

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1323 Law Enforcement Officers and Correctional Officers

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Jones	Cunningham

SUMMARY ANALYSIS

Part VI of ch. 112, F.S., commonly referred to as the “Law Enforcement Officers’ Bill of Rights,” (Bill of Rights), grants law enforcement officers and correctional officers (officer) certain statutory rights and privileges while under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal.

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with the above rights while investigating an officer. Prior to 2009, the statute authorized an officer who was personally injured due to the violation to apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency’s duties. In 2009, the section was rewritten, and the injunction provision was removed.

The bill amends s. 112.534, F.S., to allow an officer to institute a civil action in a court of competent jurisdiction to seek injunctive relief to force a law enforcement or correctional agency to comply with the Bill of Rights.

The bill allows for injunctive relief to be sought by an officer. If injunctive relief is granted against a local law enforcement agency or the Department of Corrections, they may incur costs associated with such relief. There may also be a fiscal impact on state courts. See Fiscal Section.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officers' Bill of Rights

Part VI of ch. 112, F.S.,¹ commonly referred to as the "Law Enforcement Officers' Bill of Rights," (Bill of Rights), grants law enforcement officers² and correctional officers³ (officer) certain statutory rights and privileges while under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal.⁴ For example, interrogations must be conducted in a reasonable time and place, and the officer must be:

- Informed of the nature of the investigation;
- Informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation;
- Informed of the names of all complainants;
- Provided all of the information concerning the complaint;
- Informed of the right to review witness statements;
- Afforded the right to counsel, upon request, who must be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for service; and
- Informed of all his or her rights if the officer is under arrest, or is likely to be placed under arrest as a result of the interrogation.⁵

The Bill of Rights also requires an investigation of an allegation against an officer to be completed within 180 days after the date the officer's agency receives notice of the allegation.⁶ When an investigation is complete, the agency must determine whether disciplinary action is appropriate.⁷ If a determination for disciplinary action⁸ is made, the agency must give notice⁹ in writing, to the officer of its intent to proceed along with a proposal of the specific action sought.¹⁰ An investigation against an officer may be reopened if significant new evidence is discovered that could likely affect the outcome of the investigation and if the evidence:

- Could not have reasonably been discovered in the normal course of investigation; or
- Resulted from the predisciplinary response of the officer.¹¹

Section 112.532(5), F.S., specifically provides that no officer will be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her

¹ Sections 112.531 – 112.535, F.S.

² Section 112.531(1), F.S., defines a "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, F.S.

³ Section 121.531(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), F.S. However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

⁴ Sections 112.532, and 112.534, F.S.

⁵ Section 112.532(1), F.S.

⁶ Section 112.532(6)(a), F.S.

⁷ *Id.* The contents of the complaint and investigation must remain confidential until the agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. Section 112.532(4)(b), F.S.

⁸ An officer who is subject to a disciplinary action may request the complete investigative file. Section 112.532(6)(a), F.S.

⁹ 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 in certain instances). Section 112.532(6)(a), F.S.

¹⁰ The officer must be given the notice before the effective date and given the reason for a dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or considered a punitive measure.

¹¹ Section 112.532(6)(b), F.S. Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

employment or appointment, or be threatened with any such treatment, by exercising any of the above stated rights.

Violations of the Law Enforcement Officers' Bill of Rights

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with the above rights while investigating an officer.

Prior to 2009, the statute authorized an officer who was personally injured due to the violation to apply directly to the circuit court of the county where the agency is headquartered for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.^{12,13} In 2009, the section was rewritten, and the injunction provision was removed.¹⁴

In its current form, s. 112.534, F.S., requires an officer to first advise the investigator of the alleged intentional violation.¹⁵ If the investigator fails to cure the violation or continues the violation after being notified, the officer must request that the agency head be informed of the alleged intentional violation.¹⁶ Once this request is made, the interview of the officer must stop, and the officer can refuse to respond to further investigative questions.¹⁷

A written notice of the violation and a request for a compliance review hearing must then be filed within 3 working days.¹⁸ The notice must contain information that identifies what rights are alleged to have been violated and the factual basis of each violation.¹⁹ Unless otherwise remedied before the hearing, a compliance review hearing must be conducted within 10 working days after the request is filed.²⁰

A compliance review panel (panel) is comprised of three members - one member selected by the agency head, one member selected by the officer filing the request, and a third member selected by the other two members.²¹ The panel reviews the circumstances and facts of the violation to determine whether or not the investigator or agency intentionally violated the officer's rights.²² In making their determination, the panel can hear evidence, review relevant documents, and hear argument concerning the alleged intentional violation.²³ The officer has the burden of proof to establish that the violation was intentional.²⁴ If the panel determines²⁵ that the alleged violation is intentional, the investigator is removed from the investigation immediately.²⁶

Effect of the Bill

As noted above, 2009 legislation removed the provision in s. 112.534, F.S., that authorized an officer who was personally injured due to a violation of the Bill of Rights to apply for an injunction to restrain and enjoin the violation and to compel performance of the agency's duties.

¹² Section 112.534(1), F.S. (2008).

¹³ Both the 2008 statute and current law specify that officers also have the right bring a civil suit for damages suffered during the performance of the officer's official duties, for abridgment of the officer's civil rights arising out of the officer's performance of official duties, or for the filing of a complaint which the person knew was false when filed. Section 112.532(3), F.S. (2008 and 2013).

¹⁴ Chapter 2009-200, L.O.F.

¹⁵ The officer's notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation. Section 112.534(1)(a), F.S.

¹⁶ Section 112.534(1)(b), F.S.

¹⁷ *Id.* A refusal to answer questions after this point does not constitute insubordination or any similar type of policy violation.

¹⁸ Section 112.534(1)(c), F.S.

¹⁹ *Id.*

²⁰ The officer and agency can agree to an alternate hearing date. Section 112.534(1)(d), F.S.

²¹ The panel members must be officers who are active from the same law enforcement discipline as the officer requesting the hearing and may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing must be conducted in the county in which the officer works. Section 112.534(1)(d), F.S.

²² Section 112.534(1)(e), F.S.

²³ *Id.*

²⁴ Section 112.534(1)(f), F.S. The standard of proof is by a preponderance of the evidence.

²⁵ The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer. Section 112.534(1)(f), F.S.

²⁶ Section 112.534(1)(g), F.S. The agency head must direct an investigation be initiated against the investigator for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator must be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.

The bill amends s. 112.534, F.S., to allow an officer to institute a civil action in a court of competent jurisdiction to seek injunctive relief to force a law enforcement or correctional agency to comply with the Bill of Rights.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.534, F.S., relating to failure to comply; official misconduct.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Office of the State Courts Administrator reports that the civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from the new civil cause of action created in the bill.²⁷

2. Expenditures:

The bill allows for injunctive relief to be sought by an officer. If injunctive relief is granted against the Department of Corrections, they may incur costs associated with such relief.

The bill has indeterminate impact on the State Courts System because it creates a new civil cause of action, which will increase court workload.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues

2. Expenditures:

The bill allows for injunctive relief to be sought by an officer. If injunctive relief is granted against a local law enforcement agency, they may incur costs associated with such relief.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁷ The Office of the State Courts Administrator Analysis of HB 1323 (on file with the Criminal Justice Subcommittee).

²⁸ *Id.*

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES