

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 573 First Responders and Correctional Officers

SPONSOR(S): Judiciary Committee and Civil Justice Subcommittee, Casello, McClain and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 160

FINAL HOUSE FLOOR ACTION: 115 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 573 passed the House on March 10, 2020. The bill was amended in the Senate on March 11, 2020 and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 12, 2020.

Peer Support for First Responders

The bill provides confidentiality for peer support communications between a first responder and a first responder peer. The bill defines "first responder" to include a law enforcement officer, firefighter, emergency medical technician, paramedic, or a 911 public safety telecommunicator. A "first responder peer" is a person who is not a health care practitioner but has training and experience working with a first responder regarding physical or emotional issues associated with the first responder's employment.

The bill provides exceptions for such confidentiality, including:

- The first responder peer is a defendant in a proceeding arising from a complaint filed by the first responder,
- The first responder agrees, in writing, to allow the first responder peer to testify about or divulge information related to the peer support,
- The first responder peer suspects the first responder has committed, or intends to commit, a criminal act, or
- There are articulable facts or circumstances that would lead the first responder peer to fear for the safety of the first responder, another person, or society.

Law Enforcement Officers' Bill of Rights

The Law Enforcement Officers' Bill of Rights provides certain statutory rights and privileges to law enforcement and correctional officers who are under investigation and subject to interrogation for any reason that could result in disciplinary action. Currently, disciplinary action may not be taken against an officer unless the investigation is completed within 180 days after the date the agency receives notice of the allegation of misconduct by a person authorized by the agency to initiate an investigation of the misconduct. Notice of disciplinary action must be provided to the officer within the 180 days. Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints.

The bill revises the definitions of "law enforcement officer" and "correctional officer" to include officers employed part time. The bill further specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, disciplinary action may not be taken against an officer for external or internal complaints unless the investigation is completed within 180 days. If the agency determines that disciplinary action is appropriate, the officer must be provided written notice within the 180 days.

The bill also allows an agency head or the agency head's designee to request a sworn or certified investigator from a separate law enforcement or correctional agency to conduct an investigation when there is a conflict of interest or the employing agency does not have an investigator with sufficient training to conduct the investigation.

The bill was approved by the Governor on June 27, 2020, ch. 2020-104 L.O.F., and will become effective on July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Peer Support for First Responders

Background

First Responders

A first responder is a law enforcement officer,¹ firefighter,² or an emergency medical technician or paramedic³ employed by state or local government.⁴ Additionally, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.⁵

First responders are often exposed to incidents of death and destruction that can result in post-traumatic stress disorder (PTSD), depression, and suicide.⁶ A study by the Ruderman Family Foundation revealed that 35 percent of police officers have suffered from PTSD and 46.8 percent of firefighters have experienced suicidal thoughts.⁷ Further, a 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.⁸ Firefighters are more likely to die by suicide than in the line of duty, according to the Firefighter Behavioral Health Alliance.⁹

Peer Support

Peer support consists of a person in stable recovery from mental health problems helping someone who needs assistance with establishing or maintaining his or her recovery.¹⁰ Peer support services include social supports, such as mentoring, training, peer-led support groups, and assistance completing everyday tasks.¹¹ Peers are not health care practitioners, but their support extends the reach of treatment beyond the clinical setting into the everyday environment of those seeking a successful, sustainable recovery process from mental health issues.¹²

¹ The term “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. S. 943.10, F.S.

² The term “firefighter” means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. S. 633.102, F.S.

³ The term “emergency medical technician” means a person who is certified by the Department of Health to perform basic life support. The term “paramedic” means a person who is certified by the Department of Health to perform basic and advanced life support. S. 401.23, F.S.

⁴ S. 125.01045, F.S.

⁵ *Id.*

⁶ Miriam Heyman, Jeff Dill & Robert Douglas, *The Ruderman White Paper on Mental Health and Suicide of First Responders*, RUDERMAN FAMILY FOUNDATION 7, 9 (2018), https://issuu.com/rudermanfoundation/docs/first_responder_white_paper_final_ac270d530f8bfb (last visited Mar. 13, 2020).

⁷ *Id.* at 12.

⁸ Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRERESCUE NEWS, (Mar. 19, 2017), <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/> (last visited Mar. 13, 2020).

⁹ Heyman, Dill & Douglas, *supra* note 6, at 19.

¹⁰ Substance Abuse and Mental Health Services Administration, *What Are Peer Recovery Support Services?*, (2009), <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Mar. 13, 2020).

¹¹ *Id.*

¹² Substance Abuse and Mental Health Services Administration, *Peers*, <https://www.samhsa.gov/brss-tacs/recovery-support-tools/peers> (last visited Mar. 13, 2020)

A survey by the Journal of Emergency Medical Services revealed that first responders were less likely to contemplate suicide when they felt supported and encouraged at work.¹³ One study showed that while some firefighters reported positive experiences with professional mental health help, others felt more distressed after such intervention. Alternatively, these firefighters reported benefits from peer support, such as bonding with their fire crew after negative incidents, which can reduce the stigma, scheduling difficulties, lack of access, lack of trust, and fear or repercussions that may prevent first responders from seeking mental health care.¹⁴

Patient Confidentiality

Communications between a patient and a health care practitioner are confidential.¹⁵ Information that a patient discloses to a health care practitioner may only be disclosed:

- To other health care practitioners involved in the care of the patient;
- If the patient agrees, in writing;
- If compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.¹⁶

Additionally, confidentiality between a patient and a psychotherapist may be waived where:

- The psychotherapist is a defendant in a proceeding arising from a complaint filed by the patient and information divulged is limited to the scope of the proceeding;
- The patient agrees, in writing, to waiver of confidentiality;
- The psychotherapist believes there is imminent risk of physical harm to the patient or other members of society. The information may only be communicated to potential victims, appropriate family members, law enforcement, or other appropriate authority. There is no liability on the part of the person disclosing information in this circumstance, and no cause of action may arise under this provision.¹⁷

However, Florida law does not provide confidentiality for peer support communications between or involving non-practitioners.

Effect of Proposed Changes

The bill provides confidentiality for peer support communications between a first responder and a first responder peer. First responders include:

- Law enforcement officers;
- Firefighters;
- Emergency medical technicians or paramedics; and
- 911 public safety telecommunicators.¹⁸

¹³ Journal of Emergency Medical Services, *Survey Reveals Alarming Rates of EMS Provider Stress and Thoughts of Suicide*, (Sept. 28, 2015), <https://www.jems.com/2015/09/28/survey-reveals-alarming-rates-of-ems-provider-stress-and-thoughts-of-suicide/> (last visited Mar. 13, 2020).

¹⁴ Substance Abuse and Mental Health Services Administration, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma*, DISASTER TECHNICAL ASSISTANCE CENTER SUPPLEMENTAL RESEARCH BULLETIN (May 2019), 10, 12, <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Mar. 13, 2020).

¹⁵ Ss. 456.057, 456.059, 490.0147, 491.0147, and 90.503, F.S.

¹⁶ S. 456.057, F.S.

¹⁷ S. 491.0147, F.S.

¹⁸ A "911 public safety telecommunicator" means a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel. S. 401.465(1)(a), F.S.

The bill defines “peer support” to mean the provision of physical, moral, or emotional support to a first responder by a first responder peer for the purpose of addressing physical or emotional conditions or other issues associated with being a first responder.

Under the bill, confidentiality applies only to communications with a first responder peer. The first responder peer cannot be a health care practitioner. He or she must have experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment, have received training in providing peer support, and must be designated by the first responder’s employing agency to provide peer support.

The bill provides confidentiality only for peer support communication, which are oral, written, or electronic communications between a first responder and a first responder peer. These communications must be made with the mutual expectation of confidentiality, and the first responder must be acting in his or her official capacity, to trigger the confidentiality concerning physical or emotional issues relating to the first responder’s employment.

The bill prevents a first responder peer from testifying about a peer support communication or otherwise divulging the information from these conversations, except when the person providing peer-to-peer support is a defendant in a proceeding arising from a complaint filed by the first responder and information divulged is limited to the scope of the proceeding. The bill also allows a first responder peer to divulge information if the first responder agrees, in writing, to allow the person to testify about or divulge information related to the peer-to-peer support.

Additionally, the first responder peer may reveal information from conversations with a first responder if he or she suspects the first responder has committed, or intends to commit, a criminal act. If there are facts or circumstances that would lead a person to fear for the safety of the first responder, another person, or society, the first responder peer may communicate such information to potential victims and law enforcement or other appropriate authorities. The bill provides immunity from liability under any cause of action for disclosing information in either of these circumstances.

The bill provides confidentiality for the peer support conversations that may not otherwise be protected by doctor-patient privilege or psychotherapist-patient privilege. The bill does not preclude first responders from engaging in confidential communications with a health care practitioner; rather, it expands the protection of confidentiality to those informal conversations with peers that relate to any physical or emotional conditions or issues associated with the first responder’s employment.

Law Enforcement Officers’ Bill of Rights

Background

Law Enforcement Officers’ Bill of Rights

Chapter 112, part VI, F.S., commonly known as the Law Enforcement Officers’ Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer¹⁹ or correctional officer²⁰ is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The LEOBOR defines “law enforcement officer” and “correctional officer” to mean officers employed on a full time basis.

¹⁹ Section 112.531(1), F.S., defines “law enforcement officer” as “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.”

²⁰ Section 112.531(2), F.S., defines “correctional officer” as “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). However, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.”

The LEOBOR prescribes the conditions under which an interrogation of an officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, as well as restrictions on the interrogation techniques.²¹ The LEOBOR further affords officers:

- the right to be informed of the nature of the investigation;
- the right to be provided with all evidence against the officer before any interrogation;
- the right to counsel during any interrogation;
- the right to the interrogation recording;
- the right to a complete copy of the investigative file;
- the right to be notified of the reason for disciplinary action before it is imposed; and
- the right to address the findings in the investigative file with the employing agency before disciplinary action is imposed.²²

An officer cannot be disciplined or otherwise discriminated against for exercising his or her rights under the LEOBOR.²³

Limitations Period for Disciplinary Action

The LEOBOR provides that disciplinary action may not be taken against an officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.²⁴ Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints. In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*²⁵ an internal complaint was filed against an officer and the agency's subsequent investigation exceeded 180 days. The court reaffirmed its prior interpretation and held that the 180-day provision does not apply to internal complaints because the 180-day provision is triggered by the agency's receipt of a complaint, and therefore, the complaint would need to come from a person outside the agency for the 180-day provision to apply.²⁶

If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.²⁷

Effect of Proposed Changes

The bill revises the definitions of "law enforcement officer" and "correctional officer" to include officers employed on a part time basis for the purposes of misconduct review proceedings.

The bill specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, disciplinary action may not be taken against an officer for external or internal

²¹ S. 112.532(1), F.S.

²² S. 112.532(1) and (4), F.S.

²³ S. 112.532(5), F.S.

²⁴ S. 112.532(6), F.S.

²⁵ *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So. 3d 798 (Fla. 1st DCA 2014).

²⁶ *Id.* See also *McQuade v. Department of Corrections*, 51 So. 3d 489 (Fla. 1st DCA 2010); *Migliore v. City of Lauderhill*, 415 So. 2d 62 (Fla. 4th DCA 1982); *approved*, 431 So. 2d 986 (Fla. 1983).

²⁷ The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. S. 112.532(6), F.S.

complaints unless the investigation is completed within 180 days. If the agency determines that disciplinary action is appropriate, the officer must be provided written notice within the 180 days.

The bill amends s. 112.533, F.S., to allow an agency head or the agency head's designee to request a sworn or certified investigator from a separate law enforcement or correctional agency to conduct an investigation when:

- A conflict is identified with the employing agency,
- The employing agency does not have an investigator trained to conduct the investigations, or
- The agency's investigator is the subject of, or a witness in, the investigation and the agency has any combination of 35 or fewer law enforcement officers or correctional officers.

The employing agency must document the conflict, and upon completion of the investigation, the investigator must present the findings without a disciplinary recommendation to the employing agency.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires all law enforcement and correctional agencies to comply with the LEOBOR for part time law enforcement and correctional officers. The bill also requires the investigations of allegations raised internally and externally to be completed within 180 days. Therefore, the fiscal impact on these agencies will vary based on part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.²⁸

The Department of Corrections reports that the bill would significantly impact the resources necessary to conduct investigations. The department estimates a 43 percent increase in investigative staff and a recurring annual cost of 3.1 million dollars.²⁹

²⁸ Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 House Bill 453, p. 3 (Dec. 18, 2019).

²⁹ Florida Department of Corrections, Agency Analysis of 2020 House Bill 453, pp. 3-4 (Jan. 17, 2020).