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LEGISLATIVE ACTION

Senate

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House

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The Committee on Criminal Justice (Yarborough) recommended the following:

1           **Senate Amendment to Amendment (186046) (with title**  
2 **amendment)**

3  
4           Delete lines 53 - 120  
5 and insert:

6           (1) (a) A prosecuting agency is not required to maintain a  
7 Brady identification system. A prosecuting agency may determine  
8 that its obligations under the Brady decision are better  
9 discharged through such procedures as that agency chooses to  
10 use.



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11           (b) A law enforcement officer or correctional officer's  
12 employing agency shall forward all sustained and finalized  
13 internal affairs complaints, relevant to s. 90.608, s. 90.609,  
14 or s. 90.610, to the prosecuting agency in the circuit in which  
15 the law enforcement agency is located to assist the prosecuting  
16 agency in compliance with its obligations under the Brady v.  
17 Maryland, 373 U.S. 83 (1963) decision. The employing agency must  
18 notify the law enforcement officer or correctional officer of  
19 any sustained and finalized internal affairs investigations they  
20 send to the prosecuting agency as required by this section. If  
21 the law enforcement officer or correctional officer is no longer  
22 employed, the agency must mail notification to the officer's  
23 last known address on file at the agency.

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

27           (a) The right of a law enforcement officer or a  
28 correctional officer to receive written notice through United  
29 States mail or e-mail to the current or last known employing  
30 agency of the officer, before or contemporaneously with a  
31 prosecuting agency including the name and information of the  
32 officer in a Brady identification system, unless a pending case  
33 requires immediate disclosure or providing notice would  
34 jeopardize a pending investigation.

35           (b) The right of a law enforcement officer or correctional  
36 officer to receive written notice before a prosecuting agency  
37 includes the name and information of the officer in a Brady  
38 identification system.

39           (c) The right of a law enforcement officer or correctional



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40 officer to request reconsideration of the prosecuting agency's  
41 decision to include the name and information of the officer in a  
42 Brady identification system and his or her right to submit  
43 documents and evidence in support of the request for  
44 reconsideration.

45 (3) If, after the policy provided in subsection (2) is  
46 followed, it is determined that the law enforcement officer or  
47 correctional officer in question should not be included in a  
48 Brady identification system, the prosecuting agency must send  
49 notice to the law enforcement officer or correctional officer  
50 and his or her employing agency that he or she has been removed  
51 from the Brady identification system.

52 (4) If, after the policy provided in subsection (2) is  
53 followed, it is determined that the law enforcement officer or  
54 correctional officer in question should not be included in a  
55 Brady identification system, but his or her name was disclosed  
56 in a pending case, the prosecuting agency must take the  
57 necessary steps to notify the parties involved in the pending  
58 case of the law enforcement officer's or correctional officer's  
59 removal from the Brady identification system.

60 (5) If a prosecuting agency fails to comply with this  
61 section, a law enforcement officer or a correctional officer may  
62 petition the court for a writ of mandamus to compel the  
63 prosecuting agency to act in accordance with this section. The  
64 scope of such a hearing may not include a judicial review of the  
65 evidence or merits of an officer's inclusion in a Brady  
66 identification system, but instead must be limited to whether  
67 the prosecuting agency acted in accordance with the procedural  
68 requirements of this section. This section does not preclude the



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69 law enforcement officer or correctional officer from pursuing  
70 whatever administrative or judicial remedies are otherwise  
71 available to him or her in relation to any other action or  
72 remedy outside of this section.

73 (6) This section does not:

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

78 1. A criminal conviction relevant to s. 90.610; or

79 2. A sustained and finalized internal affairs complaint  
80 relevant to s. 90.608, s. 90.609, or s. 90.610.

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

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

91 (d) Create a private cause of action against a prosecuting  
92 agency or any employee of a prosecuting agency, other than the  
93 writ described in subsection (5).

94  
95 ===== T I T L E A M E N D M E N T =====

96 And the title is amended as follows:

97 Delete line 143



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98 and insert:

99           Brady decision; imposing requirements on the current  
100           or former employing agency of the law enforcement  
101           officer or correctional officer; requiring a  
102           prosecuting agency that