

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1338  
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Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Investigations of complaint against law enforcement officers often cause delays in work and loss of pay. All complaints should be thoroughly investigated, but this should be done in a manner that causes the least amount of disruption.

S.B. 1338 creates a bill of rights for Harris County law enforcement officers. It provides standards and procedures to guide local law enforcement officers during internal investigations, interrogations of law enforcement officers, and administrative disciplinary hearings to protect due process rights. The bill also allows a bargaining agent elected by the employees of the sheriff's department to elect two persons to serve as members of the civil service commission. Previously the district attorney would have made this appointment.

As proposed, S.B. 1338 amends current law relating to the rights of certain county law enforcement officers.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 158.034(a), Local Government Code, as follows:

(a) Requires the sheriff, commissioners court, and district attorney in a county with a population of less than 2.8 million, if a majority of the employees voting at the election approve the creation of a sheriff's department civil service system, to each appoint one person to serve as a member of the civil service commission (commission) that administers the system. Requires the sheriff, commissioners court, and a bargaining agent elected by the employees of the sheriff's department, rather than district attorney, in a county with a population of 2.8 million or more, if a majority of the employees voting at the election approve the creation of a sheriff's department civil service system, to each appoint two persons to serve as members of the civil service commission that administers the system, and requires the three appointing authorities to appoint one member by joint action requiring the affirmative vote of each of the authorities.

SECTION 2. Amends Chapter 158, Local Government Code, by adding Subchapter C, as follows:

#### **SUBCHAPTER C. INVESTIGATION OF COUNTY LAW ENFORCEMENT OFFICERS IN CERTAIN COUNTIES**

Sec. 158.061. **APPLICABILITY.** Provides that this subchapter applies only to a county with a population of 3.3 million or more.

Sec. 158.062. **DEFINITIONS.** Defines "commission," "complainant," "county law enforcement officer," "investigation," "investigator," "normally assigned working hours," and "punitive action."

Sec. 158.063. INTERROGATION AND INVESTIGATION OF COUNTY LAW ENFORCEMENT OFFICERS. (a) Authorizes an investigator to interrogate a county law enforcement officer who is the subject of an investigation only during the officer's normally assigned working hours unless the seriousness of the investigation, as determined by the sheriff or the sheriff's designee, requires interrogation at another time and the officer is compensated for the interrogation time on an overtime basis.

(b) Prohibits the sheriff from considering work time missed from regular duties by a county law enforcement officer due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(c) Prohibits an investigator from interrogating a county law enforcement officer who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.

(d) Prohibits a person from being assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. Provides that a county law enforcement officer who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the officer.

(e) Requires the investigator, before an investigator is authorized to interrogate a county law enforcement officer who is the subject of an investigation, to inform the officer in writing of the nature of the investigation and the name of each person who complained about the officer concerning the matters under investigation. Prohibits an investigator from conducting an interrogation of an officer based on a complaint by a complainant who is not a peace officer or a jailer unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. Requires the investigator, not later than the 48th hour before the hour on which an investigator begins to interrogate an officer regarding an allegation based on a complaint, affidavit, or statement, to give the officer a copy of the affidavit, complaint, or statement. Provides that an officer is entitled to and is required to be provided with all statements or affidavits received or gathered by the investigative authority from witnesses, deputies, or supervisors during the investigation before the officer's interrogation, if the interrogation is based wholly or partly on those statements. Provides that if an employee is not given a statement to which the employee is entitled, that statement, or portion of the statement, is prohibited from being used to support any administrative action against or discipline of the officer. Requires the officer, if the officer gives a statement, to be given a copy of that statement. Provides that this subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interrogation. Requires the officer under investigation, if the limitation would hinder the investigation or interrogation, to be furnished, as soon as practicable, a written statement of the nature of the investigation, the name of each complaining party, and the complaint, affidavit, or statement.

(f) Prohibits an interrogation session of a county law enforcement officer who is the subject of an investigation from being unreasonably long. Requires that in determining reasonableness, the gravity and complexity of the investigation be considered. Requires the investigators to allow reasonable interruptions to permit the officer to attend to personal physical necessities.

(g) Requires an officer who is the subject of an interrogation to be given notice not less than 24 hours before the interrogation is to take place of the time and place of the interrogation. Entitles an officer to have legal counsel or a representative of the officer's employee organization present during any interrogation or interview that the employee is ordered to attend.

(h) Prohibits an investigator from threatening a county law enforcement officer who is the subject of an investigation with punitive action during an interrogation. Authorizes an investigator, however, to inform an officer that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

(i) Authorizes either the investigator or the county law enforcement officer who is the subject of an interrogation, if prior notification of intent to record an interrogation is given to the other party, to record the interrogation.

(j) Prohibits the reprimand, finding, or determination, if an investigation does not result in punitive action against a county law enforcement officer other than a reprimand recorded in writing or an adverse finding or determination regarding that person, from being placed in that person's personnel file unless the officer is first given an opportunity to read and sign the document. Authorizes that if the officer refuses to sign the reprimand, finding, or determination, the reprimand, finding, or determination be placed in the personnel file with a notation that the person refused to sign it. Authorizes an officer to respond in writing to a reprimand, finding, or determination that is placed in the person's personnel file under this subsection by submitting a written response to the sheriff within 10 days after the date the officer is asked to sign the document. Requires that the response be placed in the personnel file. Authorizes an officer who receives a punitive action and who elects not to appeal the action to file a written response as prescribed by this subsection within 10 days after the date the person is given written notice of the punitive action from the sheriff.

(k) Requires the county or department, if the sheriff or any investigator violates any provision of this section while conducting an investigation, to reverse any punitive action taken based on the investigation, including a reprimand, and prohibits any information obtained during the investigation from being admitted into evidence in any proceeding against the county law enforcement officer.

Sec. 158.064. ONGOING CRIMINAL INVESTIGATIONS. (a) Requires an investigator, if the county law enforcement officer is suspected and under investigation for ongoing criminal activity, on or before the 180th day after the date the county becomes aware of the suspected criminal activity, to notify the sheriff or the sheriff's designee in writing of the pending ongoing criminal investigation, show good cause for the continued criminal investigation, and state the approximate time the criminal investigation is likely to be concluded.

(b) Provides that the county is not required to comply with the requirements of Section 158.063 until the completion of the criminal investigation. Requires the county, not later than the fifth day after the date of the completion of the criminal investigation, to comply with the requirements of Section 158.063.

Sec. 158.065. RIGHTS OF COUNTY LAW ENFORCEMENT OFFICERS IN INVESTIGATIONS. (a) Requires the complainant, in all investigations which arise from complaints from sources other than law enforcement personnel, to first be given and pass a polygraph examination before the investigation can continue.

(b) Prohibits a county law enforcement officer from being required to submit to a polygraph examination, unless the officer has been given written notice not less than 48 hours before the polygraph examination or the officer voluntarily agrees to take the polygraph examination. Requires that the results of the polygraph examination, if the officer voluntarily submits to the polygraph examination, be provided to the officer immediately following conclusion of the exam. Entitles the officer to legal representative prior to, during, and after the polygraph examination.

- (c) Requires a county law enforcement officer to be notified in writing not less than 48 hours before a predisciplinary or disciplinary hearing.
- (d) Entitles a county law enforcement officer to request the officer's disciplinary hearing be postponed pending the outcome of a criminal case based on the same conduct.
- (e) Prohibits a predisciplinary or disciplinary hearing from being held on Saturday, Sunday, or any state or federal holiday. Requires that all predisciplinary or disciplinary hearings, or investigative interviews, be held during normal business hours.
- (f) Entitles a county law enforcement officer to be accompanied by a representative of the officer's choosing at any predisciplinary or disciplinary hearing, or at an investigative interview.
- (g) Entitles a county law enforcement officer involved in a line-of-duty shooting to have an attorney present during any investigation by the county.
- (h) Prohibits the investigator, if a county law enforcement officer is required to give a statement regarding any allegation of misconduct, from amending the officer's statement in any way without the officer's permission and signature. Requires the investigator, if the employee agrees to the amendment, to provide the officer with a copy of the amended statement immediately following the amendment.

Sec. 158.066. OUTCOME OF INVESTIGATION. Prohibits the complaint, if an investigation reveals the county law enforcement officer has not committed an act of misconduct, from being placed in the officer's file and used against the officer in a subsequent investigation, punitive action proceeding, or disciplinary action.

Sec. 158.067. SANCTIONS FOR VIOLATIONS OF THIS SUBCHAPTER. (a) Requires that the evidence gained as a consequence of the violation, if a county law enforcement officer who appeals a punitive action or that officer's representative can demonstrate by a preponderance of the evidence the provisions of Sections 158.063, 158.064, or 158.065 were violated, be permanently excluded from the investigator's file and prohibits it from being considered in rendering a decision.

- (b) Requires the commission, if a county law enforcement officer or that officer's representative is in a dispute with the county regarding evidence obtained during the investigation, before the evidence may be used and before the officer's appeal hearing convenes, to hear supporting arguments from opposing parties. Requires the commission, if the commission rules in favor of the officer and finds the county in violation of Sections 158.063, 158.064, or 158.065, to order that any information obtained and found in violation of Sections 158.063, 158.064, or 158.065 during the investigation be excluded from introduction into evidence in the proceeding against the officer or, if the commission determines that the violation was knowing or intentional, to reverse the punitive action decision and instruct the county to immediately restore the officer to the employee's prior position and order repayment of any lost wages and loss of benefits.

SECTION 3. (a) Provides that Section 158.034(a), Local Government Code, as amended by this Act, applies to an appointment or reappointment that occurs on or after the effective date of this Act.

- (b) Provides that Subchapter C, Chapter 158, Local Government Code, as added by this Act, applies only to an investigation of conduct that occurred on or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2009.