
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 569 Session of
2021

INTRODUCED BY ARGALL, LANGERHOLC, J. WARD, STEFANO, TARTAGLIONE,
REGAN, YUDICHAK, BROWNE, SABATINA, MENSCH, LAUGHLIN AND
ROBINSON, APRIL 16, 2021

REFERRED TO LABOR AND INDUSTRY, APRIL 16, 2021

AN ACT

1 Providing for guidelines and procedures governing certain
2 investigations and interrogations of correctional and
3 forensic employees; authorizing certain civil suits by
4 correctional officers; and providing for impact of collective
5 bargaining 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 and Forensic Employees 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 and
14 interrogation of correctional and forensic employees during
15 certain investigations by the Department of Corrections or
16 Department of Human Services.

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall
19 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Correctional employee." An individual employed under the
3 Governor's jurisdiction with whom the duty of care, custody and
4 control of an offender is required.

5 "Department." The Department of Corrections of the
6 Commonwealth or the Department of Human Services of the
7 Commonwealth.

8 "Employee." A correctional or forensic employee under this
9 act.

10 "Forensic employee." An individual employed under the
11 Governor's jurisdiction with whom the duty of care, custody and
12 control of a patient is required.

13 "Interrogation." The formal and systematic questioning of an
14 employee accused in a complaint of malfeasance, misfeasance or
15 nonfeasance which may result in dismissal, demotion, suspension,
16 reduction in salary, written reprimand or transfer for punitive
17 purposes. The term does not include the normal questioning of an
18 employee which occurs in the normal course of duty, counseling,
19 instruction, informal verbal admonishment or other routine or
20 unplanned contact with a supervisor.

21 "Malfeasance." The performance of an act which is unlawful.

22 "Misfeasance." The improper performance of a lawful act. The
23 term includes an act which constitutes a violation of department
24 policy for which there is no analogous criminal offense.

25 "Nonfeasance." The omission of an act which a person has a
26 legal duty to perform.

27 Section 4. Rights of employees.

28 If an employee is under investigation and subject to
29 interrogation by the department, the following standards shall
30 apply:

1 (1) The interrogation shall be conducted after not less
2 than 24 hours' notice and shall occur when the employee is on
3 duty or on approved leave. The employee may not be terminated
4 from employment or disciplined for work missed because of the
5 interrogation.

6 (2) The interrogation shall take place at one of the
7 following locations:

8 (i) The office of the investigating officer.

9 (ii) The office of the correctional facility or
10 forensic facility conducting the investigation.

11 (iii) An office within a building owned or leased by
12 the department.

13 (iv) Other locations as is necessary to protect the
14 safety or identity of the employee or is otherwise
15 consented to by the employee.

16 (3) At the beginning of the interrogation, the employee
17 under interrogation shall be informed of the name and
18 professional title of the individual in charge of the
19 interrogation and the names and professional titles of each
20 individual that will be present.

21 (4) The employee under interrogation shall be informed,
22 in writing, of the nature of the complaint and provided with
23 the name or names of the complainant not less than 24 hours
24 prior to the interrogation. This paragraph may not apply to
25 any of the following:

26 (i) A complaint subject to section 3(c) of the act
27 of December 12, 1986 (P.L.1559, No.169), known as the
28 Whistleblower Law.

29 (ii) A complaint alleging sexual abuse or sexual
30 harassment as defined by the Prison Rape Elimination Act

1 of 2003 (Public Law 108-79, 117 Stat. 972).

2 (5) The employee under interrogation shall be informed
3 whether the investigation is administrative and therefore
4 compelled as a condition of employment or criminal. Where an
5 investigation is administrative, the employee shall be read a
6 statement that the employee's answers are protected as a
7 matter of law and advised that the employee has a right to
8 representation. Where an investigation is criminal, the
9 employee shall be read warnings as provided by law and
10 advised any statements made are not compelled as a condition
11 of the employee's employment.

12 (6) (i) If an anonymous or unsworn complaint is made
13 against an employee and no evidence is obtained within the
14 applicable statute of limitations for the analogous criminal
15 offense, the complaint shall be classified as unfounded and
16 shall be completely expunged from each personnel file
17 maintained by the department.

18 (ii) If an anonymous or unsworn complaint is made
19 against an employee for an act of misfeasance and no
20 evidence is obtained within 60 days, the complaint shall
21 be classified as unfounded and shall be completely
22 expunged from the personnel maintained by the department.

23 (7) The interrogation shall allow for personal
24 necessities and for rest periods as are reasonably necessary.

25 (8) The employee under interrogation may not be offered
26 promises of reward or threatened in connection with the
27 investigation.

28 (9) The complete interrogation shall be recorded,
29 including recess periods. A copy of the record shall be made
30 available to the employee or the employee's counsel or

1 representative, upon request, without cost.

2 (10) The employee under interrogation shall have the
3 right to be represented by counsel or other representative as
4 provided by existing Federal and State law.

5 (11) No employee may be compelled to submit to a
6 polygraph examination. No disciplinary action or other
7 recrimination may be taken against an employee for refusing
8 to submit to a polygraph examination. No testimony or
9 evidence shall be admissible at a subsequent hearing, trial
10 or proceeding, judicial or administrative, to the effect that
11 the employee refused to take a polygraph examination.

12 (12) No employee may be subjected to or threatened with
13 adverse employment action as a result of the exercise of the
14 rights afforded to employees under this act.

15 (13) No employees may be required to disclose greater
16 information as to property, income, assets, source of income,
17 debts or personal or domestic expenditures, including those
18 of any member of the employee's family or household, than the
19 principal elected officials of the department are required to
20 disclose, unless the nature of the investigation necessitates
21 the disclosure of the information and the information is
22 obtained under proper legal procedures.

23 Section 5. Civil suits by correctional officers.

24 A correctional officer shall have a cause of action against a
25 person for damages suffered as a result of a complaint filed
26 against the correctional officer by the person which complaint
27 is found to be:

28 (1) without merit and frivolous; or

29 (2) without merit and made in bad faith.

30 Section 6. Impact of collective bargaining agreements.

1 (a) Additional rights.--

2 (1) If there is a conflict between an existing
3 collective bargaining agreement and the rights and coverage
4 under this act, the collective bargaining agreement shall
5 govern.

6 (2) The rights and coverage under this act may not be
7 diminished by a collective bargaining agreement entered into
8 or renewed on or after the effective date of this subsection.

9 (b) Department obligation.--Nothing in this act shall be
10 construed to diminish the obligation of the department to comply
11 with a collective bargaining agreement which provides greater
12 rights and coverage to correctional officers than the rights and
13 coverage provided by this act.

14 Section 7. Suspensions pending investigation.

15 (a) General rule.--A suspension pending investigation of an
16 employee shall be in accordance with the provisions of 71
17 Pa.C.S. Pt. III (relating to civil service reform), regardless
18 of the employee's civil service status, except as follows:

19 (1) No suspension pending investigation shall be
20 utilized unless the department has just cause for the
21 employee's removal from the workplace in lieu of a temporary
22 administrative transfer.

23 (2) All suspensions pending investigation shall be with
24 pay and contractual benefits except as noted in subsection

25 (b).

26 (3) Medical benefits and insurance shall continue during
27 the period of suspension.

28 (b) Governor's code of conduct.--

29 (1) An employee against whom a criminal proceeding has
30 been instituted and the requirements of 4 Pa. Code Ch. 7,

1 Subch. K (relating to code of conduct for appointed officials
2 and State employees) have been triggered may be suspended
3 pending investigation without pay. Medical benefits and
4 insurance to which an employee and spouse and dependents are
5 entitled by virtue of employment may not be suspended until
6 conviction or separation of the employee from the department,
7 whichever occurs first.

8 (2) If the employee's criminal charges are resolved and
9 the provisions of 4 Pa. Code Ch. 7, Subch. K no longer apply,
10 the employee shall be reinstated and reimbursed for all
11 salary and benefits that have not been paid during the
12 suspension period.

13 Section 8. Effective date.

14 This act shall take effect in 60 days.