

HB 1323

2014

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 the exclusive procedures for investigating  
5 law enforcement officers and correctional officers for  
6 internal and external complaints; providing  
7 requirements for investigators; providing that the  
8 officer under investigation must be informed of the  
9 specific nature of the investigation; prohibiting  
10 certain practices during an investigation; requiring  
11 that a copy of any recording of the interrogation  
12 session be made available to the interrogated  
13 officer's representative or legal counsel; revising  
14 applicability; authorizing the officer's  
15 representative or legal counsel to address the  
16 findings in the report before imposing disciplinary  
17 action; amending s. 112.534, F.S.; revising  
18 applicability of procedures relating to the failure to  
19 comply with certain requirements; requiring the  
20 investigation of the officer to cease under certain  
21 conditions; authorizing an officer to seek injunctive  
22 relief; providing an effective date.

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

25  
26 Section 1. Section 112.532, Florida Statutes, is amended

27 to read:

28 112.532 Law enforcement officers' and correctional  
 29 officers' rights.—The procedures in this section are the  
 30 exclusive procedures for investigating law enforcement officers  
 31 and correctional officers for internal and external complaints.

32 All law enforcement officers and correctional officers employed  
 33 by or appointed to a law enforcement agency or a correctional  
 34 agency shall have the following rights and privileges:

35 (1) PERSONS CONDUCTING INVESTIGATION.—Whenever a law  
 36 enforcement officer or correctional officer is under  
 37 investigation, the investigation shall be conducted by a full-  
 38 time, sworn law enforcement officer employed by the same agency  
 39 as the officer under investigation.

40 (2) ~~(1)~~ RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL  
 41 OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement  
 42 officer or correctional officer is under investigation and  
 43 subject to interrogation by members of his or her agency for any  
 44 reason that could lead to disciplinary action, suspension,  
 45 demotion, or dismissal, the interrogation must be conducted  
 46 under the following conditions:

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

52 (b) The interrogation shall take place either at the

53 office of the command of the investigating officer or at the  
54 office of the local precinct, police unit, or correctional unit  
55 in which the incident allegedly occurred, as designated by the  
56 investigating officer or agency.

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

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

79 statements, may voluntarily waive the provisions of this  
80 paragraph and provide a voluntary statement at any time.

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

84 (f) Throughout the investigation, the law enforcement  
85 officer or correctional officer under interrogation may not be  
86 subjected to offensive language or be threatened with transfer,  
87 dismissal, or disciplinary action. A promise or reward may not  
88 be made as an inducement to answer any questions.

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

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

104 (i) At the request of any law enforcement officer or

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

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

114 (3)~~(2)~~ COMPLAINT REVIEW BOARDS.—A complaint review board  
115 shall be composed of three members: One member selected by the  
116 chief administrator of the agency or unit; one member selected  
117 by the aggrieved officer; and a third member to be selected by  
118 the other two members. Agencies or units having more than 100  
119 law enforcement officers or correctional officers shall utilize  
120 a five-member board, with two members being selected by the  
121 administrator, two members being selected by the aggrieved  
122 officer, and the fifth member being selected by the other four  
123 members. The board members shall be law enforcement officers or  
124 correctional officers selected from any state, county, or  
125 municipal agency within the county. There shall be a board for  
126 law enforcement officers and a board for correctional officers  
127 whose members shall be from the same discipline as the aggrieved  
128 officer. ~~The provisions of this subsection shall not apply to~~  
129 ~~sheriffs or deputy sheriffs.~~

130 (4)~~(3)~~ CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR

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

144 (5)~~(4)~~(a) NOTICE OF DISCIPLINARY ACTION.—A dismissal,  
145 demotion, transfer, reassignment, or other personnel action that  
146 might result in loss of pay or benefits or that might otherwise  
147 be considered a punitive measure may not be taken against any  
148 law enforcement officer or correctional officer unless the law  
149 enforcement officer or correctional officer is notified of the  
150 action and the reason or reasons for the action before the  
151 effective date of the action.

152 (b) Notwithstanding s. 112.533(2), whenever a law  
153 enforcement officer or correctional officer is subject to  
154 disciplinary action consisting of suspension with loss of pay,  
155 demotion, or dismissal, the officer or the officer's  
156 representative shall, upon request, be provided with a complete

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

172 |       ~~(6)~~(5) RETALIATION FOR EXERCISING RIGHTS.—No law  
173 | enforcement officer or correctional officer shall be discharged;  
174 | disciplined; demoted; denied promotion, transfer, or  
175 | reassignment; or otherwise discriminated against in regard to  
176 | his or her employment or appointment, or be threatened with any  
177 | such treatment, by reason of his or her exercise of the rights  
178 | granted by this part.

179 |       ~~(7)~~(6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

180 |       (a) Except as provided in this subsection, disciplinary  
181 | action, suspension, demotion, or dismissal may not be undertaken  
182 | by an agency against a law enforcement officer or correctional

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

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

199 2. The running of the limitations period is tolled during  
200 the time that any criminal investigation or prosecution is  
201 pending in connection with the act, omission, or other  
202 allegation of misconduct.

203 3. If the investigation involves an officer who is  
204 incapacitated or otherwise unavailable, the running of the  
205 limitations period is tolled during the period of incapacitation  
206 or unavailability.

207 4. In a multijurisdictional investigation, the limitations  
208 period may be extended for a period of time reasonably necessary



209 to facilitate the coordination of the agencies involved.

210 5. The running of the limitations period may be tolled for  
211 emergencies or natural disasters during the time period wherein  
212 the Governor has declared a state of emergency within the  
213 jurisdictional boundaries of the concerned agency.

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

220 (b) An investigation against a law enforcement officer or  
221 correctional officer may be reopened, notwithstanding the  
222 limitations period for commencing disciplinary action, demotion,  
223 or dismissal, if:

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

226 2. The evidence could not have reasonably been discovered  
227 in the normal course of investigation or the evidence resulted  
228 from the predisciplinary response of the officer.

229  
230 Any disciplinary action resulting from an investigation that is  
231 reopened pursuant to this paragraph must be completed within 90  
232 days after the date the investigation is reopened.

233 Section 2. Subsection (1) of section 112.534, Florida  
234 Statutes, is amended to read:

235 112.534 Failure to comply; official misconduct.—

236 (1) If any law enforcement agency or correctional agency,  
237 including investigators in its internal affairs or professional  
238 standards division, or an assigned investigating supervisor,  
239 intentionally fails to comply with the requirements of this part  
240 at any time during the investigation of an officer until the  
241 time the officer is disciplined or the investigation ceases, the  
242 following procedures apply. For purposes of this section, the  
243 term "law enforcement officer" or "correctional officer"  
244 includes the officer's representative or legal counsel, except  
245 in application of paragraph (d).

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

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

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

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

287 in which the officer works.

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

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

304 (g) If the alleged violation is sustained as intentional  
305 by the compliance review panel, the agency head shall  
306 immediately remove the investigator from any further involvement  
307 with the investigation of the officer. Additionally, the agency  
308 head shall direct an investigation be initiated against the  
309 investigator determined to have intentionally violated the  
310 requirements provided under this part for purposes of agency  
311 disciplinary action. If that investigation is sustained, the  
312 sustained allegations against the investigator shall be

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313 forwarded to the Criminal Justice Standards and Training  
314 Commission for review as an act of official misconduct or misuse  
315 of position.

316 (h) A law enforcement officer or correctional officer may  
317 institute a civil action in a court of competent jurisdiction to  
318 seek injunctive relief to enforce a law enforcement agency to  
319 comply with any requirement of this part.

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