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CS/HB 95

2023 Legislature

1
2 An act relating to rights of law enforcement officers
3 and correctional officers; amending s. 112.531, F.S.;
4 providing definitions; amending s. 112.532, F.S.;
5 providing rights of law enforcement officers and
6 correctional officers relating to Brady identification
7 systems; prohibiting a law enforcement officer or
8 correctional officer from being discharged, suspended,
9 demoted, or otherwise disciplined for certain reasons;
10 providing construction; requiring the employing agency
11 of a law enforcement officer or correctional officer
12 to conform to certain rules and procedures; creating
13 s. 112.536, F.S.; providing that a prosecuting agency
14 is not required to maintain a Brady identification
15 system; authorizing a prosecuting agency to choose
16 different procedures to fulfill its obligations under
17 a specified Supreme Court case; requiring the
18 employing agency of a law enforcement officer or
19 correctional officer to forward specified information
20 to a prosecuting agency; requiring an employing agency
21 to provide certain notice to a law enforcement officer
22 or correctional officer in specified circumstances;
23 requiring a prosecuting agency that maintains a Brady
24 information system to adopt written policies;
25 providing minimum requirements for such policies;

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26 | authorizing a law enforcement officer or correctional
 27 | officer to request reconsideration of the inclusion of
 28 | his or her name and information in a Brady
 29 | identification system; requiring a prosecuting agency
 30 | to remove the name of a law enforcement officer or
 31 | correctional officer in a Brady identification system
 32 | under certain circumstances; requiring a prosecuting
 33 | agency to notify a law enforcement officer or
 34 | correctional officer and certain parties that the
 35 | officer's name is being removed from the Brady
 36 | identification system; authorizing a law enforcement
 37 | officer or correctional officer to petition for a writ
 38 | of mandamus under certain circumstances; providing the
 39 | scope of a court's judicial review; providing
 40 | construction; providing an effective date.

41 |

42 | Be It Enacted by the Legislature of the State of Florida:

43 |

44 | Section 1. Subsections (1) and (2) of section 112.531,
 45 | Florida Statutes, are renumbered as subsections (2) and (3),
 46 | respectively, and new subsections (1) and (4) are added to that
 47 | section, to read:

48 | 112.531 Definitions.—As used in this part, the term:

49 | (1) "Brady identification system" means a list or
 50 | identification, in whatever form, of the name or names of law

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51 enforcement officers or correctional officers about whom a
52 prosecuting agency is in possession of impeachment evidence as
53 defined by court decision, statute, or rule.

54 (4) "Prosecuting agency" means the Attorney General or an
55 assistant attorney general, the statewide prosecutor or an
56 assistant statewide prosecutor, a state attorney or an assistant
57 state attorney, a city or county attorney, a special prosecutor,
58 or any other person or entity charged with the prosecution of a
59 criminal case.

60 Section 2. Subsection (7) is added to section 112.532,
61 Florida Statutes, to read:

62 112.532 Law enforcement officers' and correctional
63 officers' rights.—All law enforcement officers and correctional
64 officers employed by or appointed to a law enforcement agency or
65 a correctional agency shall have the following rights and
66 privileges:

67 (7) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
68 OFFICERS RELATING TO A BRADY IDENTIFICATION SYSTEM.—

69 (a) A law enforcement officer or correctional officer has
70 all of the rights specified in s. 112.536 relating to the
71 inclusion of the name and information of the officer in a Brady
72 identification system.

73 (b) A law enforcement officer or correctional officer may
74 not be discharged, suspended, demoted, or otherwise disciplined,
75 or threatened with discharge, suspension, demotion, or other

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76 discipline, by his or her employing agency solely as a result of
 77 a prosecuting agency determining that the officer's name and
 78 information should be included in a Brady identification system.
 79 This paragraph does not prohibit an officer's employing agency
 80 from discharging, suspending, demoting, or taking other
 81 disciplinary action against a law enforcement officer or
 82 correctional officer based on the underlying actions of the
 83 officer which resulted in his or her name being included in a
 84 Brady identification system. If a collective bargaining
 85 agreement applies, the actions taken by the officer's employing
 86 agency must conform to the rules and procedures adopted by the
 87 collective bargaining agreement.

88 Section 3. Section 112.536, Florida Statutes, is created
 89 to read:

90 112.536 Requirements for maintaining a Brady
 91 identification system.—

92 (1)(a) A prosecuting agency is not required to maintain a
 93 Brady identification system and may determine, in its
 94 discretion, that its obligations under the decision in *Brady v.*
 95 *Maryland*, 373 U.S. 83 (1963), are better fulfilled through any
 96 such procedure the prosecuting agency otherwise chooses to
 97 utilize.

98 (b) The employing agency of a law enforcement officer or
 99 correctional officer shall forward all sustained and finalized
 100 internal affairs complaints relevant to s. 90.608, s. 90.609, or

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101 s. 90.610 to the prosecuting agency in the circuit in which the
 102 employing agency is located to assist the prosecuting agency in
 103 complying with its obligations under the *Brady* decision. The
 104 employing agency of a law enforcement officer or correctional
 105 officer must notify the law enforcement officer or correctional
 106 officer of any sustained and finalized internal affairs
 107 complaints that are sent to a prosecuting agency as required
 108 under this section. If the law enforcement officer or
 109 correctional officer is no longer employed by the employing
 110 agency, the employing agency must mail through United States
 111 mail such notification to the officer's last known address on
 112 file with the employing agency.

113 (2) A prosecuting agency that maintains a Brady
 114 identification system must adopt written policies that, at a
 115 minimum, require all of the following:

116 (a) The right of a law enforcement officer or correctional
 117 officer to receive written notice by United States mail or e-
 118 mail, which must be sent to the officer's current or last known
 119 employing agency before or contemporaneously with the
 120 prosecuting agency including the name and information of the
 121 officer in the Brady identification system, unless a pending
 122 criminal case requires immediate disclosure or providing such
 123 notice to the officer would jeopardize a pending investigation.

124 (b) The right of a law enforcement officer or correctional
 125 officer to request reconsideration of the prosecuting agency's

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126 decision to include the name and information of the officer in a
127 Brady identification system and his or her right to submit
128 documents and evidence in support of the request for
129 reconsideration.

130 (3) If, after a request for reconsideration is made under
131 paragraph (2)(b), the prosecuting agency subsequently determines
132 that the law enforcement officer or correctional officer should
133 not be included in a Brady identification system, the
134 prosecuting agency must do all of the following:

135 (a) Remove such officer from the Brady identification
136 system.

137 (b) Send written notice by United States mail or e-mail to
138 the law enforcement officer or correctional officer at the
139 officer's current or last known employing agency confirming that
140 the officer's name has been removed from the Brady
141 identification system.

142 (c) If the name of a law enforcement officer or
143 correctional officer was previously included in a Brady
144 identification system and his or her name was disclosed in a
145 pending criminal case, notify all parties to the pending
146 criminal case of the officer's removal from the Brady
147 identification system.

148 (4) If a prosecuting agency fails to comply with this
149 section, a law enforcement officer or correctional officer may
150 petition a court for a writ of mandamus to compel the

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151 prosecuting agency to comply with the requirements of this
 152 section. The court's scope of review in such matter is limited
 153 to whether the prosecuting agency acted in accordance with the
 154 procedural requirements of this section and may not include a
 155 judicial review of the evidence or merits that were the basis
 156 for the inclusion of the officer's name in a Brady
 157 identification system. This section does not preclude a law
 158 enforcement officer or correctional officer from pursuing any
 159 other available administrative or judicial remedies.

160 (5) This section does not:

161 (a) Require a prosecuting agency to give notice to or
 162 provide an opportunity for review and input from a law
 163 enforcement officer or correctional officer if the information
 164 in a Brady identification system is:

165 1. A criminal conviction that may be used for impeachment
 166 under s. 90.610; or

167 2. A sustained and finalized internal affairs complaint
 168 that may be used for impeachment under s. 90.608, s. 90.609, or
 169 s. 90.610;

170 (b) Limit the duty of a prosecuting agency to produce
 171 Brady evidence in all cases as required by the United States
 172 Constitution, the State Constitution, and the Florida Rules of
 173 Criminal Procedure and relevant case law;

174 (c) Limit or restrict a prosecuting agency's ability to
 175 remove the name and information of a law enforcement officer or

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176 | correctional officer from a Brady identification system if, at
177 | any time, the prosecuting agency determines that the name and
178 | information of the officer are no longer proper for
179 | identification; or

180 | (d) Create a private cause of action against a prosecuting
181 | agency or any employee of a prosecuting agency, other than the
182 | writ of mandamus authorized in subsection (4).

183 | Section 4. This act shall take effect July 1, 2023.