

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1588 Session of
2012

INTRODUCED BY ARGALL, RAFFERTY, WARD, YUDICHAK, SOLOBAY,
WOZNIAK, CORMAN, KASUNIC, YAW AND D. WHITE, OCTOBER 10, 2012

REFERRED TO LABOR AND INDUSTRY, OCTOBER 10, 2012

AN ACT

1 Establishing rights of correctional officers during certain
2 investigations by the Department of Corrections; authorizing
3 certain civil suits by correctional officers; and providing
4 for impact of collective bargaining agreements and for
5 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 Bill of Rights Act.

11 Section 2. Legislative intent.

12 It is the intent of the General Assembly to provide standards
13 to protect the rights of correctional officers during certain
14 investigations by the Department of Corrections.

15 Section 3. Definitions.

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

19 "Correctional officer." An individual employed as a

1 correctional officer by the Department of Corrections and given
2 the care, custody and control of inmates.

3 "Department." The Department of Corrections of the
4 Commonwealth.

5 Section 4. Rights of correctional officers.

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

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

16 (2) The interrogation shall take place at one of the
17 following locations:

18 (i) The office of the investigating officer.

19 (ii) The office of the correctional facility
20 conducting the investigation.

21 (iii) An office within a building owned or leased by
22 the department.

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

25 (3) At the beginning of the interrogation, the
26 correctional officer under interrogation shall be informed of
27 the name and rank of the correctional officer in charge of
28 the interrogation and the names and ranks of any correctional
29 personnel that will be present.

30 (4) The correctional officer under interrogation shall

1 be informed in writing of the nature of the complaint and
2 provided with the name or names of the complainant not less
3 than 24 hours prior to the interrogation.

4 (5) If an anonymous or unsworn complaint is made against
5 a correctional officer and no corroborative evidence is
6 obtained within the applicable statute of limitations for the
7 analogous criminal offense, the complaint shall be classified
8 as unfounded and shall be completely expunged from any
9 personnel file maintained by the department on the
10 correctional officer.

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

13 (7) The correctional officer under interrogation may not
14 be offered promises of reward or threatened in connection
15 with the investigation.

16 (8) The complete interrogation shall be recorded,
17 including any recess periods. A copy of the record shall be
18 made available to the correctional officer or the
19 correctional officer's counsel or representative, upon
20 request, without cost.

21 (9) If the correctional officer is under arrest at the
22 time of the interrogation, the correctional officer shall be
23 completely informed of the correctional officer's
24 constitutional rights and all rights under the law prior to
25 the commencement of the interrogation.

26 (10) The correctional officer under interrogation shall
27 have the right to be represented by counsel or other
28 representative. To the extent that the correctional officer
29 is represented for purposes of collective bargaining by a
30 collective bargaining representative pursuant to State law,

1 the correctional officer shall also have the right to have an
2 agent from the exclusive collective bargaining representative
3 present.

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

5 (i) Except as provided under subparagraph (ii), when
6 a complaint is made against a correctional officer more
7 than 90 days after the applicable statute of limitations
8 has expired for the civil wrong alleged, the complaint
9 shall be classified as unfounded and shall be completely
10 expunged from any personnel file maintained by the
11 department on the correctional officer.

12 (ii) Notwithstanding paragraph (i), no complaint
13 which alleges conduct that would constitute a misdemeanor
14 or felony offense, if proven, shall be classified as
15 unfounded or expunged as a stale complaint until the
16 applicable statute of limitations expires as prescribed
17 under 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal
18 proceedings).

19 (12) No correctional officer may be compelled to submit
20 to a polygraph examination. No disciplinary action or other
21 recrimination may be taken against a correctional officer for
22 refusing to submit to a polygraph examination. No testimony
23 or evidence shall be admissible at a subsequent hearing,
24 trial or proceeding, judicial or administrative, to the
25 effect that the correctional officer refused to take a
26 polygraph examination.

27 (13) No correctional officer may be subjected to or
28 threatened with adverse employment action as a result of the
29 exercise of the rights accorded to correctional officers
30 under this act.

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

8 (b) Routine, informed or unplanned interrogation or
9 contact.--This section shall not apply to any interrogation of a
10 correctional officer in the normal course of duty, counseling,
11 instruction, informal verbal admonishment or other routine or
12 unplanned contact with a supervisor or any other officer.

13 Section 5. Civil suits by correctional officers.

14 A correctional officer shall have a cause of action against
15 any person for damages suffered as a result of a complaint filed
16 against the correctional officer by that person which is found
17 to be any of the following:

18 (1) Without merit and frivolous.

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

20 Section 6. Impact of collective bargaining agreements.

21 Nothing in this act shall be construed to diminish the
22 obligation of the department to comply with a collective
23 bargaining agreement which provides greater rights and coverage
24 to correctional officers than the rights and coverage provided
25 by this act. The rights and coverage under this act may not be
26 diminished by any collective bargaining agreement.

27 Section 7. Summary suspensions.

28 (a) Emergency suspension.--Emergency suspension of a
29 correctional officer may be imposed by the department if the
30 particular and unique circumstances of the situation dictate

1 that the action is necessary to protect the public interest or
2 the effective functioning of the department. A correctional
3 officer who is subjected to emergency suspension may be relieved
4 of duty, provided that the correctional officer receives all
5 ordinary pay and benefits as if the correctional officer were
6 not suspended.

7 (b) Criminal charges.--A correctional officer against whom a
8 criminal proceeding involving a misdemeanor or felony offense
9 has been instituted may be suspended without pay pending
10 disposition of the criminal charges. Medical benefits and
11 insurance to which a correctional officer and spouse and
12 dependents are entitled by virtue of employment may not be
13 suspended until conviction or separation of the correctional
14 officer from the department. If the correctional officer is
15 acquitted of the criminal charges, the correctional officer
16 shall be reinstated and reimbursed for all salary and benefits
17 that have not been paid during the suspension period.

18 Section 8. Effective date.

19 This act shall take effect in 60 days.