

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 976 Session of 2013

INTRODUCED BY FLECK, BENNINGHOFF, BROOKS, D. COSTA, GIBBONS, GINGRICH, GOODMAN, HALUSKA, HARKINS, C. HARRIS, HESS, W. KELLER, KORTZ, MATZIE, MILLARD, MURT, READSHAW, REED, SWANGER, TAYLOR, EVERETT AND DONATUCCI, MARCH 12, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JANUARY 29, 2014

AN ACT

1 Establishing a bill of rights for correctional officers during <--
2 certain investigations GUIDELINES AND PROCEDURES GOVERNING <--
3 CERTAIN INVESTIGATIONS OF CORRECTIONAL OFFICERS by the
4 Department of Corrections; authorizing certain civil suits by
5 correctional officers; and providing for impact of collective
6 bargaining agreements and for summary suspensions.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Correctional
11 Officers Bill of Rights INVESTIGATION PROCEDURE Act. <--

12 Section 2. Legislative intent.

13 It is the intent of the General Assembly to provide standards <--
14 to protect the rights ESTABLISH GUIDELINES AND PROCEDURES <--
15 GOVERNING THE INVESTIGATION of correctional officers during
16 certain investigations by the Department of Corrections.

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Correctional officer." An individual employed as a  
4 correctional officer by the Department of Corrections and given  
5 the care, custody and control of inmates.

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

8 Section 4. Rights of correctional officers.

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

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

19 (2) The interrogation shall take place at one of the  
20 following locations:

21 (i) The office of the investigating officer.

22 (ii) The office of the correctional facility  
23 conducting the investigation.

24 (iii) An office within a building owned or leased by  
25 the department.

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

28 (3) At the beginning of the interrogation, the  
29 correctional officer under interrogation shall be informed of  
30 the name and rank of the correctional officer in charge of

1 the interrogation and the names and ranks of any correctional  
2 personnel that will be present.

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

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

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

16 (7) The correctional officer under interrogation may not  
17 be offered promises of reward or threatened in connection  
18 with the investigation.

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

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

29 (10) The correctional officer under interrogation shall  
30 have the right to be represented by counsel or other

1 representative. To the extent that the correctional officer  
2 is represented for purposes of collective bargaining by a  
3 collective bargaining representative pursuant to State law,  
4 the correctional officer shall also have the right to have an  
5 agent from the exclusive collective bargaining representative  
6 present.

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

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

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

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

30 (13) No correctional officer may be subjected to or

1 threatened with adverse employment action as a result of the  
2 exercise of the rights accorded to correctional officers  
3 under this act.

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

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

16 Section 5. Civil suits by correctional officers.

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

21 (1) Without merit and frivolous.

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

23 Section 6. Impact of collective bargaining agreements.

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

30 Section 7. ~~Summary suspensions~~ SUSPENSIONS.

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1 shall be reinstated and reimbursed for all salary and benefits  
2 that have not been paid during the suspension period.  
3 Section 8. Effective date.  
4 This act shall take effect in 60 days.