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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 478 Session of  
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INTRODUCED BY BOBACK, MATZIE, D. COSTA, COHEN, A. HARRIS,  
MILLARD, READSHAW, MASSER, MAJOR, DUSH, DONATUCCI, DELOZIER,  
GOODMAN, ROZZI, MURT AND HARKINS, FEBRUARY 17, 2015

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 17, 2015

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AN ACT

1 Establishing guidelines and procedures governing certain  
2 investigations of correctional officers by the Department of  
3 Corrections; authorizing certain civil suits by correctional  
4 officers; and providing for impact of collective bargaining  
5 agreements and for summary suspensions.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Correctional  
10 Officers Investigation Procedure Act.

11 Section 2. Legislative intent.

12 It is the intent of the General Assembly to establish  
13 guidelines and procedures governing the investigation of  
14 correctional officers during certain investigations by the  
15 Department of Corrections.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall  
18 have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

1 "Correctional officer." An individual employed as a  
2 correctional officer by the Department of Corrections and given  
3 the care, custody and control of inmates. The term shall include  
4 a forensic security employee.

5 "Department." The Department of Corrections of the  
6 Commonwealth.

7 "Forensic security employee." An individual employed by the  
8 department who performs nonprofessional nursing work in a  
9 specialized occupational field providing care to mentally  
10 disabled patients at institutions with forensic units.

11 Section 4. Rights of correctional officers.

12 (a) General rule.--If a correctional officer is under  
13 investigation and subject to interrogation by the department,  
14 the following standards shall apply:

15 (1) The interrogation shall be conducted after not less  
16 than 24 hours' notice and shall occur when the correctional  
17 officer is on duty, unless the seriousness of the  
18 investigation is such that an immediate investigation is  
19 necessary. The correctional officer may not be terminated  
20 from employment or disciplined for any work missed because of  
21 the interrogation.

22 (2) The interrogation shall take place at one of the  
23 following locations:

24 (i) The office of the investigating officer.

25 (ii) The office of the correctional facility  
26 conducting the investigation.

27 (iii) An office within a building owned or leased by  
28 the department.

29 (iv) Such other location as is necessary to protect  
30 the safety or identity of the correctional officer.

1           (3) At the beginning of the interrogation, the  
2       correctional officer under interrogation shall be informed of  
3       the name and rank of the correctional officer in charge of  
4       the interrogation and the names and ranks of any correctional  
5       personnel that will be present.

6           (4) The correctional officer under interrogation shall  
7       be informed in writing of the nature of the complaint and  
8       provided with the name or names of the complainant not less  
9       than 24 hours prior to the interrogation.

10          (5) If an anonymous or unsworn complaint is made against  
11       a correctional officer and no corroborative evidence is  
12       obtained within the applicable statute of limitations for the  
13       analogous criminal offense, the complaint shall be classified  
14       as unfounded and shall be completely expunged from any  
15       personnel file of the correctional officer maintained by the  
16       department.

17          (6) The interrogation shall allow for personal  
18       necessities and for rest periods as are reasonably necessary.

19          (7) The correctional officer under interrogation may not  
20       be offered promises of reward or threatened in connection  
21       with the investigation.

22          (8) The complete interrogation shall be recorded,  
23       including any recess periods. A copy of the record shall be  
24       made available to the correctional officer or the  
25       correctional officer's counsel or representative, upon  
26       request, without cost.

27          (9) If the correctional officer is under arrest at the  
28       time of the interrogation, the correctional officer shall be  
29       completely informed of the correctional officer's  
30       constitutional rights and all rights under the law prior to

1 the commencement of the interrogation.

2 (10) The correctional officer under interrogation shall  
3 have the right to be represented by counsel or other  
4 representative. To the extent that the correctional officer  
5 is represented for purposes of collective bargaining by a  
6 collective bargaining representative pursuant to State law,  
7 the correctional officer shall also have the right to have an  
8 agent from the exclusive collective bargaining representative  
9 present.

10 (11) Prompt action shall be required as follows:

11 (i) Except as provided under subparagraph (ii), when  
12 a complaint is made against a correctional officer more  
13 than 90 days after the applicable statute of limitations  
14 has expired for the civil wrong alleged, the complaint  
15 shall be classified as unfounded and shall be completely  
16 expunged from any personnel file of the correctional  
17 officer maintained by the department.

18 (ii) Notwithstanding paragraph (i), no complaint  
19 that alleges conduct that would constitute a misdemeanor  
20 or felony offense, if proven, may be classified as  
21 unfounded or expunged as a stale complaint until the  
22 applicable statute of limitations expires as prescribed  
23 under 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal  
24 proceedings).

25 (12) No correctional officer may be compelled to submit  
26 to a polygraph examination. No disciplinary action or other  
27 recrimination may be taken against a correctional officer for  
28 refusing to submit to a polygraph examination. No testimony  
29 or evidence may be admissible at a subsequent hearing, trial  
30 or proceeding, judicial or administrative, to the effect that

1 the correctional officer refused to take a polygraph  
2 examination.

3 (13) No correctional officer may be subjected to or  
4 threatened with adverse employment action as a result of the  
5 exercise of the rights accorded to correctional officers  
6 under this act.

7 (14) No correctional officer may be required to disclose  
8 greater information as to property, income, assets, source of  
9 income, debts or personal or domestic expenditures, including  
10 those of any member of the correctional officer's family or  
11 household, than the principal elected officials of the  
12 department are required to disclose, unless the information  
13 is obtained under proper legal procedures.

14 (b) Routine, informed or unplanned interrogation or  
15 contact.--This section shall not apply to any interrogation of a  
16 correctional officer in the normal course of duty, counseling,  
17 instruction, informal verbal admonishment or other routine or  
18 unplanned contact with a supervisor or any other officer.

19 Section 5. Civil suits by correctional officers.

20 A correctional officer shall have a cause of action against a  
21 person for damages suffered as a result of a complaint filed  
22 against the correctional officer by that person that is found to  
23 be any of the following:

24 (1) Without merit and frivolous.

25 (2) Without merit and made in bad faith.

26 Section 6. Impact of collective bargaining agreements.

27 Nothing in this act may be construed to diminish the  
28 obligation of the department to comply with a collective  
29 bargaining agreement that provides greater rights and coverage  
30 to correctional officers than the rights and coverage provided

1 by this act. The rights and coverage under this act may not be  
2 diminished by any collective bargaining agreement.

3 Section 7. Suspensions.

4 (a) General rule.--Suspension of a correctional officer  
5 shall be in accordance with provisions of the act of August 5,  
6 1941 (P.L.752, No.286), known as the Civil Service Act, except  
7 as follows:

8 (1) No suspension based on a pending internal  
9 investigation shall last more than 60 days from the effective  
10 date of suspension.

11 (2) Written notice of suspension shall be provided to  
12 the corrections officer no later than five working days after  
13 the effective date of suspension.

14 (3) Medical benefits and insurance shall continue during  
15 the period of suspension.

16 (b) Criminal charges.--A correctional officer against whom a  
17 criminal proceeding involving a misdemeanor or felony offense  
18 has been instituted may be suspended without pay pending  
19 disposition of the criminal charges. Medical benefits and  
20 insurance to which a correctional officer and spouse and  
21 dependents are entitled by virtue of employment may not be  
22 suspended until conviction or separation of the correctional  
23 officer from the department. If the correctional officer is  
24 acquitted of the criminal charges, the correctional officer  
25 shall be reinstated and reimbursed for all salary and benefits  
26 that have not been paid during the suspension period.

27 Section 8. Effective date.

28 This act shall take effect in 60 days.