

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 569 Session of 2021

INTRODUCED BY ARGALL, LANGERHOLC, J. WARD, STEFANO, REGAN, YUDICHAK, BROWNE, SABATINA, MENSCH, LAUGHLIN, ROBINSON AND KANE, APRIL 16, 2021

AS AMENDED ON THIRD CONSIDERATION, JUNE 20, 2022

AN ACT

1 Providing for guidelines and procedures governing certain
2 investigations and interrogations of correctional and
3 forensic employees; authorizing certain civil suits by
4 correctional officers; and providing for impact of collective
5 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 and Forensic Employees 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 and forensic employees during
15 certain investigations by the Department of Corrections or
16 Department of Human Services.

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 employee." An individual employed under the
3 Governor's jurisdiction with whom the duty of care, custody and
4 control of an offender is required.

5 "Department." The Department of Corrections of the
6 Commonwealth or the Department of Human Services of the
7 Commonwealth.

8 "Employee." A correctional or forensic employee under this
9 act.

10 "Forensic employee." An individual employed under the
11 Governor's jurisdiction with whom the duty of care, custody and
12 control of a patient is required.

13 "Interrogation." The formal and systematic questioning of an
14 employee accused in a complaint of ~~malfeasance, misfeasance or~~ <--
15 ~~nonfeasance~~ MISCONDUCT which may result in dismissal, demotion, <--
16 suspension, reduction in salary, written reprimand or transfer
17 for punitive purposes. The term does not include the normal
18 questioning of an employee which occurs in the normal course of
19 duty, counseling, instruction, informal verbal admonishment or
20 other routine or unplanned contact with a supervisor.

21 ~~"Malfeasance." The performance of an act which is unlawful.~~ <--

22 ~~"Misfeasance." The improper performance of a lawful act. The~~
23 ~~term includes an act which constitutes a violation of department~~
24 ~~policy for which there is no analogous criminal offense.~~

25 ~~"Nonfeasance." The omission of an act which a person has a~~
26 ~~legal duty to perform.~~

27 "MISCONDUCT." ANY OF THE FOLLOWING: <--

28 (1) THE PERFORMANCE OF AN ACT WHICH IS UNLAWFUL.

29 (2) THE IMPROPER PERFORMANCE OF A LAWFUL ACT, INCLUDING

30 AN ACT WHICH CONSTITUTES A VIOLATION OF DEPARTMENT POLICY FOR

1 WHICH THERE IS NO ANALOGOUS CRIMINAL OFFENSE.

2 (3) THE OMISSION OF AN ACT WHICH A PERSON HAS A LEGAL
3 DUTY TO PERFORM.

4 Section 4. Rights of employees.

5 If an employee is under investigation and subject to
6 interrogation by the department, the following standards shall
7 apply:

8 ~~(1) The interrogation shall be conducted after not less <--~~
9 ~~than 24 hours' notice and shall occur when the employee is on~~
10 ~~duty or on approved leave. The employee may not be terminated~~
11 ~~from employment or disciplined for work missed because of the~~
12 ~~interrogation.~~

13 ~~(2)~~ (1) The interrogation shall take place at one of the <--
14 following locations:

15 (i) The office of the investigating officer.

16 (ii) The office of ~~the~~ A correctional facility or <--
17 forensic facility conducting the investigation.

18 (iii) An office within a building owned or leased by
19 the department.

20 (iv) Other locations as is necessary to protect the
21 safety or identity of the employee or is otherwise
22 consented to by the employee.

23 ~~(3)~~ (2) At the beginning of the interrogation, the <--
24 employee under interrogation shall be informed of the name
25 and professional title of the individual in charge of the
26 interrogation and the names and professional titles of each
27 individual that will be present.

28 ~~(4) The employee under interrogation shall be informed, <--~~
29 ~~in writing, of the nature of the complaint and provided with~~
30 ~~the name or names of the complainant not less than 24 hours~~

1 ~~prior to the interrogation. This paragraph may not apply to~~
2 ~~any of the following:~~

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

6 ~~(ii) A complaint alleging sexual abuse or sexual~~
7 ~~harassment as defined by the Prison Rape Elimination Act~~
8 ~~of 2003 (Public Law 108-79, 117 Stat. 972).~~

9 ~~(5)~~ (3) The employee under interrogation shall be <--
10 informed whether the investigation is administrative and
11 therefore compelled as a condition of employment or criminal.
12 Where an investigation is administrative, the employee shall
13 be read a statement that the employee's answers are protected
14 as a matter of law and advised that the employee has a right
15 to representation. Where an investigation is criminal, the
16 employee shall be read warnings as provided by law and
17 advised any statements made are not compelled as a condition
18 of the employee's employment.

19 ~~(6) (i) If an anonymous or unsworn complaint is made~~ <--
20 ~~against an employee and no evidence is obtained within the~~
21 ~~applicable statute of limitations for the analogous criminal~~
22 ~~offense, the complaint shall be classified as unfounded and~~
23 ~~shall be completely expunged from each personnel file~~
24 ~~maintained by the department.~~

25 ~~(ii) If an anonymous or unsworn complaint is made~~
26 ~~against an employee for an act of misfeasance and no~~
27 ~~evidence is obtained within 60 days, the complaint shall~~
28 ~~be classified as unfounded and shall be completely~~
29 ~~expunged from the personnel maintained by the department.~~

30 ~~(7)~~ (4) The interrogation shall allow for personal <--

1 necessities and for rest periods as are reasonably necessary.

2 ~~(8)~~ (5) The employee under interrogation may not be <--
3 offered promises of reward or threatened in connection with
4 the investigation.

5 ~~(9)~~ (6) The complete interrogation shall be recorded <--
6 WITH AUDIO, including recess periods. A copy of the record <--
7 shall be made available to the employee or the employee's
8 counsel or representative, upon request, without cost.

9 ~~(10)~~ (7) The employee under interrogation shall have the <--
10 right to be represented by counsel or other representative as
11 provided by existing Federal and State law.

12 ~~(11)~~ (8) No employee may be compelled to submit to a <--
13 polygraph examination. No disciplinary action or other
14 recrimination may be taken against an employee for refusing
15 to submit to a polygraph examination. No testimony or
16 evidence shall be admissible at a subsequent hearing, trial
17 or proceeding, judicial or administrative, to the effect that
18 the employee refused to take a polygraph examination.

19 ~~(12)~~ (9) No employee may be subjected to or threatened <--
20 with adverse employment action as a result of the exercise of
21 the rights afforded to employees under this act.

22 ~~(13)~~ (10) No employees may be required to disclose <--
23 greater information as to property, income, assets, source of
24 income, debts or personal or domestic expenditures, including
25 those of any member of the employee's family or household,
26 than the principal elected officials of the department are
27 required to disclose, unless the nature of the investigation
28 necessitates the disclosure of the information and the
29 information is obtained under proper legal procedures.

30 ~~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 the person which complaint~~
4 ~~is found to be:~~

5 ~~(1) without merit and frivolous; or~~

6 ~~(2) without merit and made in bad faith.~~

7 Section ~~6~~ 5. Impact of collective bargaining agreements. <--

8 (a) Additional rights.--

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

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

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

21 Section 7 ~~6~~. Suspensions pending investigation. <--

22 (a) General rule.--A suspension pending investigation of an
23 employee shall be in accordance with the provisions of 71
24 Pa.C.S. Pt. III (relating to civil service reform), regardless
25 of the employee's civil service status, except as follows:

26 (1) No suspension pending investigation shall be
27 utilized unless the department has just cause for the
28 employee's removal from the workplace in lieu of a temporary
29 administrative transfer.

30 (2) All suspensions pending investigation shall be with

1 pay and contractual benefits except as noted in subsection
2 (b).

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

5 (b) Governor's code of conduct.--

6 (1) An employee against whom a criminal proceeding has
7 been instituted and the requirements of 4 Pa. Code Ch. 7,
8 Subch. K (relating to code of conduct for appointed officials
9 and State employees) have been triggered may be suspended
10 pending investigation without pay. Medical benefits and
11 insurance to which an employee and spouse and dependents are
12 entitled by virtue of employment may not be suspended until
13 conviction or separation of the employee from the department,
14 whichever occurs first.

15 (2) If the employee's criminal charges are resolved and
16 the provisions of 4 Pa. Code Ch. 7, Subch. K no longer apply,
17 the employee shall be reinstated and reimbursed for all
18 salary and benefits that have not been paid during the
19 suspension period.

20 Section § 7. Effective date.

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21 This act shall take effect in 60 days.