

STORAGE NAME: h0937a.jud

DATE: April 11, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 937

RELATING TO: Law Enforcement/ Correctional Officers

SPONSOR(S): Representative Posey

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 9 NAYS 0

(2) JUDICIARY YEAS 9 NAYS 0

(3)

(4)

(5)

I. SUMMARY:

The bill amends s. 112.532, F.S., to clarify that, notwithstanding the provision of rights and privileges for law enforcement officers who are under investigation, nothing in the law shall limit the right of an agency to discipline or pursue criminal charges against such officers.

The bill amends s. 112.533, F.S., to allow a law enforcement officer who is under investigation to review all statements (whether written or recorded) made by the complainant or on behalf of the complainant and witnesses, immediately prior to any investigative interview.

The bill creates a noncriminal infraction, punishable by a fine not exceeding \$500, if an interrogator deliberately, with corrupt intent, violates the requirements pertaining to the interrogation of officers.

The bill does not appear to have any fiscal impact on state or local government.

The bill is to take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill creates a noncriminal penalty for investigators who deliberately violate requirements pertaining to the interrogation of law enforcement officers.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Section 112.532, F.S., enumerates certain rights of law enforcement and correctional officers who are being investigated by their employing agency, and who may as a result be subject to disciplinary action or dismissal. These rights provide that any interrogation must be conducted at a reasonable time, in an appropriate location, and that the officer must be informed of the nature of the investigation and the identity of the complainants. The statute also describes the circumstances where representation by counsel is appropriate, and requires that any interrogation sessions be recorded.

Section 112.533, F.S., provides for the receipt and processing of complaints against law enforcement or correctional officers. Law enforcement agencies must have in place a system for the receipt, investigation, and determination of complaints received against its officers. Information obtained pursuant to an investigation by the agency must remain confidential until the agency concludes the investigation, and decides whether or not to file charges. Section 112.533(2)(a), F.S., allows an officer who is the subject of a complaint to review the complaint and all written statements made by the complainant and witnesses immediately prior to the beginning of the investigative interview.

Section 112.534, F.S., provides that if any law enforcement or correctional agency fails to comply with requirements for internal investigations and interrogations, any officer who is "personally injured" by such failure to comply may apply to the circuit court for an injunction to restrain and enjoin such violations.

Current law requires that the officer under investigation be informed of the nature of the investigation and the name of all complainants. There is no exception for complainants who wish to remain anonymous. The officer under investigation is entitled to review the complaint and all written statements made by the complainant and witnesses immediately prior to the investigative interview. There is no requirement that the officer be permitted to listen to recorded statements -- only written statements are to be made available for review. While there is no requirement that the complainant's statement be recorded, this is frequently done.

C. EFFECT OF PROPOSED CHANGES:

HB 937 amends s. 112.532, F.S., to clarify that notwithstanding the rights and privileges provided to an officer who is under investigation, nothing in the law shall limit the right of an agency to discipline or pursue criminal charges against an officer.

The bill amends s. 112.533, F.S., which allows law enforcement officers and correctional officers to review all written statements made pertaining to any complaint against the officer. The bill is amends this statutory section to allow for the review of all statements (whether written or recorded) made by the complainant or on behalf of the complainant and witnesses, immediately prior to any investigative interview.

The bill also amends s. 112.534, F.S., to provide for a noncriminal infraction, punishable by a fine not exceeding \$500, if an interrogator deliberately, with corrupt intent, violates the requirements pertaining to the interrogation of officers. In addition, the bill provides for the award of attorney fees to the prevailing party, and defines the term "corrupt" as provided in s. 839.25(2), F.S., which addresses official misconduct by public officers and employees.

Section 839.25(2), F.S., defines the term "corrupt" to mean "done with knowledge that [the] act is wrongful and with improper motives."

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The bill should not provide any significant fiscal impact upon either state or local governments.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds, or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with a city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted one strike-everything amendment on April 11, 2000, that is traveling with the bill. The amendment removes the specific penalty associated with failure to comply with rules relating to officer interrogations and incorporates by reference the corruption provisions of s. 839.25, F.S. The amendment also clarifies that an officer may review all statements, regardless of form, made by a complainant and any witnesses prior to an investigative interview.

STORAGE NAME: h0937a.jud

DATE: April 11, 2000

PAGE 5

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.