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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 or upon the
178 violation being remedied by the agency.

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

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

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

188

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

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

194 112.533 Receipt and processing of complaints.—

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

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

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

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

232 112.534 Failure to comply; official misconduct.—

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233 (1) If any law enforcement agency or correctional agency,
234 including investigators in its internal affairs or professional
235 standards division, or an assigned investigating supervisor,
236 intentionally fails to comply with the requirements of this
237 part, the following procedures apply. For purposes of this
238 section, the term "law enforcement officer" or "correctional
239 officer" includes the officer's representative or legal counsel,
240 except in application of s. 112.534(1)(d).

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

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

256 (c) Thereafter, within 3 working days, a written notice of
257 violation and request for a compliance review hearing shall be
258 filed with the agency head or designee which must contain
259 sufficient information to identify the requirements of this part
260 which are alleged to have been violated and the factual basis of
261 each violation. All evidence related to the investigation must

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262 be preserved for review and presentation at the compliance
263 review hearing. For purposes of confidentiality, the compliance
264 review panel hearing shall be considered part of the original
265 investigation.

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

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

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291 are considered confidential for purposes of the compliance
292 review hearing and determination.

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

299 (g) If the alleged violation is sustained as intentional by
300 the compliance review panel the agency head shall immediately
301 remove the investigator from any further involvement with the
302 investigation of the officer. Additionally, the agency head
303 shall direct an investigation be initiated against the
304 investigator determined to have intentionally violated the
305 requirements provided under this part for purposes of agency
306 disciplinary action. If that investigation is sustained, the
307 sustained allegations against the investigator shall be
308 forwarded to the Criminal Justice Standard and Training
309 Commission for review as an act of official misconduct or misuse
310 of position. a law enforcement officer or correctional officer
311 employed by or appointed to such agency who is personally
312 injured by such failure to comply may apply directly to the
313 circuit court of the county wherein such agency is headquartered
314 and permanently resides for an injunction to restrain and enjoin
315 such violation of the provisions of this part and to compel the
316 performance of the duties imposed by this part.

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

319 (b) The provisions of chapter 120 do not apply to this

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320 part.

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