

By: Turner

H.B. No. 3182

A BILL TO BE ENTITLED

AN ACT

relating to due process for certain law enforcement officers.

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

SECTION 1. Chapter 614, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. LAW ENFORCEMENT OFFICERS' DUE PROCESS ACT

Sec. 614.151. SHORT TITLE. This subchapter may be cited as the Law Enforcement Officers' Due Process Act.

Sec. 614.152. DEFINITIONS. In this subchapter:

(1) "Law enforcement agency" means a municipal police department, sheriff's department, or constable's office that employs, commissions, or appoints a law enforcement officer.

(2) "Law enforcement officer" means a person who:

(A) is a sworn peace officer under Article 2.12, Code of Criminal Procedure; and

(B) is not:

(i) above the rank of major; or

(ii) the chief of police, the sheriff, constable, marshal, director, or other highest ranking officer in a law enforcement agency.

Sec. 614.153. APPLICABILITY. (a) This subchapter applies only to a law enforcement officer who is employed, commissioned, or appointed by a law enforcement agency.

(b) This subchapter applies to all law enforcement

1 disciplinary proceedings in this state that are conducted by a law
2 enforcement agency.

3 (c) This subchapter does not supersede an existing meet and
4 confer agreement or collective bargaining agreement of a
5 municipality or county.

6 Sec. 614.154. LIMITATIONS ON POLITICAL ACTIVITY. A law
7 enforcement officer has the same rights to engage in political
8 activity as any other person, except that a law enforcement officer
9 may not engage in political activity while the law enforcement
10 officer is on duty, in uniform, or acting in an official capacity.

11 Sec. 614.155. LIMITATIONS ON REMOVAL FROM OFFICE. A law
12 enforcement agency may not remove without cause a law enforcement
13 officer employed as a deputy sheriff, deputy, or deputy constable
14 who:

15 (1) does not hold a command rank within the law
16 enforcement agency; and

17 (2) does not have civil service protection or is not
18 covered by a collective bargaining agreement.

19 Sec. 614.156. INVESTIGATION; QUESTIONING. (a) If a law
20 enforcement officer is under investigation or is subjected to
21 questioning for any reason that could lead to disciplinary action,
22 demotion, or dismissal, the administrative investigation or
23 questioning must be conducted in accordance with this subchapter.

24 (b) The questioning of a law enforcement officer must in an
25 administrative investigation:

26 (1) be conducted at a reasonable hour, preferably at a
27 time when the officer is on duty unless the investigator believes

1 that the gravity of the investigation requires immediate
2 questioning; and

3 (2) take place at the law enforcement agency
4 headquarters or at the office of the local troop or police unit in
5 which the incident allegedly occurred as designated by the
6 investigator unless otherwise waived in writing by the officer.

7 (c) The investigator in charge of the administrative
8 investigation shall inform the law enforcement officer under
9 investigation of the investigator's name, rank, and command. A
10 question directed to the officer may not be asked by more than two
11 investigators.

12 (d) A formal complaint against a law enforcement officer
13 that calls for the dismissal or suspension of the officer or other
14 formal disciplinary action against the officer may not be
15 prosecuted under a rule of the law enforcement agency unless the
16 complaint is supported by substantial evidence derived from an
17 administrative investigation by an authorized member of the agency.

18 (e) A law enforcement officer under an administrative
19 investigation must be informed in writing of the nature of the
20 investigation not less than 72 hours before being questioned.

21 (f) Interview sessions shall be conducted for reasonable
22 periods of time and must allow time for the law enforcement officer
23 to take care of personal necessities and for reasonable rest
24 periods.

25 (g) Except on refusal to answer questions pursued in a valid
26 administrative investigation, a law enforcement officer may not,
27 during an investigation, be threatened with transfer, dismissal, or

1 other disciplinary action.

2 Sec. 614.157. INTERVIEW RECORD REQUIRED. (a) An
3 investigator shall keep a complete record of all interviews held in
4 connection with an administrative investigation under this
5 subchapter on notification that substantial evidence exists for
6 seeking an administrative sanction of the law enforcement officer.
7 The record must be written or taped and if taped, transcribed as
8 soon as practicable.

9 (b) A copy of the record shall be provided on request to the
10 law enforcement officer or the officer's counsel at the officer's
11 expense.

12 Sec. 614.158. ARREST; RIGHT TO COUNSEL. (a) If a law
13 enforcement officer under questioning is under arrest or may
14 reasonably be placed under arrest as a result of the administrative
15 investigation, the investigator, before the interrogation begins,
16 shall inform the officer of the officer's rights, including the
17 reasonable possibility of the officer's arrest.

18 (b) On request, a law enforcement officer under questioning
19 has the right to be represented by counsel or another
20 representative of the officer's choice. If the officer requests
21 representation, the questioning must be suspended until the time
22 the officer obtains representation, if reasonably available, and
23 the counsel or representative must be present at all times during
24 the questioning unless the officer waives in writing the officer's
25 right to have the representative present.

26 Sec. 614.159. ACCESS TO DOCUMENTS. (a) An officer charged
27 with violating a rule of the law enforcement agency, or the

1 officer's representative, shall be granted access to transcripts,
2 records, written statements, written reports, analyses, and video
3 tapes that are pertinent to the case and that are exculpatory, are
4 intended to support any disciplinary action, or will be introduced
5 in an agency hearing on the charges involved.

6 (b) On demand by a law enforcement officer or the officer's
7 counsel, the documents described in Subsection (a) must be produced
8 within 48 hours of the officer's receipt of a written notification
9 of the charges.

10 Sec. 614.160. FINDINGS AND RECOMMENDATIONS. At the
11 conclusion of an administrative investigation of a law enforcement
12 officer, the investigator in writing shall inform the law
13 enforcement officer of the investigative findings and any
14 recommendation for further action.

15 Sec. 614.161. CONFIDENTIALITY. (a) All records compiled
16 as a result of any administrative investigation subject to this
17 subchapter or a contractual disciplinary grievance procedure are
18 confidential and may not be disclosed or released to the public.

19 (b) A verbal or written statement made by a law enforcement
20 officer during the course of an administrative investigation is not
21 admissible in a criminal proceeding. A report, audio tape
22 recording, videotape recordings, or notes made by an investigator
23 may not be shared with anyone who has criminal investigation
24 authority or who is capable of conducting a criminal investigation.

25 Sec. 614.162. INVESTIGATION PERIOD; EXTENSION HEARING. (a)
26 Except as otherwise provided in this section, an administrative
27 investigation of a law enforcement officer conducted under this

1 subchapter must be completed not later than the 60th day after the
2 date the investigation begins.

3 (b) This section does not supersede any civil service law or
4 collective bargaining contract which is currently in place.

5 (c) A law enforcement agency may request an extension to
6 complete an investigation by convening a three-member board to
7 conduct a hearing on the requested extension and shall provide
8 notice of the hearing to the law enforcement officer who is under an
9 administrative investigation. The officer has the right to attend
10 the hearing and to present evidence and arguments against the
11 extension.

12 (d) At the hearing under Subsection (c), if the board finds
13 that the law enforcement agency has shown good cause for granting an
14 extension of time for completion of the administrative
15 investigation, the board shall grant an extension not to exceed 60
16 days.

17 (e) This section may not be construed to:

18 (1) prohibit the law enforcement officer under
19 administrative investigation and the law enforcement agency from
20 entering into a written agreement extending the investigation for
21 not more than 60 days; or

22 (2) limit any investigation of alleged criminal
23 activity.

24 Sec. 614.163. DISCLOSURE. (a) Unless otherwise required
25 by this subchapter, a law enforcement agency is not required to
26 disclose in any civil proceeding a personnel file or internal
27 affairs investigatory file compiled in connection with a law

1 enforcement officer under administrative investigation or
2 subjected to questioning for any reason which could lead to
3 disciplinary action, demotion, or dismissal.

4 (b) Subsection (a) does not apply to a proceeding brought by
5 a citizen against a law enforcement officer alleging that the
6 officer breached the officer's official duties and that the breach
7 resulted in injury or other damage to the citizen.

8 Sec. 614.164. ADVERSE MATERIAL PLACED IN OFFICER'S FILE. A
9 law enforcement agency may not place any adverse material into the
10 file of a law enforcement officer except the file kept during the
11 internal investigation or by the intelligence division unless the
12 officer has had an opportunity to review, sign, and receive a copy
13 of the material and comment in writing on the material.

14 Sec. 614.165. DISCLOSURE OF ASSETS. A law enforcement
15 officer or any member of the officer's household may not be required
16 or requested to disclose during an administrative investigation or
17 questioning under this subchapter any item of personal property,
18 income, assets, sources of income, debts, or personal or domestic
19 expenditures unless:

20 (1) the information is necessary for the conduct of an
21 investigation on a violation of any federal, state, or local law
22 related to the performance of the officer's official duties; or

23 (2) the disclosure is required by state or federal
24 law.

25 Sec. 614.166. HEARING REQUIRED ON SUSPENSION OR OTHER
26 DISCIPLINARY ACTION. (a) A law enforcement officer is entitled to
27 a hearing if the officer is:

1 (1) suspended for any reason;

2 (2) charged with conduct alleged to violate the rules
3 or general orders of the law enforcement agency that employs the
4 officer; or

5 (3) charged with conduct that could lead to any form of
6 disciplinary action, other than a reprimand, and that may become
7 part of the officer's permanent personnel record.

8 (b) A hearing required under Subsection (a) must be
9 conducted in accordance with this subchapter unless a contractual
10 disciplinary grievance procedure executed by and between the law
11 enforcement agency and the bargaining unit for that law enforcement
12 officer is in effect, in which case the terms of that disciplinary
13 grievance procedure take precedence and govern the conduct of the
14 hearing.

15 Sec. 614.167. HEARING: SCHEDULING; NOTICE. (a) The
16 hearing for a law enforcement officer entitled to a hearing under
17 this subchapter must be scheduled within a reasonable period of
18 time after the date of the alleged incident, but not later than the
19 30th day after the date an internal investigation is concluded,
20 unless the hearing is waived in writing by the officer.

21 (b) The law enforcement officer shall be given written
22 notice of the time and place of the hearing and the issues involved,
23 including:

24 (1) a detailed description of the act the officer is
25 charged with having committed;

26 (2) a statement of the rule or order that the act is
27 alleged to violate; and

1 (3) a copy of the rule or order.

2 (c) The charge against the law enforcement officer must:

3 (1) advise the officer of the alleged facts;

4 (2) advise the officer that the violation of the rule
5 constitutes a basis for discipline; and

6 (3) specify the range of applicable penalties that
7 could be imposed.

8 Sec. 614.168. HEARING: PROCEDURE. (a) A law enforcement
9 agency shall retain the official record of a hearing conducted
10 under this subchapter, including testimony and exhibits.

11 (b) A hearing conducted under this subchapter must be
12 conducted within the law enforcement agency by an impartial board
13 of three agency officers. The board must include one member who is
14 of the same rank as the officer being charged. The prosecuting
15 party and the officer being charged may be represented by legal
16 counsel and the officer's counsel shall be given an opportunity to
17 present evidence and arguments related to the issues involved.

18 (c) If an impartial board cannot be convened by the
19 investigating agency, a board of three officers from another
20 jurisdiction shall be convened under the direction of the head law
21 enforcement officer of the law enforcement agency conducting the
22 investigation.

23 (d) An officer of a law enforcement agency appointed to
24 serve on a board under this section is immune from civil liability
25 arising from any act or omission arising out of the officer's
26 service on the board if the member acted in good faith and without
27 malice in carrying out the member's responsibilities or duties. A

1 member of the board is presumed to have acted in good faith and
2 without malice unless proven otherwise.

3 (e) Evidence with a probative value commonly accepted by
4 reasonable and prudent persons in the conduct of their affairs
5 shall be admissible in evidence and given probative effect. The
6 board conducting the hearing shall give effect to the rules of
7 privilege recognized by law and may exclude incompetent,
8 irrelevant, immaterial, and unduly repetitious evidence. All
9 records and documents that any party desires to use shall be offered
10 and made a part of the record. Documentary evidence may be received
11 in the form of copies of excerpts or by incorporation by reference.

12 (f) Every party has the right of cross-examination of
13 witnesses who testify and may submit rebuttal evidence.

14 (g) The board may take notice of judicially cognizable facts
15 and may take notice of general, technical, or scientific facts
16 within the board's specialized knowledge. Parties shall be
17 notified beforehand of the materials noticed by the board. A law
18 enforcement officer may not be adjudged guilty of any offense
19 unless the board is satisfied that guilt has been established by
20 substantial evidence.

21 Sec. 614.169. EVIDENCE OBTAINED IN VIOLATION OF OFFICER'S
22 RIGHTS. Evidence may not be obtained, received, or admitted into
23 evidence in a proceeding of any disciplinary action that violates
24 any right established by the United States Constitution, the Texas
25 Constitution, or by this subchapter. The board appointed under
26 Section 614.168 may not enter any judgment or sustain any
27 disciplinary action based on evidence obtained in violation of a

1 law enforcement officer's rights under this subchapter.

2 Sec. 614.170. WRITTEN DECISION AND FINDINGS OF FACT
3 DELIVERED TO OFFICER. (a) A decision, order, or action taken
4 following a hearing under Section 614.168 must be in writing and
5 accompanied by findings of fact. The findings shall consist of a
6 concise statement on each issue in the case.

7 (b) A copy of the decision or order, accompanying findings
8 and conclusions, and the written action and right of appeal, if any,
9 shall be delivered or mailed promptly to the law enforcement
10 officer or to the officer's counsel or representative of record.

11 Sec. 614.171. PROHIBITED PUNISHMENTS. (a) A law
12 enforcement officer may not be compelled to work extra duty without
13 compensation as a penalty for a disciplinary infraction.

14 (b) A suspension for any period of time provided in a law
15 enforcement agency's rules may not affect the law enforcement
16 officer's eligibility for pension, hospitalization, medical and
17 life insurance coverage, or other benefits specifically protected
18 under the contract of employment. Suspension may affect time of
19 pension eligibility by contractual provision or other law.

20 (c) This subchapter may not be construed to prevent a law
21 enforcement agency from requiring reimbursement by a suspended law
22 enforcement officer of the officer's employee contribution to
23 benefits during the officer's time of suspension.

24 Sec. 614.172. RETALIATION FOR EXERCISING RIGHTS. A law
25 enforcement officer may not be assessed a penalty or threatened
26 with the assessment of a penalty for exercising the officer's
27 rights under this subchapter.

1 SECTION 2. The changes in law made by this Act apply only to
2 an administrative investigation or a disciplinary hearing begun on
3 or after the effective date of this Act.

4 SECTION 3. This Act takes effect September 1, 2005.