

HB 889

2014

1 A bill to be entitled

2 An act relating to law enforcement and correctional
3 officers; amending s. 112.532, F.S.; specifying the
4 applicability of law enforcement and correctional
5 officers' rights to include internal or external
6 complaints against an officer; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 112.532, Florida Statutes, is amended
12 to read:

13 112.532 Law enforcement officers' and correctional
14 officers' rights.—A ~~All~~ law enforcement officer or ~~officers~~ and
15 correctional officer ~~officers~~ employed by or appointed to a law
16 enforcement agency or a correctional agency shall have the
17 following rights and privileges when the law enforcement officer
18 or correctional officer is the subject of an internal or
19 external complaint:

20 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
21 OFFICERS WHILE UNDER INVESTIGATION.—If ~~Whenever~~ a law
22 enforcement officer or correctional officer is under
23 investigation and subject to interrogation by members of his or
24 her agency for any reason that could lead to disciplinary
25 action, suspension, demotion, or dismissal, the interrogation
26 must be conducted under the following conditions:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 (a) The interrogation shall be conducted at a reasonable
28 hour, preferably at a time when the law enforcement officer or
29 correctional officer is on duty, unless the seriousness of the
30 investigation is of such a degree that immediate action is
31 required.

32 (b) The interrogation shall take place ~~either~~ at the
33 office of the command of the investigating officer or at the
34 office of the local precinct, police unit, or correctional unit
35 in which the incident allegedly occurred, as designated by the
36 investigating officer or agency.

37 (c) The law enforcement officer or correctional officer
38 under investigation shall be informed of the rank, name, and
39 command of the officer in charge of the investigation, the
40 interrogating officer, and all persons present during the
41 interrogation. All questions directed to the officer under
42 interrogation shall be asked by or through one interrogator
43 during any one investigative interrogation, unless specifically
44 waived by the officer under investigation.

45 (d) The law enforcement officer or correctional officer
46 under investigation must be informed of the nature of the
47 investigation before any interrogation begins, and he or she
48 must be informed of the names of all complainants. All
49 identifiable witnesses shall be interviewed, if ~~whenever~~
50 possible, before ~~prior to~~ the beginning of the investigative
51 interview of the accused officer. The complaint, all witness
52 statements, including all other existing subject officer

53 statements, and all other existing evidence, including, but not
54 limited to, incident reports, GPS locator information, and audio
55 or video recordings relating to the incident under
56 investigation, must be provided to each officer who is the
57 subject of the complaint before the beginning of any
58 investigative interview of that officer. An officer, after being
59 informed of the right to review witness statements, may
60 voluntarily waive the provisions of this paragraph and provide a
61 voluntary statement at any time.

62 (e) Interrogating sessions shall be for reasonable periods
63 and shall be timed to allow for such personal necessities and
64 rest periods as are reasonably necessary.

65 (f) The law enforcement officer or correctional officer
66 under interrogation may not be subjected to offensive language
67 or be threatened with transfer, dismissal, or disciplinary
68 action. A promise or reward may not be made as an inducement to
69 answer any questions.

70 (g) The formal interrogation of a law enforcement officer
71 or correctional officer, including all recess periods, must be
72 recorded on audio tape, or otherwise preserved in such a manner
73 as to allow a transcript to be prepared, and there shall be no
74 unrecorded questions or statements. Upon the request of the
75 interrogated officer, a copy of any recording of the
76 interrogation session must be made available to the interrogated
77 officer no later than 72 hours, excluding holidays and weekends,
78 following said interrogation.

79 (h) If the law enforcement officer or correctional officer
80 under interrogation is under arrest, or is likely to be placed
81 under arrest as a result of the interrogation, he or she shall
82 be completely informed of all his or her rights before
83 commencing the interrogation.

84 (i) At the request of any law enforcement officer or
85 correctional officer under investigation, he or she has the
86 right to be represented by counsel or any other representative
87 of his or her choice, who shall be present at all times during
88 the interrogation whenever the interrogation relates to the
89 officer's continued fitness for law enforcement or correctional
90 service.

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

94 (2) COMPLAINT REVIEW BOARDS.—A complaint review board
95 shall be composed of three members: One member selected by the
96 chief administrator of the agency or unit; one member selected
97 by the aggrieved officer; and a third member to be selected by
98 the other two members. Agencies or units having more than 100
99 law enforcement officers or correctional officers shall use
100 ~~utilize~~ a five-member board, with two members being selected by
101 the administrator, two members being selected by the aggrieved
102 officer, and the fifth member being selected by the other four
103 members. The board members shall be law enforcement officers or
104 correctional officers selected from a ~~any~~ state, county, or

105 municipal agency within the county. There shall be a board for
 106 law enforcement officers and a board for correctional officers
 107 whose members shall be from the same discipline as the aggrieved
 108 officer. ~~The provisions of~~ This subsection does ~~shall~~ not apply
 109 to sheriffs or deputy sheriffs.

110 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR
 111 CORRECTIONAL OFFICERS.—~~Each~~ Every law enforcement officer or
 112 correctional officer has ~~shall have~~ the right to bring civil
 113 suit against a ~~any~~ person, group of persons, or organization or
 114 corporation, or the head of such organization or corporation,
 115 for damages, ~~either~~ pecuniary or otherwise, suffered during the
 116 performance of the officer's official duties, for abridgment of
 117 the officer's civil rights arising out of the officer's
 118 performance of official duties, or for filing a complaint
 119 against the officer which the person knew was false when it was
 120 filed. This section does not establish a separate civil action
 121 against the officer's employing law enforcement agency for the
 122 investigation and processing of a complaint filed under this
 123 part.

124 (4) (a) NOTICE OF DISCIPLINARY ACTION.—A dismissal,
 125 demotion, transfer, reassignment, or other personnel action that
 126 might result in loss of pay or benefits or that might otherwise
 127 be considered a punitive measure may not be taken against a ~~any~~
 128 law enforcement officer or correctional officer unless the law
 129 enforcement officer or correctional officer is notified of the
 130 action and the reason or reasons for the action before the

131 effective date of the action.

132 (b) Notwithstanding s. 112.533(2), if ~~whenever~~ a law
133 enforcement officer or correctional officer is subject to
134 disciplinary action consisting of suspension with loss of pay,
135 demotion, or dismissal, the officer or the officer's
136 representative shall, upon request, be provided with a complete
137 copy of the investigative file, including the final
138 investigative report and all evidence, and with the opportunity
139 to address the findings in the report with the employing law
140 enforcement agency before imposing disciplinary action
141 consisting of suspension with loss of pay, demotion, or
142 dismissal. The contents of the complaint and investigation shall
143 remain confidential until such time as the employing law
144 enforcement agency makes a final determination whether or not to
145 issue a notice of disciplinary action consisting of suspension
146 with loss of pay, demotion, or dismissal. This paragraph does
147 not provide law enforcement officers with a property interest or
148 expectancy of continued employment, employment, or appointment
149 as a law enforcement officer.

150 (5) RETALIATION FOR EXERCISING RIGHTS.—A ~~No~~ law
151 enforcement officer or correctional officer may not ~~shall~~ be
152 discharged; disciplined; demoted; denied promotion, transfer, or
153 reassignment; or otherwise discriminated against in regard to
154 his or her employment or appointment, or be threatened with any
155 such treatment, by reason of his or her exercise of the rights
156 granted by this part.

157 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

158 (a) Except as provided in this subsection, disciplinary
159 action, suspension, demotion, or dismissal may not be undertaken
160 by an agency against a law enforcement officer or correctional
161 officer for an ~~any~~ act, omission, or other allegation of
162 misconduct if the investigation of the allegation, whether
163 generated internally or externally, is not completed within 180
164 days after the date the agency receives notice of the allegation
165 by a person authorized by the agency to initiate an
166 investigation of the misconduct. If the agency determines that
167 disciplinary action is appropriate, it shall complete its
168 investigation and give notice in writing to the law enforcement
169 officer or correctional officer of its intent to proceed with
170 disciplinary action, along with a proposal of the specific
171 action sought, including length of suspension, if applicable.
172 Notice to the officer must be provided within 180 days after the
173 date the agency received notice of the alleged misconduct,
174 except as follows:

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

178 2. The running of the limitations period is tolled during
179 the time that a ~~any~~ criminal investigation or prosecution is
180 pending in connection with the act, omission, or other
181 allegation of misconduct.

182 3. If the investigation involves an officer who is

183 incapacitated or otherwise unavailable, the running of the
184 limitations period is tolled during the period of incapacitation
185 or unavailability.

186 4. In a multijurisdictional investigation, the limitations
187 period may be extended for a period of time reasonably necessary
188 to facilitate the coordination of the agencies involved.

189 5. The running of the limitations period may be tolled for
190 emergencies or natural disasters during the time period wherein
191 the Governor has declared a state of emergency within the
192 jurisdictional boundaries of the concerned agency.

193 6. The running of the limitations period is tolled during
194 the time that the officer's compliance hearing proceeding is
195 continuing beginning with the filing of the notice of violation
196 and a request for a hearing and ending with the written
197 determination of the compliance review panel or upon the
198 violation being remedied by the agency.

199 (b) An investigation against a law enforcement officer or
200 correctional officer may be reopened, notwithstanding the
201 limitations period for commencing disciplinary action, demotion,
202 or dismissal, if:

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

205 2. The evidence could not have reasonably been discovered
206 in the normal course of investigation or the evidence resulted
207 from the predisciplinary response of the officer.

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209 | A ~~Any~~ disciplinary action resulting from an investigation that
210 | is reopened pursuant to this paragraph must be completed within
211 | 90 days after the date the investigation is reopened.

212 | Section 2. This act shall take effect July 1, 2014.