

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 476 Session of 2013

INTRODUCED BY ARGALL, KASUNIC, VULAKOVICH, TEPLITZ, RAFFERTY, BAKER, YUDICHAK, SOLOBAY, COSTA, BROWNE, BREWSTER AND BLAKE, FEBRUARY 11, 2013

SENATOR BAKER, LABOR AND INDUSTRY, AS AMENDED, JUNE 24, 2014

AN ACT

1 Establishing ~~rights of correctional officers during certain~~ <--
2 ~~investigations by the Department of Corrections~~ GUIDELINES <--
3 AND PROCEDURES GOVERNING CERTAIN INVESTIGATIONS OF
4 CORRECTIONAL OFFICERS; 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 Act~~ 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
19 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

7 Section 4. Rights of correctional officers.

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

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

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

20 (i) The office of the investigating officer.

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

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

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

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

1 personnel that will be present.

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

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

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

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

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

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

28 (10) The correctional officer under interrogation shall
29 have the right to be represented by counsel or other
30 representative. To the extent that the correctional officer

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

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

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

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

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

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

1 exercise of the rights accorded to correctional officers
2 under this act.

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

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

15 Section 5. Civil suits by correctional officers.

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

20 (1) Without merit and frivolous.

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

22 Section 6. Impact of collective bargaining agreements.

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

29 ~~Section 7. Summary suspensions.~~

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30 ~~(a) Emergency suspension. Emergency suspension of a~~

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

9 SECTION 7. SUSPENSIONS.

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10 (A) GENERAL RULE.--SUSPENSION OF A CORRECTIONAL OFFICER
11 SHALL BE IN ACCORDANCE WITH PROVISIONS OF THE ACT OF AUGUST 5,
12 1941 (P.L.752, NO.286), KNOWN AS THE "CIVIL SERVICE ACT," EXCEPT
13 AS FOLLOWS:

14 (1) NO SUSPENSION BASED ON A PENDING INTERNAL
15 INVESTIGATION SHALL LAST MORE THAN 60 DAYS FROM THE EFFECTIVE
16 DATE OF SUSPENSION.

17 (2) WRITTEN NOTICE OF SUSPENSION SHALL BE PROVIDED TO
18 THE CORRECTIONS OFFICER NO LATER THAN FIVE WORKING DAYS AFTER
19 THE EFFECTIVE DATE OF SUSPENSION.

20 (3) MEDICAL BENEFITS AND INSURANCE SHALL CONTINUE DURING
21 THE PERIOD OF SUSPENSION.

22 (b) Criminal charges.--A correctional officer against whom a
23 criminal proceeding involving a misdemeanor or felony offense
24 has been instituted may be suspended without pay pending
25 disposition of the criminal charges. Medical benefits and
26 insurance to which a correctional officer and spouse and
27 dependents are entitled by virtue of employment may not be
28 suspended until conviction or separation of the correctional
29 officer from the department. If the correctional officer is
30 acquitted of the criminal charges, the correctional officer

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.