

By Senator Fasano

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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
5 correctional officer is entitled to specified rights
6 if the officer is subject to suspension in a
7 disciplinary proceeding; providing that a law
8 enforcement officer or correctional officer is
9 entitled to review witness statements by other
10 officers and other evidence before the officer under
11 investigation is interrogated; providing that an
12 investigation is void if the law enforcement agency or
13 correctional agency violates the disciplinary
14 procedures set forth in law; amending s. 112.533,
15 F.S.; authorizing a law enforcement officer or
16 correctional officer who is subject to an
17 investigation, and the officer's legal counsel, to
18 review specified documents and recordings before the
19 investigative interview; amending s. 112.534, F.S.;
20 providing remedies to the officer if an agency fails
21 to comply with disciplinary procedures; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsections (1), (4), and (6) of section
27 112.532, Florida Statutes, are amended, and subsection (7) is
28 added to that section, to read:

29 112.532 Law enforcement officers' and correctional

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

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

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

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

51 (c) The law enforcement officer or correctional officer
52 under investigation shall be informed of the rank, name, and
53 command of the officer in charge of the investigation, the
54 interrogating officer, and all persons present during the
55 interrogation. All questions directed to the officer under
56 interrogation shall be asked by or through one interrogator
57 during any one investigative interrogation, unless specifically
58 waived by the officer under investigation.

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

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

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

87 (g) The formal interrogation of a law enforcement officer

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

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

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

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

111 (4) (a) NOTICE OF DISCIPLINARY ACTION.—A ~~No~~ dismissal,
112 demotion, transfer, reassignment, or other personnel action that
113 ~~which~~ might result in loss of pay or benefits or that ~~which~~
114 might otherwise be considered a punitive measure may not ~~shall~~
115 be taken against any law enforcement officer or correctional
116 officer unless the ~~such~~ law enforcement officer or correctional

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117 officer is notified of the action and the reason or reasons for
118 the action before ~~therefor prior to~~ the effective date of the
119 ~~such~~ action.

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

139 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

140 (a) Except as provided in this subsection, ~~no~~ disciplinary
141 action, suspension, demotion, or dismissal may not ~~shall~~ be
142 undertaken by an agency against a law enforcement officer or
143 correctional officer for any act, omission, or other allegation
144 of misconduct if the investigation of the ~~such~~ allegation is not
145 completed within 180 days after the date the agency receives

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146 notice of the allegation by a person authorized by the agency to
147 initiate an investigation of the misconduct. ~~If In the event~~
148 ~~that~~ the agency determines that disciplinary action is
149 appropriate, it shall complete its investigation and give notice
150 in writing to the law enforcement officer or correctional
151 officer of its intent to proceed with disciplinary action, along
152 with a proposal of the specific action sought, including length
153 of suspension, if applicable. ~~Such~~ Notice to the officer must
154 ~~shall~~ be provided within 180 days after the date the agency
155 received notice of the alleged misconduct, except as follows:

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

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

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

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

170 5. The running of the limitations period may be tolled for
171 emergencies or natural disasters during the time period wherein
172 the Governor has declared a state of emergency within the
173 jurisdictional boundaries of the concerned agency.

174 (b) An investigation against a law enforcement officer or

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175 correctional officer may be reopened, notwithstanding the
176 limitations period for commencing disciplinary action, demotion,
177 or dismissal, if:

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

180 2. The evidence could not have reasonably been discovered
181 in the normal course of investigation or the evidence resulted
182 from the predisciplinary response of the officer.

183
184 Any disciplinary action resulting from an investigation that is
185 reopened pursuant to this paragraph must be completed within 90
186 days after the date the investigation is reopened.

187 (7) DISCIPLINARY REVERSALS.-If a law enforcement agency or
188 correctional agency violates this section, the disciplinary
189 action is void and the officer must be reinstated to the
190 position or rank previously held by the officer, along with
191 appropriate reimbursement of wages and employment benefits, as
192 if the discipline had not been imposed.

193 Section 2. Paragraph (a) of subsection (2) of section
194 112.533, Florida Statutes, is amended to read:

195 112.533 Receipt and processing of complaints.-

196 (2) (a) A complaint filed against a law enforcement officer
197 or correctional officer with a law enforcement agency or
198 correctional agency and all information obtained pursuant to the
199 investigation by the agency of the ~~such~~ complaint is ~~shall be~~
200 confidential and exempt from the provisions of s. 119.07(1)
201 until the investigation ceases to be active, or until the agency
202 head or the agency head's designee provides written notice to
203 the officer who is the subject of the complaint, either

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204 personally or by mail, that the agency has either:

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

207 2. Concluded the investigation with a finding to proceed
208 with disciplinary action or to file charges.

209
210 Notwithstanding the foregoing provisions, the officer who is the
211 subject of the complaint, along with legal counsel or any other
212 representative of his or her choice, may review the complaint
213 and all statements regardless of form made by the complainant
214 and witnesses and all evidence, including, but not limited to,
215 incident reports, analyses, GPS locator information, and audio
216 or video recordings relating to the investigation, immediately
217 before ~~prior to the~~ beginning ~~of~~ the investigative interview.

218 All statements, regardless of form, provided by a law
219 enforcement officer or correctional officer during the course of
220 a complaint investigation of that officer shall be made under
221 oath pursuant to s. 92.525. Knowingly false statements given by
222 a law enforcement officer or correctional officer under
223 investigation may subject the law enforcement officer or
224 correctional officer to prosecution for perjury. If a witness to
225 a complaint is incarcerated in a correctional facility and may
226 be under the supervision of, or have contact with, the officer
227 under investigation, only the names and written statements of
228 the complainant and nonincarcerated witnesses may be reviewed by
229 the officer under investigation immediately prior to the
230 beginning of the investigative interview.

231 Section 3. Subsection (1) of section 112.534, Florida
232 Statutes, is amended to read:

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233 112.534 Failure to comply; official misconduct.-
234 (1) If any law enforcement agency or correctional agency
235 fails to comply with the requirements of this part, a law
236 enforcement officer or correctional officer employed by or
237 appointed to such agency who is personally injured by such
238 failure to comply may apply directly to the circuit court of the
239 county wherein such agency is headquartered and permanently
240 resides for an injunction to restrain and enjoin such violation
241 of the provisions of this part and to compel the performance of
242 the duties imposed by this part. Alternatively, the officer may
243 seek declaratory relief pursuant to chapter 86, or seek other
244 extraordinary remedies pursuant to law, in order to ensure
245 compliance with the substantive and procedural rights provided
246 under this part. In fashioning a remedy, the court shall declare
247 that the disciplinary action taken by the agency is void and
248 direct that the officer be reinstated to the position or rank
249 that he or she previously held, along with appropriate
250 reimbursement of wages and employment benefits, as if the
251 discipline had not been imposed.

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