

CHAPTER 98-249

Committee Substitute for House Bill No. 3161

An act relating to law enforcement and correctional officers; amending s. 112.532, F.S.; providing requirements with respect to recordings made during the formal interrogation of a law enforcement or correctional officer; amending s. 112.533, F.S.; providing for rights of law enforcement and correctional officers to review their personnel files, attach a response, and receive a copy of certain materials in the file; providing for application to the release of certain information; amending s. 943.135, F.S.; permitting law enforcement officers who are elected or appointed public officials to maintain certification in a special status while holding office; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) of subsection (1) of section 112.532, Florida Statutes, is amended to read:

112.532 Law enforcement officers' and correctional officers' rights.—All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:

(1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer or correctional officer is under investigation and subject to interrogation by members of his or her agency for any reason which could lead to disciplinary action, demotion, or dismissal, such interrogation shall be conducted under the following conditions:

(g) The formal interrogation of a law enforcement officer or correctional officer, including all recess periods, shall be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the interrogated officer, a copy of any such recording of the interrogation session must be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends following said interrogation.

Section 2. Subsection (3) of section 112.533, Florida Statutes, is renumbered as subsection (4) and amended, and a new subsection (3) is added to said section to read:

112.533 Receipt and processing of complaints.—

(3) A law enforcement officer or correctional officer has the right to review his or her official personnel file at any reasonable time under the supervision of the designated records custodian. A law enforcement officer or correctional officer may attach to the file a concise statement in response

to any items included in the file identified by the officer as derogatory and copies of such items must be made available to the officer.

(4)(3) Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency's investigation, including, but not limited to, the identity of the officer under investigation, the nature of the questions asked, information revealed, or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or proceeding becomes a public record as provided in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. However, this subsection does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a). Additionally, a sheriff, police chief, or other head of a law enforcement agency, or his or her designee, is not precluded by this section from acknowledging the existence of a complaint, and the fact that an investigation is underway.

Section 3. Subsection (4) of section 943.135, Florida Statutes, is amended to read:

943.135 Requirements for continued employment.—

(4)(a) Notwithstanding any other provision of law, any person holding active certification from the Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who resigns his or her position as law enforcement officer, correctional officer, or correctional probation officer for the sole purpose of serving in an office to which the person has been elected or appointed and to thereby avoid the prohibition against dual office holding established in s. 5(a) of Art. II of the State Constitution may be allowed to retain active certification in a special status during the tenure of the elected or appointed office if at the time of resignation, the person:

1. Was employed by or associated with an employing agency in a manner authorized by chapter 943;

2. Was not subject to an internal investigation or employment action to discipline or dismiss by the employing agency;

3. Was not subject to criminal investigation or prosecution by any state or federal authority; and

4. Was not subject to an investigation or action against his or her certification by the Criminal Justice Standards and Training Commission.

and that subsequent to the resignation the person otherwise complies with this subsection.

(b) Any person who qualifies under paragraph (a) may, at the option of an employing agency, associate with that agency for the sole purpose of

securing continuing training or education as required by this section and for allowing the agency to report completion of the education or training to the Criminal Justice Standards and Training Commission. The agency with which the person has associated shall submit proof of completion of any education or training so obtained for purposes of demonstrating compliance with this section and shall indicate that the person for whom the credits are reported has secured the training under the special status authorized by this section. A person permitted to associate with such agency for the purpose of continuing training or education may be required to attend such training at his or her own expense. The agency shall provide guidance to such persons as to what training is necessary for the associated person to meet the standards set by the Criminal Justice Standards and Training Commission. Any person who is permitted to associate with an agency for purposes of obtaining and reporting education or continuing training credits while serving in an elected or appointed public office shall not be considered to be employed by the agency, nor considered by his or her association with the agency, to maintain an office under s. 5(a) of Article II of the State Constitution.

(c) The period of time a person serves in an elected or appointed office and thereby maintains the special certification status authorized by this section may not be considered in calculating whether the person is considered to have incurred a break in service for purposes of maintaining active certification by the Criminal Justice Standards and Training Commission.

(d) An employing agency that receives a resignation from a person for the purpose of avoiding the dual office holding prohibition as discussed in this subsection shall verify that the person who has resigned is in fact serving in an elected or public office and report the verification including an indication of the office in which the person is serving to the Criminal Justice Standards and Training Commission via the affidavit of separation of employment used by the commission.

(e) Any person seeking the benefit of this subsection shall, upon request, provide to the Criminal Justice Standards and Training Commission any documentation or proof required by the commission to evaluate the person's eligibility under this subsection, to evaluate a submission of continuing training or education credits as authorized by this subsection, or to determine the duration of any tenure in an elected or appointed public office, including any extension of the status by reason of reelection or reappointment or by election or appointment to a different office. The commission is authorized to develop this program for implementation on July 1, 1985, for full-time, part-time, or auxiliary law enforcement officers and correctional officers and a program for correctional probation officers for implementation on July 1, 1987.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor May 27, 1998.

Filed in Office Secretary of State May 27, 1998.