

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2549 Session of  
2012

INTRODUCED BY FLECK, BENNINGHOFF, METZGAR, BAKER, BRENNAN,  
D. COSTA, DALEY, J. EVANS, GEIST, GEORGE, GOODMAN, HALUSKA,  
HANNA, HARKINS, HESS, KOTIK, MILLARD, MULLERY, MUNDY, MURT,  
REED, ROAE, STABACK, STERN AND SWANGER, JULY 11, 2012

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JULY 11, 2012

AN ACT

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

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.

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

6 Section 4. Rights of correctional officers.

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

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

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

19 (i) The office of the investigating officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 under this act.

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

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

14 Section 5. Civil suits by correctional officers.

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

19 (1) Without merit and frivolous.

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

21 Section 6. Impact of collective bargaining agreements.

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

28 Section 7. Summary suspensions.

29 (a) Emergency suspension.--Emergency suspension of a  
30 correctional officer may be imposed by the department if the

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

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

19 Section 8. Effective date.

20 This act shall take effect in 60 days.