

**SENATE . . . . . No. 1154**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Michael O. Moore***

*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 passage of the accompanying bill:

An Act establishing the Correctional Officers' Procedural Bill of Rights.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Michael O. Moore*

*Second Worcester*

*Stephen L. DiNatale*

*3rd Worcester*

**SENATE . . . . . No. 1154**

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By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 1154) of Michael O. Moore and Stephen L. DiNatale for legislation to establish the Correctional Officers' Procedural Bill of Rights. Public Safety and Homeland Security.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ □ SENATE  
□ , NO. 1233 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act establishing the Correctional Officers' Procedural Bill of Rights.

*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 2010 Official Edition,  
2 is hereby amended by adding at the end thereof the following new section:

3 Section 22. This section shall also be known as "The Correction Officers Bill of Rights".

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 which includes those holding the rank of correction officer, sergeant, lieutenant, and captain.

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

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

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

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

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

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

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

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

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

46 If prior to or during the interrogation of the correctional officer it is deemed that he or she  
47 may likely be charged with a criminal offense, the correctional officer shall be completely

48 informed of all his or her constitutional rights before proceeding or continuing with the  
49 interrogation.

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

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

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

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

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

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

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

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