

By the Committee on Community Affairs; and 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 existing evidence before the  
11          officer under investigation is interrogated; providing  
12          that time-limitation periods will be tolled during  
13          disciplinary proceedings under certain specified  
14          circumstance; amending s. 112.533, F.S.; authorizing a  
15          law enforcement officer or correctional officer who is  
16          subject to an investigation, and the officer's legal  
17          counsel, to review specified documents and recordings  
18          before the investigative interview; amending s.  
19          112.534, F.S.; providing procedures and remedies to  
20          the officer if an agency intentionally fails to comply  
21          with specified provisions; providing that the officer  
22          bears the burden of proof to establish intentional  
23          violations; providing that the standard of proof is a  
24          preponderance of the evidence; providing an effective  
25          date.

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

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

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30 112.532, Florida Statutes, are amended to read:

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

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

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

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

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

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59 during any one investigative interrogation, unless specifically  
60 waived by the officer under investigation.

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

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

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

86 (g) The formal interrogation of a law enforcement officer  
87 or correctional officer, including all recess periods, must

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

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

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

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

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

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117 the action before ~~therefor prior to~~ the effective date of the  
118 ~~such~~ action.

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

138 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

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

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

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

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

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

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

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

173 6. The running of the limitations period is tolled during  
174 the time that the officer's compliance hearing proceeding is

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175 continuing beginning with the filing of the notice of violation  
176 and a request for a hearing and ending with the written  
177 determination of the compliance review panel.

178 7. The running of the limitations period is tolled by the  
179 filing of a petition for injunction or review pursuant to s.  
180 112.534(1).

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

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

187 2. The evidence could not have reasonably been discovered  
188 in the normal course of investigation or the evidence resulted  
189 from the predisciplinary response of the officer.

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

194 Section 2. Paragraph (a) of subsection (2) of section  
195 112.533, Florida Statutes, is amended to read:

196 112.533 Receipt and processing of complaints.—

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

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204 the officer who is the subject of the complaint, either  
205 personally or by mail, that the agency has either:

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

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

210

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

232 Section 3. Section 112.534, Florida Statutes, is amended to

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233 read:

234 112.534 Failure to comply; official misconduct.-

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

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

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

256 (c) Thereafter a notice of violation and request for a  
257 compliance review hearing shall be filed by the officer in  
258 writing which must contain sufficient information to identify  
259 the requirements of this part which are alleged to have been  
260 violated and the factual basis of each violation. All evidence  
261 related to the investigation must be preserved for review and

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262 presentation at the compliance review hearing. Such documents or  
263 evidence are not considered confidential for purposes of the  
264 presentation at the compliance review panel hearing.

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

281 (e) It is the responsibility of the compliance review panel  
282 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 not considered confidential for purposes of the compliance  
290 review hearing and determination.

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291 (f) The officer bears the burden of proof to establish that  
292 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 shall be in writing and  
295 filed with the agency head and the officer. Such findings are  
296 final and binding on all parties.

297 (g) If the alleged violation is sustained as intentional by  
298 the compliance review panel the agency head shall immediately  
299 remove the investigator from any further involvement with the  
300 investigation of the officer. Additionally, the agency head  
301 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 Standard and Training  
307 Commission for review as an act of official misconduct or misuse  
308 of position. a law enforcement officer or correctional officer  
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) All the provisions of s. 838.022 shall apply to this  
316 part.

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