

CS/CS/HB 1107

2009

1 A bill to be entitled
2 An act relating to law enforcement officers and
3 correctional officers; amending s. 112.532, F.S.;
4 providing that a law enforcement officer or correctional
5 officer is entitled to specified rights if the officer is
6 subject to suspension in a disciplinary proceeding;
7 providing that a law enforcement officer or correctional
8 officer is entitled to review witness statements by other
9 officers and other existing evidence before the officer
10 under investigation is interrogated; providing that time-
11 limitation periods will be tolled during disciplinary
12 proceedings under certain specified circumstance; amending
13 s. 112.533, F.S.; authorizing a law enforcement officer or
14 correctional officer who is subject to an investigation,
15 and the officer's legal counsel, to review specified
16 documents and recordings before the investigative
17 interview; amending s. 112.534, F.S.; providing procedures
18 and remedies to an officer if an agency intentionally
19 fails to comply with specified provisions; providing that
20 the officer bears the burden of proof to establish an
21 intentional violation; providing that the standard of
22 proof is a preponderance of the evidence; exempting
23 specified provisions from the Administrative Procedure
24 Act; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsections (1), (4), and (6) of section

29 | 112.532, Florida Statutes, are amended to read:

30 | 112.532 Law enforcement officers' and correctional
 31 | officers' rights.--All law enforcement officers and correctional
 32 | officers employed by or appointed to a law enforcement agency or
 33 | a correctional agency shall have the following rights and
 34 | privileges:

35 | (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
 36 | OFFICERS WHILE UNDER INVESTIGATION.--Whenever a law enforcement
 37 | officer or correctional officer is under investigation and
 38 | subject to interrogation by members of his or her agency for any
 39 | reason that ~~which~~ could lead to disciplinary action, suspension,
 40 | demotion, or dismissal, the ~~such~~ interrogation must ~~shall~~ be
 41 | conducted under the following conditions:

42 | (a) The interrogation shall be conducted at a reasonable
 43 | hour, preferably at a time when the law enforcement officer or
 44 | correctional officer is on duty, unless the seriousness of the
 45 | investigation is of such a degree that immediate action is
 46 | required.

47 | (b) The interrogation shall take place either at the
 48 | office of the command of the investigating officer or at the
 49 | office of the local precinct, police unit, or correctional unit
 50 | in which the incident allegedly occurred, as designated by the
 51 | investigating officer or agency.

52 | (c) The law enforcement officer or correctional officer
 53 | under investigation shall be informed of the rank, name, and
 54 | command of the officer in charge of the investigation, the
 55 | interrogating officer, and all persons present during the
 56 | interrogation. All questions directed to the officer under

57 | interrogation shall be asked by or through one interrogator
58 | during any one investigative interrogation, unless specifically
59 | waived by the officer under investigation.

60 | (d) The law enforcement officer or correctional officer
61 | under investigation must ~~shall~~ be informed of the nature of the
62 | investigation before ~~prior to~~ any interrogation begins, and he
63 | or she must ~~shall~~ be informed of the names of all complainants.
64 | All identifiable witnesses shall be interviewed, whenever
65 | possible, prior to the beginning of the investigative interview
66 | of the accused officer. The complaint, ~~and~~ all witness
67 | statements, including all other existing subject officer
68 | statements, and all other existing evidence, including, but not
69 | limited to, incident reports, GPS locator information, and audio
70 | or video recordings relating to the incident under
71 | investigation, must ~~shall~~ be provided to each ~~the~~ officer who is
72 | the subject of the complaint before ~~prior to~~ the beginning of
73 | any investigative interview of that officer. An officer, after
74 | being informed of the right to review witness statements, may
75 | voluntarily waive the provisions of this paragraph and provide a
76 | voluntary statement at any time.

77 | (e) Interrogating sessions shall be for reasonable periods
78 | and shall be timed to allow for such personal necessities and
79 | rest periods as are reasonably necessary.

80 | (f) The law enforcement officer or correctional officer
81 | under interrogation may ~~shall~~ not be subjected to offensive
82 | language or be threatened with transfer, dismissal, or
83 | disciplinary action. A ~~No~~ promise or reward may not ~~shall~~ be
84 | made as an inducement to answer any questions.

85 (g) The formal interrogation of a law enforcement officer
 86 or correctional officer, including all recess periods, must
 87 ~~shall~~ be recorded on audio tape, or otherwise preserved in such
 88 a manner as to allow a transcript to be prepared, and there
 89 shall be no unrecorded questions or statements. Upon the request
 90 of the interrogated officer, a copy of any ~~such~~ recording of the
 91 interrogation session must be made available to the interrogated
 92 officer no later than 72 hours, excluding holidays and weekends,
 93 following said interrogation.

94 (h) If the law enforcement officer or correctional officer
 95 under interrogation is under arrest, or is likely to be placed
 96 under arrest as a result of the interrogation, he or she shall
 97 be completely informed of all his or her rights before
 98 commencing ~~prior to the commencement of~~ the interrogation.

99 (i) At the request of any law enforcement officer or
 100 correctional officer under investigation, he or she has ~~shall~~
 101 ~~have~~ the right to be represented by counsel or any other
 102 representative of his or her choice, who shall be present at all
 103 times during the ~~such~~ interrogation whenever the interrogation
 104 relates to the officer's continued fitness for law enforcement
 105 or correctional service.

106 (j) Notwithstanding the rights and privileges provided by
 107 this part, this part does not limit the right of an agency to
 108 discipline or to pursue criminal charges against an officer.

109 (4) ~~(a)~~ NOTICE OF DISCIPLINARY ACTION.--

110 (a) A ~~No~~ dismissal, demotion, transfer, reassignment, or
 111 other personnel action that ~~which~~ might result in loss of pay or
 112 benefits or that ~~which~~ might otherwise be considered a punitive

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113 measure may not ~~shall~~ be taken against any law enforcement
114 officer or correctional officer unless the ~~such~~ law enforcement
115 officer or correctional officer is notified of the action and
116 the reason or reasons for the action before ~~therefor prior to~~
117 the effective date of the ~~such~~ action.

118 (b) Notwithstanding ~~the provisions of~~ s. 112.533(2),
119 whenever a law enforcement officer or correctional officer is
120 subject to disciplinary action consisting of suspension with
121 loss of pay, demotion, or dismissal, the officer or the
122 officer's representative shall, upon request, be provided with a
123 complete copy of the investigative file, including the final
124 investigative report and all evidence, ~~report and supporting~~
125 ~~documents~~ and with the opportunity to address the findings in
126 the report with the employing law enforcement agency before
127 imposing ~~prior to the imposition of the~~ disciplinary action
128 consisting of suspension with loss of pay, demotion, or
129 dismissal. The contents of the complaint and investigation shall
130 remain confidential until such time as the employing law
131 enforcement agency makes a final determination whether or not to
132 issue a notice of disciplinary action consisting of suspension
133 with loss of pay, demotion, or dismissal. This paragraph does
134 ~~shall not be construed to~~ provide law enforcement officers with
135 a property interest or expectancy of continued employment,
136 employment, or appointment as a law enforcement officer.

137 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.--

138 (a) Except as provided in this subsection, ~~no~~ disciplinary
139 action, suspension, demotion, or dismissal may not ~~shall~~ be
140 undertaken by an agency against a law enforcement officer or

141 | correctional officer for any act, omission, or other allegation
 142 | of misconduct if the investigation of the ~~such~~ allegation is not
 143 | completed within 180 days after the date the agency receives
 144 | notice of the allegation by a person authorized by the agency to
 145 | initiate an investigation of the misconduct. If ~~In the event~~
 146 | ~~that~~ the agency determines that disciplinary action is
 147 | appropriate, it shall complete its investigation and give notice
 148 | in writing to the law enforcement officer or correctional
 149 | officer of its intent to proceed with disciplinary action, along
 150 | with a proposal of the specific action sought, including length
 151 | of suspension, if applicable. ~~Such~~ Notice to the officer must
 152 | ~~shall~~ be provided within 180 days after the date the agency
 153 | received notice of the alleged misconduct, except as follows:

154 | 1. The running of the limitations period may be tolled for
 155 | a period specified in a written waiver of the limitation by the
 156 | law enforcement officer or correctional officer.

157 | 2. The running of the limitations period is ~~shall be~~
 158 | tolled during the time that any criminal investigation or
 159 | prosecution is pending in connection with the act, omission, or
 160 | other allegation of misconduct.

161 | 3. If the investigation involves an officer who is
 162 | incapacitated or otherwise unavailable, the running of the
 163 | limitations period is ~~shall be~~ tolled during the period of
 164 | incapacitation or unavailability.

165 | 4. In a multijurisdictional investigation, the limitations
 166 | period may be extended for a period of time reasonably necessary
 167 | to facilitate the coordination of the agencies involved.

168 | 5. The running of the limitations period may be tolled for

169 emergencies or natural disasters during the time period wherein
170 the Governor has declared a state of emergency within the
171 jurisdictional boundaries of the concerned agency.

172 6. The running of the limitations period is tolled during
173 the time that the officer's compliance hearing proceeding is
174 continuing, beginning with the filing of the notice of violation
175 and a request for a hearing and ending with the written
176 determination of the compliance review panel or upon the
177 violation being remedied by the agency.

178 (b) An investigation against a law enforcement officer or
179 correctional officer may be reopened, notwithstanding the
180 limitations period for commencing disciplinary action, demotion,
181 or dismissal, if:

182 1. Significant new evidence has been discovered that is
183 likely to affect the outcome of the investigation.

184 2. The evidence could not have reasonably been discovered
185 in the normal course of investigation or the evidence resulted
186 from the predisciplinary response of the officer.

187
188 Any disciplinary action resulting from an investigation that is
189 reopened pursuant to this paragraph must be completed within 90
190 days after the date the investigation is reopened.

191 Section 2. Paragraph (a) of subsection (2) of section
192 112.533, Florida Statutes, is amended to read:

193 112.533 Receipt and processing of complaints.--

194 (2) (a) A complaint filed against a law enforcement officer
195 or correctional officer with a law enforcement agency or
196 correctional agency and all information obtained pursuant to the

197 investigation by the agency of the ~~such~~ complaint is ~~shall be~~
 198 confidential and exempt from the provisions of s. 119.07(1)
 199 until the investigation ceases to be active, or until the agency
 200 head or the agency head's designee provides written notice to
 201 the officer who is the subject of the complaint, either
 202 personally or by mail, that the agency has either:

203 1. Concluded the investigation with a finding not to
 204 proceed with disciplinary action or to file charges; or

205 2. Concluded the investigation with a finding to proceed
 206 with disciplinary action or to file charges.

207
 208 Notwithstanding the foregoing provisions, the officer who is the
 209 subject of the complaint, along with legal counsel or any other
 210 representative of his or her choice, may review the complaint
 211 and all statements regardless of form made by the complainant
 212 and witnesses and all existing evidence, including, but not
 213 limited to, incident reports, analyses, GPS locator information,
 214 and audio or video recordings relating to the investigation,
 215 immediately before ~~prior to the~~ beginning ~~of~~ the investigative
 216 interview. All statements, regardless of form, provided by a law
 217 enforcement officer or correctional officer during the course of
 218 a complaint investigation of that officer shall be made under
 219 oath pursuant to s. 92.525. Knowingly false statements given by
 220 a law enforcement officer or correctional officer under
 221 investigation may subject the law enforcement officer or
 222 correctional officer to prosecution for perjury. If a witness to
 223 a complaint is incarcerated in a correctional facility and may
 224 be under the supervision of, or have contact with, the officer

225 | under investigation, only the names and written statements of
 226 | the complainant and nonincarcerated witnesses may be reviewed by
 227 | the officer under investigation immediately prior to the
 228 | beginning of the investigative interview.

229 | Section 3. Section 112.534, Florida Statutes, is amended
 230 | to read:

231 | 112.534 Failure to comply; official misconduct.--

232 | (1) If any law enforcement agency or correctional agency,
 233 | including investigators in its internal affairs or professional
 234 | standards division, or an assigned investigating supervisor,
 235 | intentionally fails to comply with the requirements of this
 236 | part, the following procedures apply. For purposes of this
 237 | section, the term "law enforcement officer" or "correctional
 238 | officer" includes the officer's representative or legal counsel,
 239 | except in the application of paragraph (d).

240 | (a) The law enforcement officer or correctional officer
 241 | shall advise the investigator of the intentional violation of
 242 | the requirements of this part which is alleged to have occurred.
 243 | The officer's notice of violation is sufficient to notify the
 244 | investigator of the requirements of this part which are alleged
 245 | to have been violated and the factual basis of each violation.

246 | (b) If the investigator fails to cure the violation or
 247 | continues the violation after being notified by the law
 248 | enforcement officer or correctional officer, the officer shall
 249 | request the agency head or his or her designee be informed of
 250 | the alleged intentional violation. Once this request is made,
 251 | the interview of the officer shall cease and the officer's
 252 | refusal to respond to further investigative questions does not

253 constitute insubordination or any similar type of policy
254 violation.

255 (c) Thereafter, within 3 working days, a written notice of
256 violation and request for a compliance review hearing shall be
257 filed with the agency head or his or her designee which must
258 contain sufficient information to identify the requirements of
259 this part that are alleged to have been violated and the factual
260 basis of each violation. All evidence related to the
261 investigation must be preserved for review and presentation at
262 the compliance review hearing. For purposes of confidentiality,
263 the compliance review panel hearing shall be considered part of
264 the original investigation.

265 (d) Unless otherwise remedied by the agency before the
266 hearing, a compliance review hearing must be conducted within 10
267 working days after the request for a compliance review hearing
268 is filed, unless, by mutual agreement of the officer and agency
269 or for extraordinary reasons, an alternate date is chosen. The
270 panel shall review the circumstances and facts surrounding the
271 alleged intentional violation. The compliance review panel shall
272 be made up of three members: one member selected by the agency
273 head, one member selected by the officer filing the request, and
274 a third member to be selected by the other two members. The
275 review panel members shall be active law enforcement officers or
276 correctional officers from the same law enforcement discipline
277 as the officer requesting the hearing. Panel members may be
278 selected from any state, county, or municipal agency within the
279 county in which the officer works. The compliance review hearing
280 shall be conducted in the county in which the officer works.

281 (e) It is the responsibility of the compliance review
282 panel to determine whether or not the investigator or agency
283 intentionally violated the requirements provided under this
284 part. It may hear evidence, review relevant documents, and hear
285 argument before making such a determination; however, all
286 evidence received shall be strictly limited to the allegation
287 under consideration and may not be related to the disciplinary
288 charges pending against the officer. The investigative materials
289 are considered confidential for purposes of the compliance
290 review hearing and determination.

291 (f) The officer bears the burden of proof to establish
292 that the violation of this part was intentional. The standard of
293 proof for such a determination is by a preponderance of the
294 evidence. The determination of the panel must be made at the
295 conclusion of the hearing, in writing, and filed with the agency
296 head and the officer.

297 (g) If the alleged violation is sustained as intentional
298 by the compliance review panel, the agency head shall
299 immediately remove the investigator from any further involvement
300 with the investigation of the officer. Additionally, the agency
301 head shall direct an investigation be initiated against the
302 investigator determined to have intentionally violated the
303 requirements provided under this part for purposes of agency
304 disciplinary action. If that investigation is sustained, the
305 sustained allegations against the investigator shall be
306 forwarded to the Criminal Justice Standards and Training
307 Commission for review as an act of official misconduct or misuse
308 of position. a law enforcement officer or correctional officer

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309 ~~employed by or appointed to such agency who is personally~~
310 ~~injured by such failure to comply may apply directly to the~~
311 ~~circuit court of the county wherein such agency is headquartered~~
312 ~~and permanently resides for an injunction to restrain and enjoin~~
313 ~~such violation of the provisions of this part and to compel the~~
314 ~~performance of the duties imposed by this part.~~

315 (2) (a) All the provisions of s. 838.022 shall apply to
316 this part.

317 (b) The provisions of chapter 120 do not apply to this
318 part.

319 Section 4. This act shall take effect July 1, 2009.