

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 478 Session of
2015

INTRODUCED BY BOBACK, MATZIE, D. COSTA, COHEN, A. HARRIS,
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GOODMAN, ROZZI, MURT, HARKINS, GILLEN, TOOHL, BENNINGHOFF
AND GIBBONS, FEBRUARY 17, 2015

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 4, 2015

AN ACT

1 Establishing guidelines and procedures governing certain
2 investigations AND INTERROGATIONS of correctional officers by <--
3 the Department of Corrections; authorizing certain civil
4 suits by correctional officers; and providing for impact of
5 collective 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 Officers 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 officers during certain
15 investigations by the Department of Corrections.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 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. ~~The term shall include~~ <--
5 ~~a forensic security employee.~~

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

8 ~~"Forensic security employee." An individual employed by the~~ <--
9 ~~department who performs nonprofessional nursing work in a~~
10 ~~specialized occupational field providing care to mentally~~
11 ~~disabled patients at institutions with forensic units.~~

12 "INTERROGATION." THE FORMAL AND SYSTEMATIC QUESTIONING OF A <--
13 CORRECTIONAL OFFICER ACCUSED IN A COMPLAINT OF MALFEASANCE,
14 MISFEASANCE OR NONFEASANCE WHICH MAY RESULT IN DISMISSAL,
15 DEMOTION, SUSPENSION, REDUCTION IN SALARY, WRITTEN REPRIMAND OR
16 TRANSFER FOR PUNITIVE PURPOSES. THE TERM SHALL NOT INCLUDE THE
17 QUESTIONING OF A CORRECTIONAL OFFICER WHICH OCCURS IN THE NORMAL
18 COURSE OF DUTY, COUNSELING, INSTRUCTION, INFORMAL VERBAL
19 ADMONISHMENT OR OTHER ROUTINE OR UNPLANNED CONTACT WITH A
20 SUPERVISOR OR ANY OTHER OFFICER.

21 "MALFEASANCE." THE PERFORMANCE OF AN ACT WHICH IS UNLAWFUL.

22 "MISFEASANCE." THE IMPROPER PERFORMANCE OF A LAWFUL ACT. THE
23 TERM SHALL INCLUDE AN ACT WHICH CONSTITUTES A VIOLATION OF
24 DEPARTMENT POLICY FOR WHICH THERE IS NO ANALOGOUS CRIMINAL
25 OFFENSE.

26 "NONFEASANCE." THE OMISSION OF AN ACT WHICH A PERSON HAS A
27 LEGAL DUTY TO PERFORM.

28 Section 4. Rights of correctional officers.

29 ~~(a) General rule.~~ If a correctional officer is under <--
30 investigation and subject to interrogation by the department,

1 the following standards shall apply:

2 (1) The interrogation shall be conducted after not less
3 than 24 hours' notice and shall occur when the correctional
4 officer is on duty OR ON APPROVED LEAVE, unless the <--
5 seriousness of the investigation is such that an immediate
6 ~~investigation~~ INTERROGATION is necessary. The correctional <--
7 officer may not be terminated from employment or disciplined
8 for any work missed because of the interrogation.

9 (2) The interrogation shall take place at one of the
10 following locations:

11 (i) The office of the investigating officer.

12 (ii) The office of the correctional facility
13 conducting the investigation.

14 (iii) An office within a building owned or leased by
15 the department.

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

18 (3) At the beginning of the interrogation, the
19 correctional officer under interrogation shall be informed of
20 the name and ~~rank of the correctional officer~~ PROFESSIONAL <--
21 TITLE OF THE INDIVIDUAL in charge of the interrogation and
22 the names and ~~ranks of any correctional personnel~~ <--
23 PROFESSIONAL TITLES OF ANY INDIVIDUALS that will be present. <--

24 (4) The correctional officer under interrogation shall
25 be informed in writing of the nature of the complaint and
26 provided with the name or names of the complainant not less
27 than 24 hours prior to the interrogation, UNLESS THE <--
28 SERIOUSNESS OF THE INVESTIGATION IS SUCH THAT AN IMMEDIATE
29 INTERROGATION IS NECESSARY. IF AN IMMEDIATE INTERROGATION IS
30 NECESSARY, THE INFORMATION REQUIRED UNDER THIS PARAGRAPH

1 SHALL BE PROVIDED CONTEMPORANEOUSLY WITH THE INTERROGATION.
2 THIS PARAGRAPH SHALL NOT APPLY TO AN ANONYMOUS COMPLAINT
3 ALLEGING SEXUAL ABUSE OR SEXUAL HARASSMENT MADE UNDER THE
4 PRISON RAPE ELIMINATION ACT OF 2003 (PUBLIC LAW 108-79, 117
5 STAT. 974).

6 ~~(5) If an anonymous or unsworn complaint is made against~~ <--

7 (5) (I) IF AN ANONYMOUS OR UNSWORN COMPLAINT IS MADE <--

8 AGAINST a correctional officer and no ~~corroborative~~ <--

9 evidence is obtained within the applicable statute of

10 limitations for the analogous criminal offense, the

11 complaint shall be classified as unfounded and shall be

12 completely expunged from any personnel file of the

13 correctional officer maintained by the department.

14 (II) IF AN ANONYMOUS OR UNSWORN COMPLAINT IS MADE <--

15 AGAINST A CORRECTIONAL OFFICER FOR AN ACT OF MISFEASANCE

16 AND NO EVIDENCE IS OBTAINED WITHIN 60 DAYS, THE COMPLAINT

17 SHALL BE CLASSIFIED AS UNFOUNDED AND SHALL BE COMPLETELY

18 EXPUNGED FROM THE PERSONNEL FILE OF THE CORRECTIONAL

19 OFFICER MAINTAINED BY THE DEPARTMENT.

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

22 (7) The correctional officer under interrogation may not
23 be offered promises of reward or threatened in connection
24 with the investigation.

25 (8) The complete interrogation shall be recorded,
26 including any recess periods. A copy of the record shall be
27 made available to the correctional officer or the
28 correctional officer's counsel or representative, upon
29 request, without cost.

30 (9) If the correctional officer is under arrest at the

1 time of the interrogation, the correctional officer shall be
2 completely informed of the correctional officer's
3 constitutional rights and all rights under the law prior to
4 the commencement of the interrogation.

5 (10) The correctional officer under interrogation shall
6 have the right to be represented by counsel or other
7 representative. To the extent that the correctional officer
8 is represented for purposes of collective bargaining by a
9 collective bargaining representative pursuant to State law,
10 the correctional officer shall also have the right to have an
11 agent from the exclusive collective bargaining representative
12 present.

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

14 (i) Except as provided under subparagraph ~~(ii)~~ <--
15 (III), when a complaint is made against a correctional <--
16 officer more than 90 days after the applicable statute of
17 limitations has expired for the civil ~~wrong~~ ACTION <--
18 alleged, the complaint shall be classified as unfounded
19 and shall be completely expunged from any personnel file
20 of the correctional officer maintained by the department.

21 (II) WHEN A COMPLAINT IS MADE AGAINST A CORRECTIONAL <--
22 OFFICER FOR AN ACT OF MISFEASANCE MORE THAN 60 DAYS AFTER
23 THE ALLEGED DATE OF THE ACT, THE COMPLAINT SHALL BE
24 CLASSIFIED AS UNFOUNDED AND SHALL BE COMPLETELY EXPUNGED
25 FROM ANY PERSONNEL FILE OF THE CORRECTIONAL OFFICER
26 MAINTAINED BY THE DEPARTMENT.

27 ~~(ii)~~ (III) Notwithstanding ~~paragraph~~ SUBPARAGRAPH <--
28 (i), no complaint that alleges conduct that would
29 constitute a misdemeanor or felony offense, if proven,
30 may be classified as unfounded or expunged as a stale

complaint until the applicable statute of limitations expires as prescribed under 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal proceedings).

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

(13) No correctional officer may be subjected to or threatened with adverse employment action as a result of the exercise of the rights accorded to correctional officers under this act.

(14) No correctional officer may be required to disclose greater information as to property, income, assets, source of income, debts or personal or domestic expenditures, including those of any member of the correctional officer's family or household, than the principal elected officials of the department are required to disclose, unless THE NATURE OF THE <-- INVESTIGATION NECESSITATES THE DISCLOSURE OF THE INFORMATION AND the information is obtained under proper legal procedures.

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

Section 5. Civil suits by correctional officers.

1 A correctional officer shall have a cause of action against a
2 person for damages suffered as a result of a complaint filed
3 against the correctional officer by that person that is found to
4 be any of the following:

5 (1) Without merit and frivolous.

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

7 Section 6. Impact of collective bargaining agreements.

8 Nothing in this act may be construed to diminish the
9 obligation of the department to comply with a collective
10 bargaining agreement that provides greater rights and coverage
11 to correctional officers than the rights and coverage provided
12 by this act. The rights and coverage under this act may not be
13 diminished by any collective bargaining agreement.

14 Section 7. Suspensions.

15 (a) General rule.--Suspension of a correctional officer
16 shall be in accordance with provisions of the act of August 5,
17 1941 (P.L.752, No.286), known as the Civil Service Act, except
18 as follows:

19 (1) No suspension based on a pending internal
20 investigation shall last more than 60 days from the effective
21 date of suspension.

22 (2) Written notice of suspension shall be provided to
23 the corrections officer no later than five working days after
24 the effective date of suspension.

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

27 (b) Criminal charges.--A correctional officer against whom a
28 criminal proceeding involving a misdemeanor or felony offense
29 has been instituted may be suspended without pay pending
30 disposition of the criminal charges. Medical benefits and

1 insurance to which a correctional officer and spouse and
2 dependents are entitled by virtue of employment may not be
3 suspended until conviction or separation of the correctional
4 officer from the department. If the correctional officer is
5 acquitted of the criminal charges, the correctional officer
6 shall be reinstated and reimbursed for all salary and benefits
7 that have not been paid during the suspension period.

8 Section 8. Effective date.

9 This act shall take effect in 60 days.