

By Senator Evers

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1 A bill to be entitled
2 An act relating to law enforcement and corrections
3 officers; amending s. 112.532, F.S.; specifying the
4 exclusivity of procedures governing the investigation
5 of law enforcement officers and correctional officers;
6 authorizing an interrogated officer's representative
7 or legal counsel to obtain a recording of an
8 interrogation session upon request; requiring that an
9 officer subject to disciplinary action or the
10 officer's representative or legal counsel have an
11 opportunity to address findings in a final
12 investigative report before imposition of discipline;
13 including disciplinary probation in specified
14 disciplinary actions imposed by a law enforcement
15 agency as a result of an investigation; requiring a
16 law enforcement agency to provide notice of alleged
17 misconduct to an officer's representative or legal
18 counsel within a specified timeframe; amending s.
19 112.534, F.S.; specifying the length of application of
20 investigative procedures of a law enforcement agency
21 or correctional agency; clarifying that the officer
22 under investigation bears the burden of proof before
23 the compliance review panel; authorizing an officer to
24 seek injunctive relief if a law enforcement agency or
25 correctional agency fails to comply with the
26 requirements of part VI of ch. 112, F.S.; specifying
27 the venue for such an action; providing an effective
28 date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 112.532, Florida Statutes, is amended to
33 read:

34 112.532 Law enforcement officers' and correctional
35 officers' rights.—The following procedures shall be the
36 exclusive procedures for investigating all law enforcement
37 officers and correctional officers subject to an internal or
38 external investigation, notwithstanding any other law or
39 ordinance. All law enforcement officers and correctional
40 officers employed by or appointed to a law enforcement agency or
41 a correctional agency shall have the following rights and
42 privileges:

43 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
44 OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement
45 officer or correctional officer is under investigation and
46 subject to interrogation by members of his or her agency for any
47 reason that could lead to disciplinary action, suspension,
48 demotion, or dismissal, the interrogation must be conducted
49 under the following conditions:

50 (a) The interrogation shall be conducted at a reasonable
51 hour, preferably at a time when the law enforcement officer or
52 correctional officer is on duty, unless the seriousness of the
53 investigation is of such a degree that immediate action is
54 required.

55 (b) The interrogation shall take place either at the office
56 of the command of the investigating officer or at the office of
57 the local precinct, police unit, or correctional unit in which
58 the incident allegedly occurred, as designated by the

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59 investigating officer or agency.

60 (c) The law enforcement officer or correctional officer
61 under investigation shall be informed of the rank, name, and
62 command of the officer in charge of the investigation, the
63 interrogating officer, and all persons present during the
64 interrogation. All questions directed to the officer under
65 interrogation shall be asked by or through one interrogator
66 during any one investigative interrogation, unless specifically
67 waived by the officer under investigation.

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

84 (e) Interrogating sessions shall be for reasonable periods
85 and shall be timed to allow for such personal necessities and
86 rest periods as are reasonably necessary.

87 (f) Throughout the course of an investigation, the law

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88 enforcement officer or correctional officer under interrogation
89 may not be subjected to offensive language or be threatened with
90 transfer, dismissal, or disciplinary action. A promise or reward
91 may not be made as an inducement to answer any questions.

92 (g) The formal interrogation of a law enforcement officer
93 or correctional officer, including all recess periods, must be
94 recorded on audio tape, or otherwise preserved in such a manner
95 as to allow a transcript to be prepared, and there shall be no
96 unrecorded questions or statements. Upon the request of the
97 interrogated officer or the interrogated officer's
98 representative or legal counsel, a copy of any recording of the
99 interrogation session must be made available to the interrogated
100 officer no later than 72 hours, excluding holidays and weekends,
101 following said interrogation.

102 (h) If the law enforcement officer or correctional officer
103 under interrogation is under arrest, or is likely to be placed
104 under arrest as a result of the interrogation, he or she shall
105 be completely informed of all his or her rights before
106 commencing the interrogation.

107 (i) At the request of any law enforcement officer or
108 correctional officer under investigation, he or she has the
109 right to be represented by legal counsel or any other
110 representative of his or her choice, who shall be present at all
111 times during the interrogation whenever the interrogation
112 relates to the officer's continued fitness for law enforcement
113 or correctional service.

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

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117 (2) COMPLAINT REVIEW BOARDS.—A complaint review board shall
118 be composed of three members: One member selected by the chief
119 administrator of the agency or unit; one member selected by the
120 aggrieved officer; and a third member to be selected by the
121 other two members. Agencies or units having more than 100 law
122 enforcement officers or correctional officers shall utilize a
123 five-member board, with two members being selected by the
124 administrator, two members being selected by the aggrieved
125 officer, and the fifth member being selected by the other four
126 members. The board members shall be law enforcement officers or
127 correctional officers selected from any state, county, or
128 municipal agency within the county. There shall be a board for
129 law enforcement officers and a board for correctional officers
130 whose members shall be from the same discipline as the aggrieved
131 officer. ~~The provisions of this subsection shall not apply to~~
132 ~~sheriffs or deputy sheriffs.~~

133 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR
134 CORRECTIONAL OFFICERS.—Every law enforcement officer or
135 correctional officer shall have the right to bring civil suit
136 against any person, group of persons, or organization or
137 corporation, or the head of such organization or corporation,
138 for damages, either pecuniary or otherwise, suffered during the
139 performance of the officer's official duties, for abridgment of
140 the officer's civil rights arising out of the officer's
141 performance of official duties, or for filing a complaint
142 against the officer which the person knew was false when it was
143 filed. This section does not establish a separate civil action
144 against the officer's employing law enforcement agency for the
145 investigation and processing of a complaint filed under this

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146 part.

147 (4) (a) NOTICE OF DISCIPLINARY ACTION.—A dismissal,
148 demotion, transfer, reassignment, or other personnel action that
149 might result in loss of pay or benefits or that might otherwise
150 be considered a punitive measure may not be taken against any
151 law enforcement officer or correctional officer unless the law
152 enforcement officer or correctional officer is notified of the
153 action and the reason or reasons for the action before the
154 effective date of the action.

155 (b) Notwithstanding s. 112.533(2), whenever a law
156 enforcement officer or correctional officer is subject to
157 disciplinary action consisting of suspension with loss of pay,
158 demotion, or dismissal, the officer or the officer's
159 representative or legal counsel shall, upon request, be provided
160 with a complete copy of the investigative file, including the
161 final investigative report and all evidence, and with the
162 opportunity for the officer and the officer's representative or
163 legal counsel to address the findings in the report with the
164 employing law enforcement agency before imposing disciplinary
165 action consisting of suspension with loss of pay, demotion,
166 disciplinary probation, or dismissal. The contents of the
167 complaint and investigation shall remain confidential until such
168 time as the employing law enforcement agency makes a final
169 determination whether or not to issue a notice of disciplinary
170 action consisting of suspension with loss of pay, demotion,
171 disciplinary probation, or dismissal. This paragraph does not
172 provide law enforcement officers with a property interest or
173 expectancy of continued employment, employment, or appointment
174 as a law enforcement officer.

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175 (5) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement
176 officer or correctional officer shall be discharged;
177 disciplined; demoted; denied promotion, transfer, or
178 reassignment; or otherwise discriminated against in regard to
179 his or her employment or appointment, or be threatened with any
180 such treatment, by reason of his or her exercise of the rights
181 granted by this part.

182 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

183 (a) Except as provided in this subsection, disciplinary
184 action, suspension, demotion, or dismissal may not be undertaken
185 by an agency against a law enforcement officer or correctional
186 officer for any act, omission, or other allegation of misconduct
187 if the investigation of the allegation is not completed within
188 180 days after the date the agency receives notice of the
189 allegation by a person authorized by the agency to initiate an
190 investigation of the misconduct. If the agency determines that
191 disciplinary action is appropriate, it shall complete its
192 investigation and give notice in writing to the law enforcement
193 officer or correctional officer or the officer's representative
194 or legal counsel of its intent to proceed with disciplinary
195 action, along with a proposal of the specific action sought,
196 including length of suspension, if applicable. Notice to the
197 officer or the officer's representative or legal counsel must be
198 provided within 180 days after the date the agency received
199 notice of the alleged misconduct, except as follows:

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

203 2. The running of the limitations period is tolled during

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204 the time that any criminal investigation or prosecution is
205 pending in connection with the act, omission, or other
206 allegation of misconduct.

207 3. If the investigation involves an officer who is
208 incapacitated or otherwise unavailable, the running of the
209 limitations period is tolled during the period of incapacitation
210 or unavailability.

211 4. In a multijurisdictional investigation, the limitations
212 period may be extended for a period of time reasonably necessary
213 to facilitate the coordination of the agencies involved.

214 5. The running of the limitations period may be tolled for
215 emergencies or natural disasters during the time period wherein
216 the Governor has declared a state of emergency within the
217 jurisdictional boundaries of the concerned agency.

218 6. The running of the limitations period is tolled during
219 the time that the officer's compliance hearing proceeding is
220 continuing beginning with the filing of the notice of violation
221 and a request for a hearing and ending with the written
222 determination of the compliance review panel or upon the
223 violation being remedied by the agency.

224 (b) An investigation against a law enforcement officer or
225 correctional officer may be reopened, notwithstanding the
226 limitations period for commencing disciplinary action, demotion,
227 or dismissal, if:

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

230 2. The evidence could not have reasonably been discovered
231 in the normal course of investigation or the evidence resulted
232 from the predisciplinary response of the officer.

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

237 Section 2. Section 112.534, Florida Statutes, is amended to
238 read:

239 112.534 Failure to comply; official misconduct.—

240 (1) If any law enforcement agency or correctional agency,
241 including investigators in its internal affairs or professional
242 standards division, or an assigned investigating supervisor,
243 intentionally fails to comply with the requirements of this part
244 at any time from the beginning of the investigation until the
245 imposition of discipline or the investigation is closed, the
246 following procedures apply. As used in ~~For purposes of~~ this
247 section, the term "law enforcement officer" or "correctional
248 officer" includes the officer's representative or legal counsel,
249 except in application of paragraph (d).

250 (a) The law enforcement officer or correctional officer
251 shall advise the investigator of the intentional violation of
252 the requirements of this part which is alleged to have occurred.
253 The officer's notice of violation is sufficient to notify the
254 investigator of the requirements of this part which are alleged
255 to have been violated and the factual basis of each violation.

256 (b) If the investigator fails to cure the violation or
257 continues the violation after being notified by the law
258 enforcement officer or correctional officer, the officer shall
259 request that the agency head or his or her designee be informed
260 of the alleged intentional violation. Once this request is made,
261 the interview of the officer shall cease, and the officer's

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262 refusal to respond to further investigative questions does not
263 constitute insubordination or any similar type of policy
264 violation.

265 (c) Thereafter, within 3 working days, a written notice of
266 violation and request for a compliance review hearing shall be
267 filed with the agency head or designee which must contain
268 sufficient information to identify the requirements of this part
269 which are alleged to have been violated and the factual basis of
270 each violation. All evidence related to the investigation must
271 be preserved for review and presentation at the compliance
272 review hearing. For purposes of confidentiality, the compliance
273 review panel hearing is ~~shall be~~ considered part of the original
274 investigation.

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

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291 in which the officer works.

292 (e) ~~It is the responsibility of~~ The compliance review panel
293 shall ~~to~~ determine whether or not the investigator or agency
294 intentionally violated the requirements provided under this
295 part. The panel ~~It~~ may hear evidence, review relevant documents,
296 and hear arguments ~~argument~~ before making such a determination;
297 however, all evidence received shall be strictly limited to the
298 allegation under consideration and may not be related to the
299 disciplinary charges pending against the officer. The
300 investigative materials are considered confidential for purposes
301 of the compliance review hearing and determination.

302 (f) The officer bears the burden of proof before the
303 compliance review panel to establish that the violation of this
304 part was intentional. The standard of proof for such a
305 determination is by a preponderance of the evidence. The
306 determination of the panel must be made at the conclusion of the
307 hearing, in writing, and filed with the agency head and the
308 officer.

309 (g) If the alleged violation is sustained as intentional by
310 the compliance review panel, the agency head shall immediately
311 remove the investigator from any further involvement with the
312 investigation of the officer. Additionally, the agency head
313 shall direct an investigation be initiated against the
314 investigator determined to have intentionally violated the
315 requirements provided under this part for purposes of agency
316 disciplinary action. If that investigation is sustained, the
317 sustained allegations against the investigator shall be
318 forwarded to the Criminal Justice Standards and Training
319 Commission for review as an act of official misconduct or misuse

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320 of position.

321 (h) If a law enforcement agency or a correctional agency
322 fails to comply with any requirement of this part, the law
323 enforcement officer or correctional officer may seek injunctive
324 relief in the circuit court of the county in which the alleged
325 violation occurred.

326 (2) (a) All the provisions of s. 838.022 ~~shall~~ apply to this
327 part.

328 (b) The provisions of chapter 120 do not apply to this
329 part.

330 Section 3. This act shall take effect July 1, 2014.