

By: Whitmire

S.B. No. 1338

A BILL TO BE ENTITLED

AN ACT

relating to the rights of certain county law enforcement officers.

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

SECTION 1. Section 158.034(a), Local Government Code, is amended to read as follows:

(a) 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, the sheriff, commissioners court, and district attorney shall each appoint one person to serve as a member of the civil service commission that administers the system. 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, the sheriff, commissioners court, and a bargaining agent elected by the employees of the sheriff's department [~~district attorney~~] shall each appoint two persons to serve as members of the civil service commission that administers the system, and the three appointing authorities shall appoint one member by joint action requiring the affirmative vote of each of the authorities.

SECTION 2. Chapter 158, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. INVESTIGATION OF COUNTY LAW ENFORCEMENT

OFFICERS IN CERTAIN COUNTIES

1 Sec. 158.061. APPLICABILITY. This subchapter applies only
2 to a county with a population of 3.3 million or more.

3 Sec. 158.062. DEFINITIONS. In this subchapter:

4 (1) "Commission" means a county civil service
5 commission.

6 (2) "Complainant" means a person claiming to be the
7 victim of misconduct by a county law enforcement officer.

8 (3) "County law enforcement officer" means a deputy
9 sheriff or other peace officer or a jailer appointed or employed by
10 the department.

11 (4) "Investigation" means an administrative
12 investigation, conducted by the county or the department, of
13 alleged misconduct by a county law enforcement officer that could
14 result in punitive action against that person.

15 (5) "Investigator" means an agent or employee of the
16 county or the department who is assigned to conduct an
17 investigation.

18 (6) "Normally assigned working hours" includes those
19 hours during which a county law enforcement officer is actually at
20 work or at the person's assigned place of work but does not include
21 any time when the person is off duty on authorized leave, including
22 sick leave.

23 (7) "Punitive action" means a disciplinary
24 suspension, dismissal, demotion in rank, reprimand, or any
25 combination of those actions.

26 Sec. 158.063. INTERROGATION AND INVESTIGATION OF COUNTY LAW
27 ENFORCEMENT OFFICERS. (a) An investigator may interrogate a

1 county law enforcement officer who is the subject of an
2 investigation only during the officer's normally assigned working
3 hours unless:

4 (1) the seriousness of the investigation, as
5 determined by the sheriff or the sheriff's designee, requires
6 interrogation at another time; and

7 (2) the officer is compensated for the interrogation
8 time on an overtime basis.

9 (b) The sheriff may not consider work time missed from
10 regular duties by a county law enforcement officer due to
11 participation in the conduct of an investigation in determining
12 whether to impose a punitive action or in determining the severity
13 of a punitive action.

14 (c) An investigator may not interrogate a county law
15 enforcement officer who is the subject of an investigation or
16 conduct any part of the investigation at that person's home without
17 that person's permission.

18 (d) A person may not be assigned to conduct an investigation
19 if the person is the complainant, the ultimate decision-maker
20 regarding disciplinary action, or a person who has any personal
21 involvement regarding the alleged misconduct. A county law
22 enforcement officer who is the subject of an investigation has the
23 right to inquire and, on inquiry, to be informed of the identities
24 of each investigator participating in an interrogation of the
25 officer.

26 (e) Before an investigator may interrogate a county law
27 enforcement officer who is the subject of an investigation, the

1 investigator must inform the officer in writing of the nature of the
2 investigation and the name of each person who complained about the
3 officer concerning the matters under investigation. An
4 investigator may not conduct an interrogation of an officer based
5 on a complaint by a complainant who is not a peace officer or a
6 jailer unless the complainant verifies the complaint in writing
7 before a public officer who is authorized by law to take statements
8 under oath. Not later than the 48th hour before the hour on which an
9 investigator begins to interrogate an officer regarding an
10 allegation based on a complaint, affidavit, or statement, the
11 investigator shall give the officer a copy of the affidavit,
12 complaint, or statement. An officer is entitled to and shall be
13 provided with all statements or affidavits received or gathered by
14 the investigative authority from witnesses, deputies, or
15 supervisors during the investigation before the officer's
16 interrogation, if the interrogation is based wholly or partly on
17 those statements. If an employee is not given a statement to which
18 the employee is entitled, that statement, or portion of the
19 statement, may not be used to support any administrative action
20 against or discipline of the officer. If the officer gives a
21 statement, the officer shall be given a copy of that statement.
22 This subsection does not apply to an on-the-scene investigation
23 that occurs immediately after an incident being investigated if the
24 limitations of this subsection would unreasonably hinder the
25 essential purpose of the investigation or interrogation. If the
26 limitation would hinder the investigation or interrogation, the
27 officer under investigation must be furnished, as soon as

1 practicable, a written statement of the nature of the
2 investigation, the name of each complaining party, and the
3 complaint, affidavit, or statement.

4 (f) An interrogation session of a county law enforcement
5 officer who is the subject of an investigation may not be
6 unreasonably long. In determining reasonableness, the gravity and
7 complexity of the investigation must be considered. The
8 investigators shall allow reasonable interruptions to permit the
9 officer to attend to personal physical necessities.

10 (g) An officer who is the subject of an interrogation shall
11 be given notice not less than 24 hours before the interrogation is
12 to take place of the time and place of the interrogation. An
13 officer is entitled to have legal counsel or a representative of the
14 officer's employee organization present during any interrogation
15 or interview that the employee is ordered to attend.

16 (h) An investigator may not threaten a county law
17 enforcement officer who is the subject of an investigation with
18 punitive action during an interrogation. However, an investigator
19 may inform an officer that failure to truthfully answer reasonable
20 questions directly related to the investigation or to fully
21 cooperate in the conduct of the investigation may result in
22 punitive action.

23 (i) If prior notification of intent to record an
24 interrogation is given to the other party, either the investigator
25 or the county law enforcement officer who is the subject of an
26 interrogation may record the interrogation.

27 (j) If an investigation does not result in punitive action

1 against a county law enforcement officer other than a reprimand
2 recorded in writing or an adverse finding or determination
3 regarding that person, the reprimand, finding, or determination may
4 not be placed in that person's personnel file unless the officer is
5 first given an opportunity to read and sign the document. If the
6 officer refuses to sign the reprimand, finding, or determination,
7 it may be placed in the personnel file with a notation that the
8 person refused to sign it. An officer may respond in writing to a
9 reprimand, finding, or determination that is placed in the person's
10 personnel file under this subsection by submitting a written
11 response to the sheriff within 10 days after the date the officer is
12 asked to sign the document. The response shall be placed in the
13 personnel file. An officer who receives a punitive action and who
14 elects not to appeal the action may file a written response as
15 prescribed by this subsection within 10 days after the date the
16 person is given written notice of the punitive action from the
17 sheriff.

18 (k) If the sheriff or any investigator violates any
19 provision of this section while conducting an investigation, the
20 county or department shall reverse any punitive action taken based
21 on the investigation, including a reprimand, and any information
22 obtained during the investigation may not be admitted into evidence
23 in any proceeding against the county law enforcement officer.

24 Sec. 158.064. ONGOING CRIMINAL INVESTIGATIONS. (a) If the
25 county law enforcement officer is suspected and under investigation
26 for ongoing criminal activity, an investigator shall:

27 (1) on or before the 180th day after the date the

1 county becomes aware of the suspected criminal activity, notify the
2 sheriff or the sheriff's designee in writing of the pending ongoing
3 criminal investigation;

4 (2) show good cause for the continued criminal
5 investigation; and

6 (3) state the approximate time the criminal
7 investigation is likely to be concluded.

8 (b) The county is not required to comply with the
9 requirements of Section 158.063 until the completion of the
10 criminal investigation. Not later than the fifth day after the date
11 of the completion of the criminal investigation, the county shall
12 comply with the requirements of Section 158.063.

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

18 (b) A county law enforcement officer may not be required to
19 submit to a polygraph examination, unless the officer has been
20 given written notice not less than 48 hours before the polygraph
21 examination or the officer voluntarily agrees to take the polygraph
22 examination. If the officer voluntarily submits to the polygraph
23 examination, the results of the polygraph examination shall be
24 provided to the officer immediately following conclusion of the
25 exam. The officer is entitled to legal representation prior to,
26 during, and after the polygraph examination.

27 (c) A county law enforcement officer shall be notified in

1 writing not less than 48 hours before a predisciplinary or
2 disciplinary hearing.

3 (d) A county law enforcement officer is entitled to request
4 the officer's disciplinary hearing be postponed pending the outcome
5 of a criminal case based on the same conduct.

6 (e) A predisciplinary or disciplinary hearing may not be
7 held on Saturday, Sunday, or any state or federal holiday. All
8 predisciplinary and disciplinary hearings, or investigative
9 interviews, shall be held during normal business hours.

10 (f) A county law enforcement officer is entitled to be
11 accompanied by a representative of the officer's choosing at any
12 predisciplinary or disciplinary hearing, or at an investigative
13 interview.

14 (g) A county law enforcement officer involved in a
15 line-of-duty shooting is entitled to have an attorney present
16 during any investigation by the county.

17 (h) If a county law enforcement officer is required to give
18 a statement regarding any allegation of misconduct, the
19 investigator may not amend the officer's statement in any way
20 without the officer's permission and signature. If the employee
21 agrees to the amendment, the investigator shall provide the officer
22 with a copy of the amended statement immediately following the
23 amendment.

24 Sec. 158.066. OUTCOME OF INVESTIGATION. If an
25 investigation reveals the county law enforcement officer has not
26 committed an act of misconduct:

27 (1) the complaint may not be placed in the officer's

1 file; and

2 (2) the complaint may not be used against the officer
3 in a subsequent investigation, punitive action proceeding, or
4 disciplinary action.

5 Sec. 158.067. SANCTIONS FOR VIOLATIONS OF THIS SUBCHAPTER.

6 (a) If a county law enforcement officer who appeals a punitive
7 action or that officer's representative can demonstrate by a
8 preponderance of the evidence the provisions of Section 158.063,
9 158.064, or 158.065 were violated, the evidence gained as a
10 consequence of the violation shall be permanently excluded from the
11 investigator's file and may not be considered in rendering a
12 decision.

13 (b) If a county law enforcement officer or that officer's
14 representative is in a dispute with the county regarding evidence
15 obtained during the investigation, before the evidence may be used
16 and before the officer's appeal hearing convenes the commission
17 shall hear supporting arguments from opposing parties. If the
18 commission rules in favor of the officer and finds the county in
19 violation of Section 158.063, 158.064, or 158.065, the commission
20 shall:

21 (1) order that any information obtained and found in
22 violation of Section 158.063, 158.064, or 158.065 during the
23 investigation be excluded from introduction into evidence in the
24 proceeding against the officer; or

25 (2) if the commission determines that the violation
26 was knowing or intentional:

27 (A) reverse the punitive action decision and

1 instruct the county to immediately restore the officer to the
2 employee's prior position; and

3 (B) order repayment of any lost wages and loss of
4 benefits.

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

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

11 SECTION 4. This Act takes effect September 1, 2009.