

By: Reynolds

H.B. No. 47

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of law enforcement oversight.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Government Code, is amended by adding Chapter 426 to read as follows:

CHAPTER 426. OFFICE OF LAW ENFORCEMENT OVERSIGHT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 426.001. DEFINITIONS. In this chapter:

(1) "Director" means the individual appointed under this chapter as director for the office.

(2) "Office" means the office of law enforcement oversight.

Sec. 426.002. ESTABLISHMENT; PURPOSE. The office is a state agency established for the purpose of monitoring the operations of law enforcement agencies in this state and the use of force practices of those agencies.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 426.051. APPOINTMENT OF DIRECTOR. (a) The governor shall appoint, with the advice and consent of the senate, a person to serve as director from a list of persons recommended by the standing committee of the house of representatives having primary jurisdiction over criminal justice matters.

(b) The director serves a two-year term.

1 Sec. 426.052. ASSISTANTS. The director may appoint
2 assistants to perform, under the direction of the director, the
3 same duties and to exercise the same powers as the director.

4 Sec. 426.053. CONFLICT OF INTEREST. (a) In this section,
5 "Texas trade association" means a cooperative and voluntarily
6 joined statewide association of business or professional
7 competitors in this state designed to assist its members and its
8 industry or profession in dealing with mutual business or
9 professional problems and in promoting their common interest.

10 (b) A person may not be the director and may not be an
11 employee of the office employed in a "bona fide executive,
12 administrative, or professional capacity," as that phrase is used
13 for purposes of establishing an exemption to the overtime
14 provisions of the federal Fair Labor Standards Act of 1938 (29
15 U.S.C. Section 201 et seq.), if:

16 (1) the person is an officer, employee, or paid
17 consultant of a Texas trade association in the field of law
18 enforcement; or

19 (2) the person's spouse is an officer, manager, or paid
20 consultant of a Texas trade association in the field of law
21 enforcement.

22 (c) A person may not be the director or act as the general
23 counsel to the office if the person is required to register as a
24 lobbyist under Chapter 305, Government Code, because of the
25 person's activities for compensation on behalf of a profession
26 related to the office's operation.

27 Sec. 426.054. REPORT. The director shall prepare and

1 submit to the governor, the lieutenant governor, and each member of
2 the legislature:

3 (1) periodic reports that evaluate systemic issues
4 affecting law enforcement agencies in this state; and

5 (2) an annual report that describes:

6 (A) the work of the director and office;

7 (B) the results of any review or investigation
8 undertaken by the office; and

9 (C) any recommendations that the director has
10 regarding:

11 (i) the duties of the director; or

12 (ii) the operations of law enforcement
13 agencies in this state.

14 Sec. 426.055. PROMOTION OF AWARENESS. The office shall
15 promote awareness among the public regarding:

16 (1) how the office may be contacted;

17 (2) the purpose of the office; and

18 (3) the services the office provides.

19 Sec. 426.056. RULEMAKING AUTHORITY. The office by rule
20 shall establish policies and procedures for the operations of the
21 office, including procedures for receiving and reviewing
22 complaints under this chapter.

23 SUBCHAPTER C. POWERS AND DUTIES

24 Sec. 426.101. POWERS AND DUTIES. (a) The director shall:

25 (1) review the complaints received by the office
26 regarding the use of force by peace officers of law enforcement
27 agencies;

1 (2) if the director determines that, based on
2 complaints and other evidence, there is a pattern of excessive
3 force at a law enforcement agency, conduct an investigation into
4 the agency's use of force practices; and

5 (3) if the investigation described by Subdivision (2)
6 substantiates the alleged pattern of excessive force, request the
7 appropriate district or county attorney to bring an action under
8 this chapter to institute reforms to the agency's use of force
9 practices.

10 (b) In making the determination described by Subsection
11 (a)(2), the director may contact or consult with an officer or
12 employee of a law enforcement agency, a complainant, or any other
13 individual.

14 Sec. 426.102. ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL
15 ENTITIES. A law enforcement agency shall allow the office access to
16 the agency's records relating to an investigation conducted under
17 this chapter. In allowing access to records under this section, the
18 law enforcement agency shall fully cooperate and collaborate with
19 the office in a prompt manner in order for the office to carry out
20 its duties and improve the agency's operations and conditions.

21 Sec. 426.103. ACCESS TO INFORMATION OF PRIVATE ENTITIES.

22 (a) The director may subpoena the records of a private entity that
23 relate to a complaint the office is investigating.

24 (b) A subpoena issued under this section may be served
25 personally or by certified mail and must specify a reasonable
26 return date for providing the sought records.

27 (c) If a person fails to comply with the subpoena, the

1 office, acting through the appropriate district attorney or county
2 attorney, may bring an action to enforce the subpoena in a district
3 court in this state. On finding that good cause exists for issuing
4 the subpoena, the court shall order the person to comply with the
5 subpoena. The court may punish for contempt a person who fails to
6 obey the court order.

7 (d) Before the return date specified by the subpoena, the
8 person receiving the subpoena may, in a district court in Travis
9 County, petition for an order to modify or quash the subpoena.

10 Sec. 426.104. ACCESS TO FACILITIES, RECORDS, AND PERSONNEL.
11 The office may inspect or review without notice any part of a
12 facility of a law enforcement agency under investigation or any
13 operation, policy, procedure, record, or log of the agency relating
14 to:

- 15 (1) a complaint received by the office;
16 (2) the use of force against an individual;
17 (3) the internal investigations process of the agency;

18 and

19 (4) employee or officer recruitment, training,
20 supervision, or discipline.

21 SUBCHAPTER D. ENFORCEMENT

22 Sec. 426.151. ACTION AGAINST LAW ENFORCEMENT AGENCY. (a)
23 If after an investigation the director determines there is a
24 pattern of excessive force at a law enforcement agency, the
25 director shall request the appropriate district or county attorney
26 to bring an action against the agency for:

- 27 (1) appropriate equitable relief, including authority

1 for the office to require and monitor any changes to policies,
2 procedures, and other measures necessary to end, to the extent
3 practicable, the use of excessive force by the peace officers of the
4 law enforcement agency; or

5 (2) the appointment of the office as receiver of the
6 law enforcement agency for the purpose of instituting the changes
7 described by Subdivision (1).

8 (b) The office shall assist the district or county attorney
9 in prosecuting the action, as requested by the district or county
10 attorney.

11 (c) Sovereign or governmental immunity, as applicable, is
12 waived and abolished only to the extent necessary to enforce this
13 chapter.

14 SECTION 2. As soon as practicable after the effective date
15 of this Act, the governor shall appoint the initial director of the
16 office of law enforcement oversight under Chapter 426, Government
17 Code, as added by this Act.

18 SECTION 3. This Act takes effect on the 91st day after the
19 last day of the legislative session.