

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 404 Session of 2015

INTRODUCED BY ARGALL, YUDICHAK, BAKER, BROWNE, GORDNER, SMITH, TARTAGLIONE, RAFFERTY AND BREWSTER, FEBRUARY 5, 2015

SENATOR BAKER, LABOR AND INDUSTRY, AS AMENDED, MAY 12, 2015

AN ACT

1 Establishing guidelines and procedures governing certain
2 investigations AND INTERROGATIONS of correctional officers; <--
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 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
19 context clearly indicates otherwise:

1 "Correctional officer." An individual employed as a
2 correctional officer OR FOOD SERVICE OR MAINTENANCE EMPLOYEE by <--
3 the Department of Corrections and given the care, custody and
4 control of inmates.

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

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

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

17 "MISFEASANCE." THE IMPROPER PERFORMANCE OF A LAWFUL ACT. THE
18 TERM SHALL INCLUDE AN ACT WHICH CONSTITUTES A VIOLATION OF
19 DEPARTMENT POLICY FOR WHICH THERE IS NO ANALOGOUS CRIMINAL
20 OFFENSE.

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

23 Section 4. Rights of correctional officers.

24 ~~(a) General rule.~~—If a correctional officer is under <--
25 investigation and subject to interrogation by the department,
26 the following standards shall apply:

27 (1) The interrogation shall be conducted after not less
28 than 24 hours' notice and shall occur when the correctional
29 officer is on duty, ~~unless the seriousness of the~~ <--
30 ~~investigation is such that an immediate investigation is~~

1 ~~necessary~~ OR ON APPROVED LEAVE. The correctional officer may <--
2 not be terminated from employment or disciplined for any work
3 missed because of the interrogation.

4 (2) The interrogation shall take place at one of the
5 following locations:

6 (i) The office of the investigating officer.

7 (ii) The office of the correctional facility
8 conducting the investigation.

9 (iii) An office within a building owned or leased by
10 the department.

11 (iv) Such other location as is necessary to protect
12 the safety or identity of the correctional officer OR IS <--
13 CONSENTED TO BY THE CORRECTIONAL OFFICER.

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

20 (4) The correctional officer under interrogation shall
21 be informed in writing of the nature of the complaint and
22 provided with the name or names of the complainant not less
23 than 24 hours prior to the interrogation. THIS PARAGRAPH <--
24 SHALL NOT APPLY TO ANY COMPLAINT ALLEGING SEXUAL ABUSE OR
25 SEXUAL HARASSMENT AS DEFINED BY THE PRISON RAPE ELIMINATION
26 ACT OF 2003 (PUBLIC LAW 108-79, 117 STAT. 972).

27 (5) (I) If an anonymous or unsworn complaint is made <--
28 against a correctional officer and no ~~corroborative~~ <--
29 evidence is obtained within the applicable statute of
30 limitations for the analogous criminal offense, the

1 complaint shall be classified as unfounded and shall be
2 completely expunged from any personnel file maintained by
3 the department on the correctional officer.

4 (II) IF AN ANONYMOUS OR UNSWORN COMPLAINT IS MADE <--
5 AGAINST A CORRECTIONAL OFFICER FOR AN ACT OF MISFEASANCE
6 AND NO EVIDENCE IS OBTAINED WITHIN 60 DAYS, THE COMPLAINT
7 SHALL BE CLASSIFIED AS UNFOUNDED AND SHALL BE COMPLETELY
8 EXPUNGED FROM THE PERSONNEL FILE OF THE CORRECTIONAL
9 OFFICER MAINTAINED BY THE DEPARTMENT.

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

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

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

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

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

1 agent from the exclusive collective bargaining representative
2 present.

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

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

11 (II) WHEN A COMPLAINT IS MADE AGAINST A CORRECTIONAL <--
12 OFFICER FOR AN ACT OF MISFEASANCE MORE THAN 60 DAYS AFTER
13 THE ALLEGED DATE OF THE ACT, THE COMPLAINT SHALL BE
14 CLASSIFIED AS UNFOUNDED AND SHALL BE COMPLETELY EXPUNGED
15 FROM ANY PERSONNEL FILE OF THE CORRECTIONAL OFFICER
16 MAINTAINED BY THE DEPARTMENT.

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

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

1 polygraph examination.

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

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

15 ~~(b) Applicability. This section shall not apply to an <--~~
16 ~~interrogation of a correctional officer in the normal course of~~
17 ~~duty, counseling, instruction, informal verbal admonishment or~~
18 ~~other routine or unplanned contact with a supervisor or other~~
19 ~~officer.~~

20 Section 5. Civil suits by correctional officers.

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

25 (1) without merit and frivolous; or

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

27 ~~Section 6. Construction. <--~~

28 SECTION 6. IMPACT OF COLLECTIVE BARGAINING AGREEMENTS. <--

29 Nothing in this act shall be construed to diminish the
30 obligation of the department to comply with a collective

1 bargaining agreement which provides greater rights and coverage
2 to correctional officers than the rights and coverage provided
3 by this act. The rights and coverage under this act may not be
4 diminished by any collective bargaining agreement.

5 Section 7. Suspensions.

6 (a) General rule.--Suspension of a correctional officer
7 shall be in accordance with provisions of the act of August 5,
8 1941 (P.L.752, No.286), known as the ~~"Civil Service Act,"~~ CIVIL <--
9 SERVICE ACT, except as follows:

10 (1) No suspension based on a pending internal
11 investigation shall last more than 60 days from the effective
12 date of suspension.

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

16 (3) Medical benefits and insurance shall continue during
17 the period of suspension.

18 (b) Criminal charges.--

19 (1) A correctional officer against whom a criminal
20 proceeding involving a misdemeanor or felony offense has been
21 instituted may be suspended without pay pending disposition
22 of the criminal charges. Medical benefits and insurance to
23 which a correctional officer and spouse and dependents are
24 entitled by virtue of employment may not be suspended until
25 conviction or separation of the correctional officer from the
26 department, WHICHEVER OCCURS FIRST. <--

27 (2) If the correctional officer is acquitted of the
28 criminal charges, the correctional officer shall be
29 reinstated and reimbursed for all salary and benefits that
30 have not been paid during the suspension period.

1 Section 8. Effective date.

2 This act shall take effect in 60 days.