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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

No. **239** Session of  
2023

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INTRODUCED BY ARGALL, KANE, ROBINSON, LANGERHOLC, STEFANO,  
LAUGHLIN AND J. WARD, JANUARY 31, 2023

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REFERRED TO LABOR AND INDUSTRY, JANUARY 31, 2023

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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 misconduct which may result  
15 in dismissal, demotion, suspension, reduction in salary, written  
16 reprimand or transfer for punitive purposes. The term does not  
17 include the normal questioning of an employee which occurs in  
18 the normal course of duty, counseling, instruction, informal  
19 verbal admonishment or other routine or unplanned contact with a  
20 supervisor.

21 "Misconduct." Any of the following:

22 (1) The performance of an act which is unlawful.

23 (2) The improper performance of a lawful act, including  
24 an act which constitutes a violation of department policy for  
25 which there is no analogous criminal offense.

26 (3) The omission of an act which a person has a legal  
27 duty to perform.

28 Section 4. Rights of employees.

29 If an employee is under investigation and subject to  
30 interrogation by the department, the following standards shall

1 apply:

2 (1) 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 a correctional facility or  
6 forensic facility conducting the investigation.

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

9 (iv) Other locations as is necessary to protect the  
10 safety or identity of the employee or is otherwise  
11 consented to by the employee.

12 (2) At the beginning of the interrogation, the employee  
13 under interrogation shall be informed of the name and  
14 professional title of the individual in charge of the  
15 interrogation and the names and professional titles of each  
16 individual that will be present.

17 (3) The employee under interrogation shall be informed  
18 whether the investigation is administrative and therefore  
19 compelled as a condition of employment or criminal. Where an  
20 investigation is administrative, the employee shall be read a  
21 statement that the employee's answers are protected as a  
22 matter of law and advised that the employee has a right to  
23 representation. Where an investigation is criminal, the  
24 employee shall be read warnings as provided by law and  
25 advised any statements made are not compelled as a condition  
26 of the employee's employment.

27 (4) The interrogation shall allow for personal  
28 necessities and for rest periods as are reasonably necessary.

29 (5) The employee under interrogation may not be offered  
30 promises of reward or threatened in connection with the

1 investigation.

2 (6) The complete interrogation shall be recorded with  
3 audio, including recess periods. A copy of the record shall  
4 be made available to the employee or the employee's counsel  
5 or representative, upon request, without cost.

6 (7) The employee under interrogation shall have the  
7 right to be represented by counsel or other representative as  
8 provided by existing Federal and State law.

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

16 (9) No employee may be subjected to or threatened with  
17 adverse employment action as a result of the exercise of the  
18 rights afforded to employees under this act.

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

27 Section 5. Impact of collective bargaining agreements.

28 (a) Additional rights.--

29 (1) If there is a conflict between an existing  
30 collective bargaining agreement and the rights and coverage

1 under this act, the collective bargaining agreement shall  
2 govern.

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

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

11 Section 6. Suspensions pending investigation.

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

16 (1) No suspension pending investigation shall be  
17 utilized unless the department has just cause for the  
18 employee's removal from the workplace in lieu of a temporary  
19 administrative transfer.

20 (2) All suspensions pending investigation shall be with  
21 pay and contractual benefits except as noted in subsection  
22 (b).

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

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

26 (1) An employee against whom a criminal proceeding has  
27 been instituted and the requirements of 4 Pa. Code Ch. 7,  
28 Subch. K (relating to code of conduct for appointed officials  
29 and State employees) have been triggered may be suspended  
30 pending investigation without pay. Medical benefits and

1 insurance to which an employee and spouse and dependents are  
2 entitled by virtue of employment may not be suspended until  
3 conviction or separation of the employee from the department,  
4 whichever occurs first.

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

10 Section 7. Effective date.

11 This act shall take effect in 60 days.