

## CHAPTER 2023-230

### Committee Substitute for House Bill No. 95

An act relating to rights of law enforcement officers and correctional officers; amending s. 112.531, F.S.; providing definitions; amending s. 112.532, F.S.; providing rights of law enforcement officers and correctional officers relating to Brady identification systems; prohibiting a law enforcement officer or correctional officer from being discharged, suspended, demoted, or otherwise disciplined for certain reasons; providing construction; requiring the employing agency of a law enforcement officer or correctional officer to conform to certain rules and procedures; creating s. 112.536, F.S.; providing that a prosecuting agency is not required to maintain a Brady identification system; authorizing a prosecuting agency to choose different procedures to fulfill its obligations under a specified Supreme Court case; requiring the employing agency of a law enforcement officer or correctional officer to forward specified information to a prosecuting agency; requiring an employing agency to provide certain notice to a law enforcement officer or correctional officer in specified circumstances; requiring a prosecuting agency that maintains a Brady information system to adopt written policies; providing minimum requirements for such policies; authorizing a law enforcement officer or correctional officer to request reconsideration of the inclusion of his or her name and information in a Brady identification system; requiring a prosecuting agency to remove the name of a law enforcement officer or correctional officer in a Brady identification system under certain circumstances; requiring a prosecuting agency to notify a law enforcement officer or correctional officer and certain parties that the officer's name is being removed from the Brady identification system; authorizing a law enforcement officer or correctional officer to petition for a writ of mandamus under certain circumstances; providing the scope of a court's judicial review; providing construction; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 112.531, Florida Statutes, are renumbered as subsections (2) and (3), respectively, and new subsections (1) and (4) are added to that section, to read:

112.531 Definitions.—As used in this part, the term:

(1) “Brady identification system” means a list or identification, in whatever form, of the name or names of law enforcement officers or correctional officers about whom a prosecuting agency is in possession of impeachment evidence as defined by court decision, statute, or rule.

(4) “Prosecuting agency” means the Attorney General or an assistant attorney general, the statewide prosecutor or an assistant statewide prosecutor, a state attorney or an assistant state attorney, a city or county

attorney, a special prosecutor, or any other person or entity charged with the prosecution of a criminal case.

Section 2. Subsection (7) is added to section 112.532, Florida Statutes, 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:

(7) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS RELATING TO A BRADY IDENTIFICATION SYSTEM.—

(a) A law enforcement officer or correctional officer has all of the rights specified in s. 112.536 relating to the inclusion of the name and information of the officer in a Brady identification system.

(b) A law enforcement officer or correctional officer may not be discharged, suspended, demoted, or otherwise disciplined, or threatened with discharge, suspension, demotion, or other discipline, by his or her employing agency solely as a result of a prosecuting agency determining that the officer's name and information should be included in a Brady identification system. This paragraph does not prohibit an officer's employing agency from discharging, suspending, demoting, or taking other disciplinary action against a law enforcement officer or correctional officer based on the underlying actions of the officer which resulted in his or her name being included in a Brady identification system. If a collective bargaining agreement applies, the actions taken by the officer's employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

Section 3. Section 112.536, Florida Statutes, is created to read:

112.536 Requirements for maintaining a Brady identification system.

(1)(a) A prosecuting agency is not required to maintain a Brady identification system and may determine, in its discretion, that its obligations under the decision in *Brady v. Maryland*, 373 U.S. 83 (1963), are better fulfilled through any such procedure the prosecuting agency otherwise chooses to utilize.

(b) The employing agency of a law enforcement officer or correctional officer shall forward all sustained and finalized internal affairs complaints relevant to s. 90.608, s. 90.609, or s. 90.610 to the prosecuting agency in the circuit in which the employing agency is located to assist the prosecuting agency in complying with its obligations under the *Brady* decision. The employing agency of a law enforcement officer or correctional officer must notify the law enforcement officer or correctional officer of any sustained and finalized internal affairs complaints that are sent to a prosecuting agency as

required under this section. If the law enforcement officer or correctional officer is no longer employed by the employing agency, the employing agency must mail through United States mail such notification to the officer's last known address on file with the employing agency.

(2) A prosecuting agency that maintains a Brady identification system must adopt written policies that, at a minimum, require all of the following:

(a) The right of a law enforcement officer or correctional officer to receive written notice by United States mail or e-mail, which must be sent to the officer's current or last known employing agency before or contemporaneously with the prosecuting agency including the name and information of the officer in the Brady identification system, unless a pending criminal case requires immediate disclosure or providing such notice to the officer would jeopardize a pending investigation.

(b) The right of a law enforcement officer or correctional officer to request reconsideration of the prosecuting agency's decision to include the name and information of the officer in a Brady identification system and his or her right to submit documents and evidence in support of the request for reconsideration.

(3) If, after a request for reconsideration is made under paragraph (2)(b), the prosecuting agency subsequently determines that the law enforcement officer or correctional officer should not be included in a Brady identification system, the prosecuting agency must do all of the following:

(a) Remove such officer from the Brady identification system.

(b) Send written notice by United States mail or e-mail to the law enforcement officer or correctional officer at the officer's current or last known employing agency confirming that the officer's name has been removed from the Brady identification system.

(c) If the name of a law enforcement officer or correctional officer was previously included in a Brady identification system and his or her name was disclosed in a pending criminal case, notify all parties to the pending criminal case of the officer's removal from the Brady identification system.

(4) If a prosecuting agency fails to comply with this section, a law enforcement officer or correctional officer may petition a court for a writ of mandamus to compel the prosecuting agency to comply with the requirements of this section. The court's scope of review in such matter is limited to whether the prosecuting agency acted in accordance with the procedural requirements of this section and may not include a judicial review of the evidence or merits that were the basis for the inclusion of the officer's name in a Brady identification system. This section does not preclude a law enforcement officer or correctional officer from pursuing any other available administrative or judicial remedies.

(5) This section does not:

(a) Require a prosecuting agency to give notice to or provide an opportunity for review and input from a law enforcement officer or correctional officer if the information in a Brady identification system is:

1. A criminal conviction that may be used for impeachment under s. 90.610; or

2. A sustained and finalized internal affairs complaint that may be used for impeachment under s. 90.608, s. 90.609, or s. 90.610;

(b) Limit the duty of a prosecuting agency to produce *Brady* evidence in all cases as required by the United States Constitution, the State Constitution, and the Florida Rules of Criminal Procedure and relevant case law;

(c) Limit or restrict a prosecuting agency's ability to remove the name and information of a law enforcement officer or correctional officer from a Brady identification system if, at any time, the prosecuting agency determines that the name and information of the officer are no longer proper for identification; or

(d) Create a private cause of action against a prosecuting agency or any employee of a prosecuting agency, other than the writ of mandamus authorized in subsection (4).

Section 4. This act shall take effect July 1, 2023.

Approved by the Governor June 13, 2023.

Filed in Office Secretary of State June 13, 2023.