

**HOUSE . . . . . No. 2381**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***John J. Mahoney***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing uniform disciplinary procedures for correctional officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>1/16/2013</i>

**HOUSE . . . . . No. 2381**

By Mr. Mahoney of Worcester, a petition (accompanied by bill, House, No. 2381) of John J. Mahoney for legislation to establish uniform disciplinary procedures for correctional officers. Public Service.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act establishing uniform disciplinary procedures for correctional officers.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 125 of the General Laws, as appearing in the most recent edition,  
2 is hereby amended by adding at the end thereof the following new section:

3 Section 22. "Disciplinary Procedures for Correctional Officers".

4 (a) The following words and phrases as used in this section, unless a different meaning is  
5 plainly required by the context, shall have the following meanings:

6 "Correctional officer", shall mean and refer to a sworn member of the Massachusetts  
7 Department of Correction who holds one of the following titles: Correction Officer, Industrial  
8 Instructor, or Recreation Officer, or a sworn officer of any county jail or house of correction.

9 "Disciplinary action", shall mean and refer to any action that may lead to dismissal,  
10 demotion, suspension, reduction in pay or benefits, written reprimand, or a transfer or  
11 reassignment for purposes of punishment.

12 (b) Whenever a correctional officer is under investigation and subject to interrogation by  
13 his commanding officer, or any other member of the employing agency or office, for any reason  
14 which could lead to disciplinary action, such interrogation shall be conducted under the  
15 following conditions:

16 The interrogation shall be conducted at a reasonable hour, preferably at a time when the  
17 correctional officer is on duty, unless the seriousness of the investigation is of such a degree that  
18 immediate action is required.

19 The interrogation shall take place either at the office headquarters of the investigating  
20 officer or at the correctional unit in which the incident allegedly occurred, as designated by the  
21 investigating officer or employing agency or office.

22 The correctional officer under investigation shall be informed prior to such interrogation  
23 of the rank, name, and command of the officer in charge of the investigation, any interrogating  
24 officers, and all persons present during the interrogation. All questions directed to the officer  
25 under interrogation shall be asked by and through no more than one interrogator at any one time.

26 The correctional officer under investigation shall be informed of the nature of the  
27 investigation prior to any interrogation, and he or she shall be informed of the name of all  
28 complainants.

29 The interrogating sessions shall be for a reasonable period taking into consideration the  
30 nature and complexity of the issue being investigated, and shall be timed to allow for such  
31 personal necessities and rest periods as are reasonably necessary.

32 The correctional officer under interrogation shall not be subjected to offensive language  
33 or be threatened with dismissal, demotion, suspension, a written reprimand, or other disciplinary  
34 action, except that an officer refusing to answer questions or submit to interrogation shall be  
35 informed that a failure to answer questions directly related and relevant to the investigation or  
36 interrogation may result in disciplinary action. No promise or reward shall be made as an  
37 inducement to answer any questions.

38 The complete interrogation of a correctional officer shall be recorded on audio tape, or  
39 otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be  
40 no unrecorded questions or statements. Upon the request of the interrogated officer, a copy of  
41 any such recording or transcript shall be made available to the interrogated officer no later than  
42 72 hours, excluding holidays and weekends, following said request. The correctional officer  
43 being interrogated shall have the right to bring his or her own audio tape recording device and  
44 record any and all aspects of the interrogation.

45 If prior to or during the interrogation of the correctional officer it is deemed that he or she  
46 may likely be charged with a criminal offense, the correctional officer shall be completely  
47 informed of all his or her constitutional rights before proceeding or continuing with the  
48 interrogation.

49 At the request of any correctional officer under investigation, he or she shall have the  
50 right to be represented by counsel or a collective bargaining unit representative of his or her  
51 choice, who shall be present at all times during such interrogation. The representative shall not  
52 be the person subject to the same investigation, and this right to representation shall not apply to  
53 any normal course of duty counseling, instruction, or informal verbal admonishment by, or other  
54 routine or planned contact with, a supervisor or any other correctional officer. Nothing herein

55 shall be construed to prohibit a collective bargaining unit representative from being present  
56 during any interrogation unless the interrogated officer specifically requests their exclusion.

57         Upon completion of the investigation, the correctional officer shall be furnished with the  
58 names of any witnesses, the charges and specifications against the officer, a copy of the  
59 investigatory file and any exculpatory information, but excluding the identity of any justifiably  
60 confidential sources of information, not less than 10 days prior to any disciplinary hearing.

61         (c) No evidence obtained or received in violation of any rights established by the United  
62 States Constitution, the Commonwealth of Massachusetts Constitution, or this section, shall be  
63 admitted into evidence in any disciplinary hearing. Further, no person or tribunal shall enter any  
64 judgment or sustain any disciplinary action based on any evidence obtained or received in  
65 violation of the correctional officer's rights as contained in this section.

66         (d) No dismissal, demotion, suspension, transfer, reassignment, or other personnel action  
67 which might result in loss of pay or benefits or which might otherwise be considered a  
68 disciplinary or punitive measure shall be taken against any correctional officer unless he or she is  
69 first notified of the impending action, and the rights and privileges granted by this section and  
70 any applicable collective bargaining agreement have been properly afforded.

71         (e) Every correctional officer shall have the right to bring a civil action against any  
72 person, group of persons, or organization or corporation, or the head of such organization or  
73 corporation, for damages, either pecuniary or otherwise, suffered during the performance of the  
74 officer's official duties or for abridgment of the officer's civil rights arising out of the officer's  
75 performance of official duties.

76         (f) No correctional officer shall be discharged, demoted, denied promotion, suspended,  
77 transferred, reassigned, or otherwise discriminated against in regard to his or her employment or  
78 appointment, or be threatened with any such treatment, by reason of his or her exercise of the  
79 rights and privileges granted by this section or any applicable collective bargaining agreement.

80         (g) Notwithstanding the rights and privileges provided by this section, this section does  
81 not limit the right of the Department of Correction or the Office of the Sheriff of any County to  
82 discipline or pursue criminal charges against a correctional officer.

83         (h) The rights and privileges established by this section shall not be diminished or  
84 abridged by any applicable collective bargaining agreement.