

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 884

INTRODUCER: Senators Hooper and Perry

SUBJECT: Law Enforcement and Correctional Officers

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 884 revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of chapter 112, Florida Statutes. Part VI of chapter 112, Florida Statutes, is commonly referred to as the Law Enforcement Officers’ (LEO) Bill of Rights and affords certain rights and privileges for law enforcement officers and correctional officers.

The bill clarifies that *regardless of the allegation’s origin*, if the investigation of an allegation is not completed within 180 days after the date the agency receives notice of the allegation, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the allegation’s origin*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill removes language that limited the 180-day period provision to external complaints.

The bill also allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill also specifies that clear and convincing evidence that an agency violated part VI of chapter 112, Florida Statutes, constitutes irreparable harm for purposes of injunctive relief.

The bill will have a significant negative fiscal impact on the Department of Corrections and may have a negative fiscal impact on other law enforcement and correctional agencies. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Law Enforcement Officers' Bill of Rights; Generally

Section 112.532, F.S., commonly known as the Law Enforcement Officers' (LEO) Bill of Rights,¹ affords law enforcement officers and correctional officers various rights and privileges when a law enforcement officer or a correctional officer is under investigation and subject to interrogation for a reason which could lead to disciplinary action, suspension, demotion, or dismissal. In general, the LEO Bill of Rights includes:

- The right to be informed of the nature of the investigation and the evidence against the law enforcement officer or correctional officer before any interrogation;
- The right to counsel during any interrogation;
- The right to be notified of the reasons for any disciplinary action before it is imposed;
- The right to a transcript of any interrogation;
- The right to a complete copy of the investigatory file; and
- The right to address the findings in the investigatory report with the agency before the disciplinary action is imposed.²

Additionally, the LEO Bill of Rights prescribes the conditions under which any interrogation of the officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, and restrictions on the interrogation techniques.³

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. The term includes any person who is appointed by the sheriff as a deputy sheriff.

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. The term includes correctional probation officers. The term does not include any secretarial, clerical, or professionally trained personnel.

Limitations Period for Disciplinary Actions

Section 112.532(6), F.S., provides that disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional 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.

In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, the First District Court of Appeals reviewed an agency's disciplinary action against a law enforcement officer where the

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

² Section 112.532(1)(d), (1)(g), (1)(i), (4)(a), and (4)(b), F.S.

³ Section 112.532(1)(a), (1)(b), (1)(c), (1)(e), and (1)(f), F.S.

investigation exceeded 180 days after an internal complaint was made.⁴ The court found the current language of the 180-day period provision excludes those complaints that originate internally.⁵ The court adopted its prior interpretation of the statute, reasoning that because the period is triggered by the agency's receipt of a complaint, the complaint would need to come from a person outside the agency for the 180-day provision to apply.⁶

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.⁷

Compliance Review Procedures

Section 112.534, F.S., provides review procedures and remedial measures if any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of the LEO Bill of Rights. The law enforcement officer or correctional officer⁸ is required to advise the investigator of the intentional violation of the LEO Bill of Rights alleged.⁹ If the investigator fails to cure the violation or continues the violation after being notified by the officer, the officer must request the agency head or his or her designee be informed of the alleged intentional violation.¹⁰ Once this request is made, the interview of the officer must cease.¹¹ Thereafter, a written notice of violation and request for a compliance review hearing must be filed within 3 working days with the agency head or designee which must contain sufficient information to identify the alleged intentional violation of the LEO Bill of Rights.¹²

Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed.¹³

⁴ *Supra* n. 1.

⁵ *Id.*

⁶ *Id.* See *McQuade v. Department of Corrections*, 51 So.3d 489 (Fla. 1st DCA 2010). See also *Migliore v. City of Lauderhill*, 415 So.2d 62 (Fla. 4th DCA 1982), *approved*, 431 So.2d 986 (Fla. 1983).

⁷ 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 the 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 the 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. Section 112.532(6), F.S.

⁸ For purposes of s. 112.534, F.S., "law enforcement officer" and "correctional officer" includes the officer's representative or legal counsel until such point that a compliance review hearing is commenced. Section 112.534(1), F.S.

⁹ Section 112.534(1)(a), F.S.

¹⁰ Section 112.534(1)(b), F.S.

¹¹ *Id.* Refusal to respond to investigative questions by the officer does not constitute insubordination or any similar type of policy violation.

¹² Section 112.534(1)(c), F.S.

¹³ An alternate date may be chosen by mutual agreement of the officer and agency or for extraordinary reasons. Section 112.534(1)(d), F.S.

An officer under investigation for a disciplinary matter is entitled to a compliance review hearing to review alleged violations of the LEO Bill of Rights, regardless of the source of the complaint that led to the investigation.¹⁴ The compliance review panel¹⁵ reviews the circumstances and facts surrounding the alleged intentional violation and must determine whether or not the investigator or agency intentionally violated the requirements of the LEO Bill of Rights.¹⁶

A compliance review hearing is not available to review violations occurring after the investigation is complete.¹⁷ If an alleged violation is sustained by the compliance review panel, s. 112.534(1)(g), F.S., provides for a limited remedial measure of such violation: the agency head must immediately remove the investigator from any further involvements with the investigation of the office.^{18, 19}

III. Effect of Proposed Changes:

The bill revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of ch. 112, F.S.

Currently, complaints that originate internally are not subject to the provision that requires investigations to be completed within the 180-day time period. The bill clarifies that *regardless of the allegation’s origin*, if the investigation of an allegation is not completed within 180 days after the date the agency receives notice of the allegation, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the allegation’s origin*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill changes language that limited the 180-day period provision to external complaints.

The bill also allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. Specifically, if any law enforcement agency or correctional agency, including investigators in an agency’s internal affairs or professional standards division or an assigned investigating supervisor, fails to comply with the requirements of part VI of ch. 112,

¹⁴ *Supra* n. 1.

¹⁵ The compliance review panel is made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. These members must be active law enforcement or correctional officers from the same law enforcement discipline as the officer filing the request. The panel may be selected from any state, county, or municipal agency within the county in which the officer works. Section 112.534(1)(d), F.S.

¹⁶ Section 112.534(1)(e), F.S.

¹⁷ *Supra* n. 1.

¹⁸ Additionally, the agency head must direct an investigation to be initiated against the investigator determined to have intentionally violated the agency disciplinary action procedures under this part. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position. Section 112.534(1)(g), F.S.

¹⁹ *Supra* n. 1. In *Fraternal Order of Police*, the First District Court of Appeal described the exclusive purpose of the compliance review hearing as a remedy to violations of the LEO Bill of Rights occurring during the investigation, not a name-clearing hearing, by relying on this limited remedy.

F.S., an officer who is personally injured by such failure to comply may file for injunctive relief to enforce the requirements of part VI of ch. 112, F.S.

The bill also provides for injunctive relief if the injury suffered by the officer employed by or appointed to such agency is not capable of being remedied by a compliance review hearing. The officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of part VI of ch. 112, F.S.

The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill also specifies that clear and convincing evidence²⁰ that an agency violated part VI of ch. 112, F.S., constitutes irreparable harm for purposes of injunctive relief.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ Clear and convincing evidence may be defined as an: “intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” *In re Davey*, 645 So.2d 398, 404 (Fla. 1994).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands the requirement that all law enforcement and correctional agencies to comply with the LEO Bill of Rights to include part time law enforcement officers and correctional officers under investigation and subject to interrogation that could lead to disciplinary action. The bill also requires investigations of allegations raised internally and externally to be completed within 180 days; currently only externally-generated allegations must be investigated within 180 days. The bill also provides for a private right of action for violations of the LEO Bill of Rights. Therefore, the fiscal impact on these agencies will vary based on the number of 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.²¹

The Department of Corrections reports that most allegations against correctional officers are raised internally. Therefore, the bill will significantly impact the resources necessary to conduct the investigations within the required timeframe.²² The DOC indicates that this bill will require a 43 percent increase in investigative staff within their Office of Inspector General as follows:²³

²¹ The DHSMV, *2020 Agency Analysis for SB 884*, p. 3, December 18, 2019 (on file with the Senate Criminal Justice Committee).

²² E-mail received from the Department of Corrections, to committee staff (January 10, 2020) (on file with the Senate Criminal Justice Committee).

²³ The DOC, *2020 Agency Analysis for SB 884*, p. 4, January 13, 2020.

Class Title	Salary & Benefits	FTE	Year 1 Annual Costs
Inspector - DC	\$68,145	37	\$2,521,365
Operations & Mgmt Const I-SES	\$60,657	2	\$121,314
Human Resources Consultant-SES	\$79,650	1	\$79,650
Human Resource Analyst-SES	\$72,692	2	\$145,384
Human Resource Specialist-SES	\$ 62,256	2	\$124,512
Total Salaries & Benefits		44	\$2,992,225
Expense and Other			
Recurring expense-Professional	\$3,378		\$148,632
Non-recurring expense-Professional	\$4,429		\$194,876
Human Resource Services	\$329		\$14,476
Salary incentive (if applicable)	\$1,128		\$41,736
Total Expense and Other			\$399,720
Total		44	\$3,391,945
Recurring GR	\$3,197,069		
Non-recurring	\$194,876		

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.531, 112.532, and 112.534.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.