



482388

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2009	.	
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The Committee on Community Affairs (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1), (4), and (6) of section 112.532, Florida Statutes, are amended to read:

112.532 Law enforcement officers' and correctional officers' rights.—All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:



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12 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
13 OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement
14 officer or correctional officer is under investigation and
15 subject to interrogation by members of his or her agency for any
16 reason that ~~which~~ could lead to disciplinary action, suspension,
17 demotion, or dismissal, the ~~such~~ interrogation must ~~shall~~ be
18 conducted under the following conditions:

19 (a) The interrogation shall be conducted at a reasonable
20 hour, preferably at a time when the law enforcement officer or
21 correctional officer is on duty, unless the seriousness of the
22 investigation is of such a degree that immediate action is
23 required.

24 (b) The interrogation shall take place either at the office
25 of the command of the investigating officer or at the office of
26 the local precinct, police unit, or correctional unit in which
27 the incident allegedly occurred, as designated by the
28 investigating officer or agency.

29 (c) The law enforcement officer or correctional officer
30 under investigation shall be informed of the rank, name, and
31 command of the officer in charge of the investigation, the
32 interrogating officer, and all persons present during the
33 interrogation. All questions directed to the officer under
34 interrogation shall be asked by or through one interrogator
35 during any one investigative interrogation, unless specifically
36 waived by the officer under investigation.

37 (d) The law enforcement officer or correctional officer
38 under investigation must ~~shall~~ be informed of the nature of the
39 investigation before ~~prior to~~ any interrogation begins, and he
40 or she must ~~shall~~ be informed of the names of all complainants.



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41 All identifiable witnesses shall be interviewed, whenever
42 possible, prior to the beginning of the investigative interview
43 of the accused officer. The complaint, ~~and~~ all witness
44 statements, including all other existing subject officer
45 statements, and all other existing evidence, including, but not
46 limited to, incident reports, GPS locator information, and audio
47 or video recordings relating to the incident under
48 investigation, must ~~shall~~ be provided to each ~~the~~ officer who is
49 the subject of the complaint before ~~prior to~~ the beginning of
50 any investigative interview of that officer. An officer, after
51 being informed of the right to review witness statements, may
52 voluntarily waive the provisions of this paragraph and provide a
53 voluntary statement at any time.

54 (e) Interrogating sessions shall be for reasonable periods
55 and shall be timed to allow for such personal necessities and
56 rest periods as are reasonably necessary.

57 (f) The law enforcement officer or correctional officer
58 under interrogation may ~~shall~~ not be subjected to offensive
59 language or be threatened with transfer, dismissal, or
60 disciplinary action. A ~~No~~ promise or reward may not ~~shall~~ be
61 made as an inducement to answer any questions.

62 (g) The formal interrogation of a law enforcement officer
63 or correctional officer, including all recess periods, must
64 ~~shall~~ be recorded on audio tape, or otherwise preserved in such
65 a manner as to allow a transcript to be prepared, and there
66 shall be no unrecorded questions or statements. Upon the request
67 of the interrogated officer, a copy of any ~~such~~ recording of the
68 interrogation session must be made available to the interrogated
69 officer no later than 72 hours, excluding holidays and weekends,



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70 following said interrogation.

71 (h) If the law enforcement officer or correctional officer
72 under interrogation is under arrest, or is likely to be placed
73 under arrest as a result of the interrogation, he or she shall
74 be completely informed of all his or her rights before
75 commencing ~~prior to the commencement of~~ the interrogation.

76 (i) At the request of any law enforcement officer or
77 correctional officer under investigation, he or she has ~~shall~~
78 ~~have~~ the right to be represented by counsel or any other
79 representative of his or her choice, who shall be present at all
80 times during the ~~such~~ interrogation whenever the interrogation
81 relates to the officer's continued fitness for law enforcement
82 or correctional service.

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

86 (4) (a) NOTICE OF DISCIPLINARY ACTION.-A ~~No~~ dismissal,
87 demotion, transfer, reassignment, or other personnel action that
88 ~~which~~ might result in loss of pay or benefits or that ~~which~~
89 might otherwise be considered a punitive measure may not ~~shall~~
90 be taken against any law enforcement officer or correctional
91 officer unless the ~~such~~ law enforcement officer or correctional
92 officer is notified of the action and the reason or reasons for
93 the action before ~~therefor prior to~~ the effective date of the
94 ~~such~~ action.

95 (b) Notwithstanding ~~the provisions of~~ s. 112.533(2),
96 whenever a law enforcement officer or correctional officer is
97 subject to disciplinary action consisting of suspension with
98 loss of pay, demotion, or dismissal, the officer or the



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99 officer's representative shall, upon request, be provided with a
100 complete copy of the investigative file, including the final
101 investigative report and all evidence, ~~report and supporting~~
102 ~~documents~~ and with the opportunity to address the findings in
103 the report with the employing law enforcement agency before
104 imposing ~~prior to the imposition of the~~ disciplinary action
105 consisting of suspension with loss of pay, demotion, or
106 dismissal. The contents of the complaint and investigation shall
107 remain confidential until such time as the employing law
108 enforcement agency makes a final determination whether or not to
109 issue a notice of disciplinary action consisting of suspension
110 with loss of pay, demotion, or dismissal. This paragraph does
111 ~~shall not be construed to~~ provide law enforcement officers with
112 a property interest or expectancy of continued employment,
113 employment, or appointment as a law enforcement officer.

114 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

115 (a) Except as provided in this subsection, ~~no~~ disciplinary
116 action, suspension, demotion, or dismissal may not ~~shall~~ be
117 undertaken by an agency against a law enforcement officer or
118 correctional officer for any act, omission, or other allegation
119 of misconduct if the investigation of the ~~such~~ allegation is not
120 completed within 180 days after the date the agency receives
121 notice of the allegation by a person authorized by the agency to
122 initiate an investigation of the misconduct. If ~~In the event~~
123 ~~that~~ the agency determines that disciplinary action is
124 appropriate, it shall complete its investigation and give notice
125 in writing to the law enforcement officer or correctional
126 officer of its intent to proceed with disciplinary action, along
127 with a proposal of the specific action sought, including length



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128 of suspension, if applicable. ~~Such~~ Notice to the officer must
129 ~~shall~~ be provided within 180 days after the date the agency
130 received notice of the alleged misconduct, except as follows:

131 1. The running of the limitations period may be tolled for
132 a period specified in a written waiver of the limitation by the
133 law enforcement officer or correctional officer.

134 2. The running of the limitations period is ~~shall be~~ tolled
135 during the time that any criminal investigation or prosecution
136 is pending in connection with the act, omission, or other
137 allegation of misconduct.

138 3. If the investigation involves an officer who is
139 incapacitated or otherwise unavailable, the running of the
140 limitations period is ~~shall be~~ tolled during the period of
141 incapacitation or unavailability.

142 4. In a multijurisdictional investigation, the limitations
143 period may be extended for a period of time reasonably necessary
144 to facilitate the coordination of the agencies involved.

145 5. The running of the limitations period may be tolled for
146 emergencies or natural disasters during the time period wherein
147 the Governor has declared a state of emergency within the
148 jurisdictional boundaries of the concerned agency.

149 6. The running of the limitations period is tolled during
150 the time that the officer's compliance hearing proceeding is
151 continuing beginning with the filing of the notice of violation
152 and a request for a hearing and ending with the written
153 determination of the compliance review panel.

154 7. The running of the limitations period is tolled by the
155 filing of a petition for injunction or review pursuant to s.
156 112.534(1).



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157 (b) An investigation against a law enforcement officer or
158 correctional officer may be reopened, notwithstanding the
159 limitations period for commencing disciplinary action, demotion,
160 or dismissal, if:

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

163 2. The evidence could not have reasonably been discovered
164 in the normal course of investigation or the evidence resulted
165 from the predisciplinary response of the officer.

166

167 Any disciplinary action resulting from an investigation that is
168 reopened pursuant to this paragraph must be completed within 90
169 days after the date the investigation is reopened.

170 Section 2. Paragraph (a) of subsection (2) of section
171 112.533, Florida Statutes, is amended to read:

172 112.533 Receipt and processing of complaints.—

173 (2) (a) A complaint filed against a law enforcement officer
174 or correctional officer with a law enforcement agency or
175 correctional agency and all information obtained pursuant to the
176 investigation by the agency of the ~~such~~ complaint is ~~shall be~~
177 confidential and exempt from the provisions of s. 119.07(1)
178 until the investigation ceases to be active, or until the agency
179 head or the agency head's designee provides written notice to
180 the officer who is the subject of the complaint, either
181 personally or by mail, that the agency has either:

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

184 2. Concluded the investigation with a finding to proceed
185 with disciplinary action or to file charges.



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186
187 Notwithstanding the foregoing provisions, the officer who is the
188 subject of the complaint, along with legal counsel or any other
189 representative of his or her choice, may review the complaint
190 and all statements regardless of form made by the complainant
191 and witnesses and all existing evidence, including, but not
192 limited to, incident reports, analyses, GPS locator information,
193 and audio or video recordings relating to the investigation,
194 immediately before ~~prior to the~~ beginning ~~of~~ the investigative
195 interview. All statements, regardless of form, provided by a law
196 enforcement officer or correctional officer during the course of
197 a complaint investigation of that officer shall be made under
198 oath pursuant to s. 92.525. Knowingly false statements given by
199 a law enforcement officer or correctional officer under
200 investigation may subject the law enforcement officer or
201 correctional officer to prosecution for perjury. If a witness to
202 a complaint is incarcerated in a correctional facility and may
203 be under the supervision of, or have contact with, the officer
204 under investigation, only the names and written statements of
205 the complainant and nonincarcerated witnesses may be reviewed by
206 the officer under investigation immediately prior to the
207 beginning of the investigative interview.

208 Section 3. Section 112.534, Florida Statutes, is amended to
209 read:

210 112.534 Failure to comply; official misconduct.-

211 (1) If any law enforcement agency or correctional agency,
212 including investigators in its internal affairs or professional
213 standards division, or an assigned investigating supervisor,
214 intentionally fails to comply with the requirements of this



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215 part, the following procedures apply. For purposes of this
216 section, the term "law enforcement officer" or "correctional
217 officer" includes the officer's representative or legal counsel.

218 (a) The law enforcement officer or correctional officer
219 shall advise the investigator of the intentional violation of
220 the requirements of this part which is alleged to have occurred.
221 The officer's notice of violation is sufficient to notify the
222 investigator of the requirements of this part which are alleged
223 to have been violated and the factual basis of each violation.

224 (b) If the investigator fails to cure the violation or
225 continues the violation after being notified by the law
226 enforcement officer or correctional officer, the officer shall
227 request that the interview cease and the agency head or his
228 designee be informed of the alleged intentional violation. Once
229 this request is made the interview of the officer shall cease
230 and the officer's refusal to respond to further investigative
231 questions does not constitute insubordination.

232 (c) Thereafter a notice of violation and request for a
233 compliance review hearing shall be filed by the officer in
234 writing which must contain sufficient information to identify
235 the requirements of this part which are alleged to have been
236 violated and the factual basis of each violation. All evidence
237 related to the investigation must be preserved for review and
238 presentation at the compliance review hearing. Such documents or
239 evidence are not considered confidential for purposes of the
240 presentation at the compliance review panel hearing.

241 (d) A compliance review hearing must be conducted within 10
242 calendar days after the request for a compliance review hearing
243 is filed, unless, by mutual agreement of the officer and agency



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244 or for extraordinary reasons, an alternate date is chosen. The
245 panel shall review the circumstances and facts surrounding the
246 alleged intentional violation. The compliance review panel shall
247 be made up of three members: one member selected by the agency
248 head, one member selected by the officer filing the request, and
249 a third member to be selected by the other two members. The
250 review panel members shall be law enforcement officers or
251 correctional officers who are either active or have retired in
252 good standing, from the same law enforcement discipline as the
253 officer requesting the hearing. Panel members may be selected
254 from any state, county or municipal agency within the county in
255 which the officer works. The compliance review hearing shall be
256 conducted in the county in which the officer works.

257 (e) It is the responsibility of the compliance review panel
258 to determine whether or not the investigator or agency
259 intentionally violated the requirements provided under this
260 part. It may hear evidence, review relevant documents and hear
261 argument before making such a determination; however, all
262 evidence received shall be strictly limited to the allegation
263 under consideration and may not be related to the disciplinary
264 charges pending against the officer. The investigative materials
265 are not considered confidential for purposes of the compliance
266 review hearing and determination.

267 (f) The officer bears the burden of proof to establish that
268 the violation of this part was intentional. The standard of
269 proof for such a determination is by a preponderance of the
270 evidence. The determination of the panel shall be in writing and
271 filed with the agency head and the officer. Such findings are
272 final and binding on all parties.



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273 (g) If the alleged violation is sustained as intentional by
274 the compliance review panel the agency head shall immediately
275 remove the investigator from any further involvement with the
276 investigation of the officer. Additionally, the agency head
277 shall direct an investigation be initiated against the
278 investigator determined to have intentionally violated the
279 requirements provided under this part for purposes of agency
280 disciplinary action. If that investigation is sustained, the
281 sustained allegations against the investigator shall be
282 forwarded to the Criminal Justice Standard and Training
283 Commission for review as an act of official misconduct or misuse
284 of position. a law enforcement officer or correctional officer
285 employed by or appointed to such agency who is personally
286 injured by such failure to comply may apply directly to the
287 circuit court of the county wherein such agency is headquartered
288 and permanently resides for an injunction to restrain and enjoin
289 such violation of the provisions of this part and to compel the
290 performance of the duties imposed by this part.

291 (2) All the provisions of s. 838.022 shall apply to this
292 part.

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

294
295 ===== T I T L E A M E N D M E N T =====

296 And the title is amended as follows:

297 Delete everything before the enacting clause
298 and insert:

299 A bill to be entitled
300 An act relating to law enforcement officers and
301 correctional officers; amending s. 112.532, F.S.;



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302 providing that a law enforcement officer or
303 correctional officer is entitled to specified rights
304 if the officer is subject to suspension in a
305 disciplinary proceeding; providing that a law
306 enforcement officer or correctional officer is
307 entitled to review witness statements by other
308 officers and other existing evidence before the
309 officer under investigation is interrogated; providing
310 that time-limitation periods will be tolled during
311 disciplinary proceedings under certain specified
312 circumstance; amending s. 112.533, F.S.; authorizing a
313 law enforcement officer or correctional officer who is
314 subject to an investigation, and the officer's legal
315 counsel, to review specified documents and recordings
316 before the investigative interview; amending s.
317 112.534, F.S.; providing procedures and remedies to
318 the officer if an agency intentionally fails to comply
319 with specified provisions; providing an effective
320 date.