

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 569

PRINTER NO. 606

AMOUNT

See Fiscal Impact

FUND

General Fund
Local Government Funds

DATE INTRODUCED

April 16, 2021

PRIME SPONSOR

Senator Argall

DESCRIPTION

Senate Bill 569 establishes a freestanding act entitled the "Correctional and Forensic Employees Investigation Procedure Act" to establish certain guidelines and procedures governing the investigation and interrogation of correctional and forensic employees of the Department of Corrections (DOC) and the Department of Human Services (DHS).

The legislation defines "department" as the Department of Corrections of the Commonwealth or the Department of Human Services of the Commonwealth.

Under this legislation, rights granted to employees under investigation and subject to interrogation by the department are set forth as follows:

- Correctional officers shall be provided with at least 24 hours' notice of an interrogation by the department, which shall occur when the employee is on duty or on approved leave;
- Prohibits employees from being terminated or disciplined for any work missed because of the interrogation;
- The interrogation shall take place at one of the following locations:
 - 1) Office of the investigating officer;
 - 2) Office of the correctional facility or forensic facility conducting the investigation;
 - 3) An office within a building owned or leased by the department; or
 - 4) Such other locations as is necessary to protect the safety or identity of the employee or is otherwise consented to by the employee.
- Employees being interrogated shall be informed of the name and professional title of the individual in charge of the interrogation and the names and professional titles of each individual that will be present;
- Employees under interrogation shall be informed in writing of the nature of the complaint and provided with the name or names of the complainant not less than 24 hours prior to the interrogation, except for the following:

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- 1) A complaint subject to section 3(c) of the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law; and
 - 2) A complaint alleging sexual abuse or sexual harassment as defined by the Prison Rape Elimination Act of 2003 (Public Law 108-79, 117 Stat. 972) (PREA).
- The employee shall be informed whether the investigation is administrative or criminal. Where administrative, the employee shall be read a statement that answers are protected as a matter of law and advised that the employee has a right to representation. Where criminal, the employee shall be read warnings as provided by law and advised that any statements made are not compelled as a condition of employment;
 - Anonymous or unsworn complaints, where no corroborative evidence is found within the applicable statute of limitations, must be classified as unfounded and expunged from the correctional officer's personnel files;
 - Interrogations shall allow for personal necessities and for reasonably necessary rest periods;
 - Employees under interrogation may not be offered promises of reward or threatened during interrogations;
 - Complete interrogations shall be recorded, including any recess periods, and made available to all parties involved, upon request, at no cost;
 - The employee shall have the right to be represented by counsel or other representatives;
 - No employee may be compelled to submit to a polygraph examination;
 - No employee may be threatened with adverse employment action as a result of the exercise of rights afforded under this act; and
 - No employees may be required to disclose greater information as to property, income, assets, sources of income, debts, or personal domestic expenditures than principal elected officials of the department are required to disclose unless the nature of the investigation necessitates disclosure and the information is obtained under proper legal procedures.

This legislation further provides a right of civil action for damages suffered as a result of a filed complaint that is found to be frivolous or without merit and made in bad faith. Collective bargaining agreements may provide greater rights to employees but may not diminish the rights set forth in this legislation. If there is a conflict between an existing collective bargaining agreement and the rights and coverage under this act, the collective bargaining agreement shall govern.

Suspension of an employee shall be in accordance with provisions of 71 Pa.C.S. Pt. III (relating to civil service reform), except as follows:

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- No suspension based on a pending investigation shall be utilized unless the department has just cause for the employee's removal from the workplace in lieu of a temporary administrative transfer;
- All suspensions pending investigation shall be with pay and contractual benefits except under certain conditions; and
- An employee's medical benefits and insurance shall continue during the period of suspension.

This act shall take effect in 60 days.

FISCAL IMPACT:

According to the Pennsylvania Department of Corrections (DOC), enactment of this legislation will have a fiscal impact on the DOC.

This legislation requires the payment of full medical benefits for an individual who has pending criminal charges. Final disposition of a criminal case may take years, depending on the prosecution, the defense and the courts. According to data from the DOC, there were an average of 25 individuals suspended each year over the past three years. The DOC currently provides medical benefits for a period of 90 days. Under this legislation, it would require 100% payment of all medical benefits until the final disposition of the criminal case. Assuming a one-year final disposition on all criminal cases, it would require the DOC to provide an additional 275 days of medical benefits at an annual cost of \$36,000 for each employee, for a total annual cost of \$792,000.

Additionally, this legislation requires full pay and medical benefits for an individual who is on an administrative suspension. The DOC currently provides full medical benefits throughout the suspension, and pay is suspended for no more than 60 days. This legislation would require the DOC to provide full pay for the first 60 days that are currently unpaid. The cost of providing full pay for 25 individuals for the first 60-day period of an administrative suspension is approximately \$265,000.

Finally, this legislation would result in the DOC's inability to comply with the federal Prison Rape Elimination Act (PREA) of 2003 (P.L. 108-79). The loss of PREA compliance by the DOC could make the DOC ineligible to receive federal discretionary PREA funds. This year, the DOC received \$250,000 to continue efforts in preventing sexual violence and harassment.

The DOC's noncompliance of PREA standards will also result in forfeiture of 5% of federal Edward Byrne Memorial Justice Assistance Grants (JAG) and federal Services, Training, Officers, and Prosecutors (STOP) Violence Against Women Formula Grants. These federal grants are generally allocated to counties. The federal FY 2020 allocation was \$5,568,836. This would result in a loss of \$278,441 (5%) to counties.

Therefore, the enactment would have a negative fiscal impact of \$1.3 million annually on Commonwealth funds and approximately \$278,441 on local government funds.