

By: Turner

H.B. No. 3641

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 or 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  
3 videotapes that are pertinent to the case and that are exculpatory,  
4 are intended to support any disciplinary action, or will be  
5 introduced 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, audiotape  
22 recording, videotape recording, 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 that 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 that 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 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, 2007.