

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1049 Session of
2020

INTRODUCED BY ARGALL, BREWSTER, GORDNER, STEFANO, LANGERHOLC,
J. WARD, BROWNE, YUDICHAK AND TARTAGLIONE, MARCH 3, 2020

REFERRED TO LABOR AND INDUSTRY, MARCH 3, 2020

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 and given the care, custody and control of
4 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 does 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 includes an act which constitutes a violation of department
19 policy for which there is no analogous criminal offense.

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

22 Section 4. Rights of correctional officers.

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

- 26 (1) The interrogation shall be conducted after not less
27 than 24 hours' notice and shall occur when the correctional
28 officer is on duty or on approved leave. The correctional
29 officer may not be terminated from employment or disciplined
30 for work missed because of the interrogation.

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

3 (i) The office of the investigating officer.

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

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

8 (iv) Other location as is necessary to protect the
9 safety or identity of the correctional officer or is
10 consented to by 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 each individual 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. This paragraph may
20 not apply to any of the following:

21 (i) A complaint subject to section 3(c) of the act
22 of December 12, 1986 (P.L.1559, No.169), known as the
23 Whistleblower Law.

24 (ii) A complaint alleging sexual abuse or sexual
25 harassment as defined by the Prison Rape Elimination Act
26 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 evidence is
29 obtained within the applicable statute of limitations for
30 the analogous criminal offense, the complaint shall be

1 classified as unfounded and shall be completely expunged
2 from each personnel file maintained by the department on
3 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 recess periods. A copy of the record shall be made
17 available to the correctional officer or the correctional
18 officer's counsel or representative, upon request, without
19 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 (iii),
5 when a complaint is made against a correctional officer
6 more than 90 days after the applicable statute of
7 limitations has expired for the civil action alleged, the
8 complaint shall be classified as unfounded and shall be
9 completely expunged from any personnel file maintained by
10 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 (iii) Notwithstanding subparagraph (i), no complaint
18 which alleges conduct that would constitute a misdemeanor
19 or felony offense, if proven, shall be classified as
20 unfounded or expunged as a stale complaint until the
21 applicable statute of limitations expires as prescribed
22 under 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal
23 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

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.

Section 5. Civil suits by correctional officers.

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

- (1) without merit and frivolous; or
- (2) without merit and made in bad faith.

Section 6. Impact of collective bargaining agreements.

(a) Additional rights.--

(1) If there is a conflict between an existing collective bargaining agreement and the rights and coverage under this act, the collective bargaining agreement shall govern.

(2) The rights and coverage under this act may not be diminished by a collective bargaining agreement entered into or renewed on or after the effective date of this subsection.

(b) Department's obligation.--Nothing in this act shall be construed to diminish the obligation of the department to comply with a collective bargaining agreement which provides greater rights and coverage to correctional officers than the rights and coverage provided by this act.

Section 7. Suspensions.

(a) General rule.--Suspension of a correctional officer shall be in accordance with provisions of 71 Pa.C.S. Pt. III (relating to civil service reform), except as follows:

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

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

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

(b) Criminal charges.--

(1) A correctional officer against whom a criminal proceeding involving a misdemeanor or felony offense has been instituted may be suspended without pay pending disposition of the criminal charges. Medical benefits and insurance to which a correctional officer and spouse and dependents are entitled by virtue of employment may not be suspended until conviction or separation of the correctional officer from the department, whichever occurs first.

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

1 Section 8. Effective date.

2 This act shall take effect in 60 days.