

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

REFERRED TO LABOR AND INDUSTRY, FEBRUARY 5, 2015

AN ACT

Establishing guidelines and procedures governing certain investigations of correctional officers; authorizing certain civil suits by correctional officers; and providing for impact of collective bargaining agreements and for summary suspensions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Correctional Officers Investigation Procedure Act.

Section 2. Legislative intent.

It is the intent of the General Assembly to establish guidelines and procedures governing the investigation of correctional officers during certain investigations by the Department of Corrections.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Correctional officer." An individual employed as a correctional officer by the Department of Corrections and given the care, custody and control of inmates.

"Department." The Department of Corrections of the Commonwealth.

Section 4. Rights of correctional officers.

(a) General rule.--If a correctional officer is under investigation and subject to interrogation by the department, the following standards shall apply:

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

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

(i) The office of the investigating officer.

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

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

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

(3) At the beginning of the interrogation, the correctional officer under interrogation shall be informed of the name and rank of the correctional officer in charge of the interrogation and the names and ranks of any correctional

personnel that will be present.

(4) The correctional officer under interrogation shall be informed in writing of the nature of the complaint and provided with the name or names of the complainant not less than 24 hours prior to the interrogation.

(5) If an anonymous or unsworn complaint is made against a correctional officer and no corroborative evidence is obtained within the applicable statute of limitations for the analogous criminal offense, the complaint shall be classified as unfounded and shall be completely expunged from any personnel file maintained by the department on the correctional officer.

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

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

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

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

(10) The correctional officer under interrogation shall have the right to be represented by counsel or other

representative. To the extent that the correctional officer is represented for purposes of collective bargaining by a collective bargaining representative pursuant to State law, the correctional officer shall also have the right to have an agent from the exclusive collective bargaining representative present.

(11) Prompt action shall be required as follows:

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

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

(12) No correctional officer may be compelled to submit to a polygraph examination. No disciplinary action or other recrimination may be taken against a correctional officer for refusing to submit to a polygraph examination. No testimony or evidence shall be admissible at a subsequent hearing, trial or proceeding, judicial or administrative, to the 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 information is obtained under proper legal procedures.

(b) Applicability.--This section shall not apply to an interrogation of a correctional officer in the normal course of duty, counseling, instruction, informal verbal admonishment or other routine or unplanned contact with a supervisor or other officer.

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. Construction.

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. The rights and coverage under this act may not be

diminished by any collective bargaining agreement.

Section 7. Suspensions.

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

(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.

Section 8. Effective date.

This act shall take effect in 60 days.