
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2005 Session of
2018

INTRODUCED BY BOBACK, MILLARD, JAMES, GOODMAN, D. COSTA, GILLEN
AND KORTZ, JANUARY 9, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 9, 2018

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
19 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 "Interrogation." The formal and systematic questioning of a
7 correctional officer accused in a complaint of malfeasance,
8 misfeasance or nonfeasance that may result in dismissal,
9 demotion, suspension, reduction in salary, written reprimand or
10 transfer for punitive purposes. The term does not include the
11 questioning of a correctional officer that occurs in the normal
12 course of duty, counseling, instruction, informal verbal
13 admonishment or other routine or unplanned contact with a
14 supervisor or any other officer.

15 "Malfeasance." The performance of an unlawful act.

16 "Misfeasance." The improper performance of a lawful act. The
17 term includes an act that constitutes a violation of department
18 policy for which there is no analogous criminal offense.

19 "Nonfeasance." The omission of an act that a person has a
20 legal duty to perform.

21 Section 4. Rights of correctional officers.

22 If a correctional officer is under investigation and subject
23 to interrogation by the department, the following standards
24 shall apply:

25 (1) The interrogation shall be conducted after not less
26 than 24 hours' notice and shall occur when the correctional
27 officer is on duty or on approved leave, unless the
28 seriousness of the investigation is such that an immediate
29 interrogation is necessary. The correctional officer may not
30 be terminated from employment or disciplined for any work

1 missed because of the interrogation.

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

4 (i) The office of the investigating officer.

5 (ii) The office of the correctional facility
6 conducting the investigation.

7 (iii) An office within a building owned or leased by
8 the department.

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

11 (3) At the beginning of the interrogation, the
12 correctional officer under interrogation shall be informed of
13 the name and professional title of the individual in charge
14 of the interrogation and the names and professional titles of
15 any individuals that will be present.

16 (4) The correctional officer under interrogation shall
17 be informed in writing of the nature of the complaint and
18 provided with the name or names of the complainant not less
19 than 24 hours prior to the interrogation, unless the
20 seriousness of the investigation is such that an immediate
21 interrogation is necessary. If an immediate interrogation is
22 necessary, the information required under this paragraph
23 shall be provided contemporaneously with the interrogation.
24 This paragraph shall not apply to an anonymous complaint
25 alleging sexual abuse or sexual harassment made under the
26 Prison Rape Elimination Act of 2003 (Public Law 108-79, 117
27 Stat. 974).

28 (5) (i) If an anonymous or unsworn complaint is made
29 against a correctional officer and no evidence is
30 obtained within the applicable statute of limitations for

1 the analogous criminal offense, the complaint shall be
2 classified as unfounded and shall be completely expunged
3 from any personnel file of the correctional officer
4 maintained by the department.

5 (ii) If an anonymous or unsworn complaint is made
6 against a correctional officer for an act of misfeasance
7 and no evidence is obtained within 60 days, the complaint
8 shall be classified as unfounded and shall be completely
9 expunged from the personnel file of the correctional
10 officer maintained by the department.

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

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

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

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

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

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

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

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

12 (ii) When a complaint is made against a correctional
13 officer for an act of misfeasance more than 60 days after
14 the alleged date of the act, the complaint shall be
15 classified as unfounded and shall be completely expunged
16 from any personnel file of the correctional officer
17 maintained by the department.

18 (iii) Notwithstanding subparagraph (i), no complaint
19 that alleges conduct that would constitute a misdemeanor
20 or felony offense, if proven, may be classified as
21 unfounded or expunged as a stale complaint until the
22 applicable statute of limitations expires as prescribed
23 under 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal
24 proceedings).

25 (12) A correctional officer may not be compelled to
26 submit to a polygraph examination. Disciplinary action or
27 other recrimination may not be taken against a correctional
28 officer for refusing to submit to a polygraph examination. No
29 testimony or evidence may be admissible at a subsequent
30 hearing, trial or proceeding, judicial or administrative, to

1 the effect that the correctional officer refused to take a
2 polygraph examination.

3 (13) A correctional officer may not be subjected to or
4 threatened with adverse employment action as a result of the
5 exercise of the rights accorded to correctional officers
6 under this act.

7 (14) A correctional officer may not be required to
8 disclose greater information as to property, income, assets,
9 source of income, debts or personal or domestic expenditures,
10 including those of any member of the correctional officer's
11 family or household, than the principal elected officials of
12 the department are required to disclose, unless the nature of
13 the investigation necessitates the disclosure of the
14 information and the information is obtained under proper
15 legal procedures.

16 Section 5. Civil suits by correctional officers.

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

21 (1) Without merit and frivolous.

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

23 Section 6. Impact of collective bargaining agreements.

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

30 Section 7. Suspensions.

1 (a) General rule.--Suspension of a correctional officer
2 shall be in accordance with provisions of the act of August 5,
3 1941 (P.L.752, No.286), known as the Civil Service Act, except
4 as follows:

5 (1) A suspension based on a pending internal
6 investigation may not last more than 60 days from the
7 effective date of suspension.

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

11 (3) Medical benefits and insurance shall continue during
12 the period of suspension.

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

24 Section 8. Effective date.

25 This act shall take effect in 60 days.