

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

AS AMENDED ON THIRD CONSIDERATION, JULY 13, 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 If a correctional officer is under investigation and subject
25 to interrogation by the department, the following standards
26 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 or on approved leave. The correctional
30 officer may not be terminated from employment or disciplined

1 for any work 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 or is
11 consented to by the correctional officer.

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

17 (4) The correctional officer under interrogation shall
18 be informed in writing of the nature of the complaint and
19 provided with the name or names of the complainant not less
20 than 24 hours prior to the interrogation. This paragraph
21 ~~shall not apply to any complaint alleging sexual abuse or~~ <--
22 SHALL NOT APPLY TO ANY OF THE FOLLOWING: <--

23 (I) A COMPLAINT SUBJECT TO SECTION 3(C) OF THE ACT
24 OF DECEMBER 12, 1986 (P.L.1559, NO.169), KNOWN AS THE
25 WHISTLEBLOWER LAW.

26 (II) A COMPLAINT ALLEGING SEXUAL ABUSE OR sexual
27 harassment as defined by the Prison Rape Elimination Act
28 of 2003 (Public Law 108-79, 117 Stat. 972).

29 (5) (i) If an anonymous or unsworn complaint is made
30 against a correctional officer and no evidence is

1 obtained within the applicable statute of limitations for
2 the analogous criminal offense, the complaint shall be
3 classified as unfounded and shall be completely expunged
4 from any personnel file maintained by the department on
5 the correctional officer.

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

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

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

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

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

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

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

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

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

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

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

26 (12) No correctional officer may be compelled to submit
27 to a polygraph examination. No disciplinary action or other
28 recrimination may be taken against a correctional officer for
29 refusing to submit to a polygraph examination. No testimony
30 or evidence shall be admissible at a subsequent hearing,

1 trial or proceeding, judicial or administrative, to the
2 effect that the correctional officer refused to take a
3 polygraph examination.

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

8 (14) No correctional officer may be required to disclose
9 greater information as to property, income, assets, source of
10 income, debts or personal or domestic expenditures, including
11 those of any member of the correctional officer's family or
12 household, than the principal elected officials of the
13 department are required to disclose, unless the nature of the
14 investigation necessitates the disclosure of the information
15 and the information is obtained under proper legal
16 procedures.

17 Section 5. Civil suits by correctional officers.

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

22 (1) without merit and frivolous; or

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

24 Section 6. Impact of collective bargaining agreements.

25 ~~Nothing in this act shall be construed to diminish the~~

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26 (A) ADDITIONAL RIGHTS.--

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27 (1) IF THERE IS A CONFLICT BETWEEN AN EXISTING
28 COLLECTIVE BARGAINING AGREEMENT AND THE RIGHTS AND COVERAGE
29 UNDER THIS ACT, THE COLLECTIVE BARGAINING AGREEMENT SHALL
30 GOVERN.

1 (2) THE RIGHTS AND COVERAGE UNDER THIS ACT MAY NOT BE
2 DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO
3 OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION.

4 (B) DEPARTMENT'S OBLIGATION.--NOTHING IN THIS ACT SHALL BE
5 CONSTRUED TO DIMINISH THE obligation of the department to comply
6 with a collective bargaining agreement which provides greater
7 rights and coverage to correctional officers than the rights and
8 coverage provided by this act. ~~The rights and coverage under~~ <--
9 ~~this act may not be diminished by any collective bargaining~~
10 ~~agreement.~~

11 Section 7. Suspensions.

12 (a) General rule.--Suspension of a correctional officer
13 shall be in accordance with provisions of the act of August 5,
14 1941 (P.L.752, No.286), known as the Civil Service Act, except
15 as follows:

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

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

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

24 (b) Criminal charges.--

25 (1) A correctional officer against whom a criminal
26 proceeding involving a misdemeanor or felony offense has been
27 instituted may be suspended without pay pending disposition
28 of the criminal charges. Medical benefits and insurance to
29 which a correctional officer and spouse and dependents are
30 entitled by virtue of employment may not be suspended until

1 conviction or separation of the correctional officer from the
2 department, whichever occurs first.

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

7 Section 8. Effective date.

8 This act shall take effect in 60 days.