

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1322

INTRODUCER: Senator Evers

SUBJECT: Law Enforcement and Corrections Officers

DATE: March 21, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			GO	
3.			CA	

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**I. Summary:**

SB 1322 amends Part VI of Chapter 112, F.S., which provides protections and rights to law enforcement officers and correctional officers who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The bill:

- Provides that procedures under s. 112.532, F.S. (law enforcement officers' and correctional officers' rights), are exclusive procedures for investigation of all law enforcement and correctional officers subject to any internal or external investigation;
- Requires that officers subject to investigation be advised of the "specific nature" of the investigation prior to any interrogation session;
- Requires that a copy of any recording of an interrogation be provided upon request of the officer's representative or legal counsel;
- Removes an exemption for sheriffs and deputy sheriffs from a provision of s. 112.532, F.S., which requires a complaint review board;
- Authorizes legal counsel for an officer subject to disciplinary action to receive a copy of the investigative file, including the final investigate report and all evidence, and to address the findings in the report before disciplinary action is imposed;
- Relevant to a notice of disciplinary action, provides that action may include disciplinary probation;
- Authorizes the investigating agency to provide the officer's representative or legal counsel with notice of intent to proceed with disciplinary action;
- Provides that procedures in s. 122.534, F.S., apply to intentional failure to comply with Part VI at any time from the beginning of the investigation until the imposition of discipline or the investigation is closed; and
- If an agency fails to comply with Part VI, authorizes an officer to seek injunctive relief in the circuit court of the county in which the alleged violation occurred.

## II. Present Situation:

### Rights and Procedures under Part VI of Chapter 112, F.S.

Part VI of Chapter 112, F.S., provides protections and rights to law enforcement officers<sup>1</sup> and correctional officers<sup>2</sup> who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal.”<sup>3</sup> Section 112.532, F.S., specifies the rights and protections provided to a law enforcement officer or correctional officer to include all of the following:

- Generally requiring that the interrogation be conducted at a reasonable hour and at the officer’s place of employment.
- Requiring that the officer be provided with the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation.
- Requiring that all questions directed to the officer be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the officer.
- Informing the officer of the investigation before any interrogation begins, and the names of all complainants.<sup>4</sup>
- Interviewing all identifiable witnesses, whenever possible, prior to the beginning of the investigative interview of the officer.<sup>5</sup>
- Before the beginning of any investigative interview of that officer, providing the officer with the complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation.<sup>6</sup>
- Requiring that interrogating sessions be for reasonable periods and timed to allow for such personal necessities and rest periods as are reasonably necessary.
- Providing that an officer may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action, and a promise or reward may not be made as an inducement to answer any questions.
- Requiring that the formal interrogation of an officer, including all recess periods, be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements.
- Requiring that, upon the request of the interrogated officer, a copy of any recording of the interrogation session be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following that interrogation.

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<sup>1</sup> “Law enforcement officer” means any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S. Section 112.531(1), F.S.

<sup>2</sup> “Correctional officer” means any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3), F.S. However, the term does not include any secretarial, clerical, or professionally trained personnel. Section 112.531(2), F.S.

<sup>3</sup> Section 112.532(1), F.S.

<sup>4</sup> An officer, after being informed of the right to review witness statements, may voluntarily waive this right and provide a voluntary statement at any time. Section 112.532(1)(d), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

- If the officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, requiring that the officer be completely informed of all his or her rights before commencing the interrogation.
- Providing that, at the request of any officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service.<sup>7</sup>

Notwithstanding the previously-described rights, Part VI does not limit the right of an agency to discipline or to pursue criminal charges against an officer.<sup>8</sup>

The statute establishes a complaint review board which is composed of 3 members or 5 members (for agencies or units having more than 100 law enforcement or correctional officers) and specifies how the members are selected. For the 3-member board, the aggrieved officer selects 1 member; for the 5-member board, the aggrieved officer selects 2 members. Sheriffs and deputy sheriffs are excluded from the complaint review board requirement.<sup>9</sup>

With certain exceptions, an investigation of an allegation against an officer must be completed within 180 days after the officer's agency receives notice of the allegation.<sup>10</sup> When an investigation is completed, the agency must determine whether disciplinary action is appropriate.<sup>11</sup> If a determination for disciplinary action<sup>12</sup> is made, the agency must give notice<sup>13</sup> in writing to the officer of its intent to proceed along with a proposal of the specific action sought.<sup>14</sup>

An investigation against an officer may be reopened if significant new evidence is discovered that could likely affect the outcome of the investigation and if the evidence:

- Could not have been reasonably discovered in the normal course of investigation; or
- Resulted from the predisciplinary response of the officer.<sup>15</sup>

The statute provides that no officer will be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by exercising any of the rights granted by Part VI.<sup>16</sup>

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<sup>7</sup> Section 112.32(1)(a)-(i), F.S.

<sup>8</sup> Section 112.32(1)(j), F.S.

<sup>9</sup> Section 112.532(2), F.S.

<sup>10</sup> Section 112.532(6)(a), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> An officer who is subject to disciplinary action may request the complete investigative file. Section 112.532(4)(a), F.S.

<sup>13</sup> Notice must be provided to the officer within 180 days after the date the agency received notice of the alleged misconduct (the running of the limitations period may be tolled in certain instances). Section 112.532(6)(a), F.S.

<sup>14</sup> The officer must be given notice before the effective date and given the reason for a dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or be considered a punitive measure.

<sup>15</sup> Section 112.532(6)(b), F.S. Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

<sup>16</sup> Section 112.532(5), F.S.

## Violations of Part VI of Chapter 112, F.S.

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with Part VI while investigating the officer.

Prior to 2009, s. 112.534, F.S., provided:

If any law enforcement agency or correctional agency fails to comply with the requirements of this part, a law enforcement officer or correctional officer employed by or appointed to such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part.<sup>17</sup>

In 2009, the statute was rewritten and the injunction provision was removed.<sup>18</sup>

Currently, s. 112.534, F.S., requires an officer to advise the investigator of the intentional violation of Part VI.<sup>19</sup> If the investigator fails to cure the violation or continues the violation after notification, the officer must request that the agency head be informed of the alleged intentional violation.<sup>20</sup> Once this request is made, the interview of the officer must cease and the officer can refuse to respond to further investigative questions.<sup>21</sup>

A written notice of the violation and a request for a compliance review hearing must then be filed within 3 working days.<sup>22</sup> The notice must contain sufficient information to identify what rights are alleged to have been violated and the factual basis of each violation.<sup>23</sup> Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a hearing is filed.<sup>24</sup>

A compliance review panel (panel) is comprised of 3 members. One member is selected by the agency head, one member is selected by the officer filing the request, and one member is selected by the other 2 members.<sup>25</sup> The panel must review the circumstances and acts of the alleged intentional violation to determine whether or not the investigator or agency intentionally violated Part VI.<sup>26</sup> In making its determination, the panel may hear evidence, review relevant

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<sup>17</sup> Section 112.534(1), F.S. (2008). An officer has a right to bring a civil suit for damages suffered during the performance of the officer's official duties for abridgement of the officer's civil rights arising out of the officer's performance of official duties, or for the filing of a complaint which the person knew was false when filed. Section 112.532(3), F.S.

<sup>18</sup> Chapter 2009-200, L.O.F.

<sup>19</sup> The officer's notice of the violation is sufficient to notify the investigator of the requirements of Part VI that are alleged to have been violated and the factual basis for each violation. Section 112.534(1)(a), F.S.

<sup>20</sup> Section 112.534(1)(b), F.S.

<sup>21</sup> *Id.* The officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.

<sup>22</sup> Section 112.534(1)(c), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> The officer and agency can agree to an alternate hearing date. Section 112.534(1)(d), F.S.

<sup>25</sup> The panel members must be officers who are active from the same law enforcement discipline as the officer requesting the hearing and may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing must be conducted in the county in which the officer works. Section 112.534(1)(d), F.S.

<sup>26</sup> Section 112.534(1)(d) and (e), F.S.

documents, and hear argument concerning the alleged intentional violation.<sup>27</sup> The officer bears the burden of proof to establish that the violation was intentional.<sup>28</sup> If the panel determines<sup>29</sup> that the violation is intentional, the investigator is immediately removed from the investigation.<sup>30</sup>

### III. Effect of Proposed Changes:

The bill amends Part VI of Chapter 112, F.S., which provides protections and rights to law enforcement officers and correctional officers who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The bill:

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The effective date of the bill is July 1, 2014.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>27</sup> Section 112.534(1)(e), F.S.

<sup>28</sup> Section 112.534(1)(f), F.S. The standard of proof is by a preponderance of the evidence.

<sup>29</sup> The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer. Section 112.534(1)(f), F.S.

<sup>30</sup> Section 112.534(1)(g), F.S. The agency head must direct that an investigation be initiated against the investigator for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator must be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**State Courts Impact:**

The Office of the State Courts Administrator (OSCA) states that the provision of the bill permitting actions for injunctive relief in the circuit courts for intentional failure to comply with Part VI of ch. 112, F.S., “may have a substantial impact in relation to both court workload and expenditure of judicial time.”<sup>31</sup> The OSCA provides the following specific information regarding revenue and expenditures:

- Revenues: The fiscal impact of this legislation on revenues to the State Courts’ trust funds from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from the new cause of action related to the intentional failure to comply with provisions as established in the bill.
- Expenditures: The fiscal impact of this bill on expenditures of the State Courts System is indeterminate due to the unavailability of data needed to quantifiably establish the increase in judicial time and court workload as a result of the new civil cause of action regarding the violation of the provisions of the bill.

Information is not available on whether the provisions of the bill will have an impact on state and local law enforcement and correctional agencies.

**VI. Technical Deficiencies:**

None.

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<sup>31</sup> 2014 Judicial Impact Statement (SB 1322) (March 6, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice). All information in the “Government Sector Impact” section of this analysis is from the OSCA analysis.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 112.532 and 112.534.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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