

1-1 By: Whitmire S.B. No. 1338
1-2 (In the Senate - Filed March 4, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 6, 2009, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; May 6, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the rights of certain county law enforcement officers.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subsection (a), Section 158.034, Local
1-11 Government Code, is amended to read as follows:

1-12 (a) In a county with a population of less than 2.8 million,
1-13 if a majority of the employees voting at the election approve the
1-14 creation of a sheriff's department civil service system, the
1-15 sheriff, commissioners court, and district attorney shall each
1-16 appoint one person to serve as a member of the civil service
1-17 commission that administers the system. In a county with a
1-18 population of 2.8 million or more, if a majority of the employees
1-19 voting at the election approve the creation of a sheriff's
1-20 department civil service system, the sheriff, commissioners court,
1-21 and a bargaining agent elected by the employees of the sheriff's
1-22 department [~~district attorney~~] shall each appoint two persons to
1-23 serve as members of the civil service commission that administers
1-24 the system, and the three appointing authorities shall appoint one
1-25 member by joint action requiring the affirmative vote of each of the
1-26 authorities.

1-27 SECTION 2. Chapter 158, Local Government Code, is amended
1-28 by adding Subchapter C to read as follows:

1-29 SUBCHAPTER C. INVESTIGATION OF COUNTY LAW ENFORCEMENT
1-30 OFFICERS IN CERTAIN COUNTIES

1-31 Sec. 158.061. APPLICABILITY. This subchapter applies only
1-32 to a county with a population of 3.3 million or more.

1-33 Sec. 158.062. DEFINITIONS. In this subchapter:

1-34 (1) "Commission" means a county civil service
1-35 commission.

1-36 (2) "Complainant" means a person claiming to be the
1-37 victim of misconduct by a county law enforcement officer.

1-38 (3) "County law enforcement officer" means a deputy
1-39 sheriff or other peace officer or a jailer appointed or employed by
1-40 the department.

1-41 (4) "Investigation" means an administrative
1-42 investigation, conducted by the county or the department, of
1-43 alleged misconduct by a county law enforcement officer that could
1-44 result in punitive action against that person.

1-45 (5) "Investigator" means an agent or employee of the
1-46 county or the department who is assigned to conduct an
1-47 investigation.

1-48 (6) "Normally assigned working hours" includes those
1-49 hours during which a county law enforcement officer is actually at
1-50 work or at the person's assigned place of work but does not include
1-51 any time when the person is off duty on authorized leave, including
1-52 sick leave.

1-53 (7) "Punitive action" means a disciplinary
1-54 suspension, dismissal, demotion in rank, reprimand, or any
1-55 combination of those actions.

1-56 Sec. 158.063. INTERROGATION AND INVESTIGATION OF COUNTY LAW
1-57 ENFORCEMENT OFFICERS. (a) An investigator may interrogate a
1-58 county law enforcement officer who is the subject of an
1-59 investigation only during the officer's normally assigned working
1-60 hours unless:

1-61 (1) the seriousness of the investigation, as
1-62 determined by the sheriff or the sheriff's designee, requires
1-63 interrogation at another time; and

1-64 (2) the officer is compensated for the interrogation

2-1 time on an overtime basis.

2-2 (b) The sheriff may not consider work time missed from
2-3 regular duties by a county law enforcement officer due to
2-4 participation in the conduct of an investigation in determining
2-5 whether to impose a punitive action or in determining the severity
2-6 of a punitive action.

2-7 (c) An investigator may not interrogate a county law
2-8 enforcement officer who is the subject of an investigation or
2-9 conduct any part of the investigation at that person's home without
2-10 that person's permission.

2-11 (d) A person may not be assigned to conduct an investigation
2-12 if the person is the complainant, the ultimate decision-maker
2-13 regarding disciplinary action, or a person who has any personal
2-14 involvement regarding the alleged misconduct. A county law
2-15 enforcement officer who is the subject of an investigation has the
2-16 right to inquire and, on inquiry, to be informed of the identities
2-17 of each investigator participating in an interrogation of the
2-18 officer.

2-19 (e) Before an investigator may interrogate a county law
2-20 enforcement officer who is the subject of an investigation, the
2-21 investigator must inform the officer in writing of the nature of the
2-22 investigation and the name of each person who complained about the
2-23 officer concerning the matters under investigation. An
2-24 investigator may not conduct an interrogation of an officer based
2-25 on a complaint by a complainant who is not a peace officer or a
2-26 jailer unless the complainant verifies the complaint in writing
2-27 before a public officer who is authorized by law to take statements
2-28 under oath. Not later than the 48th hour before the hour on which an
2-29 investigator begins to interrogate an officer regarding an
2-30 allegation based on a complaint, affidavit, or statement, the
2-31 investigator shall give the officer a copy of the affidavit,
2-32 complaint, or statement. An officer is entitled to and shall be
2-33 provided with all statements or affidavits received or gathered by
2-34 the investigative authority from witnesses, deputies, or
2-35 supervisors during the investigation before the officer's
2-36 interrogation, if the interrogation is based wholly or partly on
2-37 those statements. If an employee is not given a statement to which
2-38 the employee is entitled, that statement, or portion of the
2-39 statement, may not be used to support any administrative action
2-40 against or discipline of the officer. If the officer gives a
2-41 statement, the officer shall be given a copy of that statement.
2-42 This subsection does not apply to an on-the-scene investigation
2-43 that occurs immediately after an incident being investigated if the
2-44 limitations of this subsection would unreasonably hinder the
2-45 essential purpose of the investigation or interrogation. If the
2-46 limitation would hinder the investigation or interrogation, the
2-47 officer under investigation must be furnished, as soon as
2-48 practicable, a written statement of the nature of the
2-49 investigation, the name of each complaining party, and the
2-50 complaint, affidavit, or statement.

2-51 (f) An interrogation session of a county law enforcement
2-52 officer who is the subject of an investigation may not be
2-53 unreasonably long. In determining reasonableness, the gravity and
2-54 complexity of the investigation must be considered. The
2-55 investigators shall allow reasonable interruptions to permit the
2-56 officer to attend to personal physical necessities.

2-57 (g) An officer who is the subject of an interrogation shall
2-58 be given notice not less than 24 hours before the interrogation is
2-59 to take place of the time and place of the interrogation. An
2-60 officer is entitled to have legal counsel or a representative of the
2-61 officer's employee organization present during any interrogation
2-62 or interview that the employee is ordered to attend.

2-63 (h) An investigator may not threaten a county law
2-64 enforcement officer who is the subject of an investigation with
2-65 punitive action during an interrogation. However, an investigator
2-66 may inform an officer that failure to truthfully answer reasonable
2-67 questions directly related to the investigation or to fully
2-68 cooperate in the conduct of the investigation may result in
2-69 punitive action.

3-1 (i) If prior notification of intent to record an
 3-2 interrogation is given to the other party, either the investigator
 3-3 or the county law enforcement officer who is the subject of an
 3-4 interrogation may record the interrogation.

3-5 (j) If an investigation does not result in punitive action
 3-6 against a county law enforcement officer other than a reprimand
 3-7 recorded in writing or an adverse finding or determination
 3-8 regarding that person, the reprimand, finding, or determination may
 3-9 not be placed in that person's personnel file unless the officer is
 3-10 first given an opportunity to read and sign the document. If the
 3-11 officer refuses to sign the reprimand, finding, or determination,
 3-12 it may be placed in the personnel file with a notation that the
 3-13 person refused to sign it. An officer may respond in writing to a
 3-14 reprimand, finding, or determination that is placed in the person's
 3-15 personnel file under this subsection by submitting a written
 3-16 response to the sheriff within 10 days after the date the officer is
 3-17 asked to sign the document. The response shall be placed in the
 3-18 personnel file. An officer who receives a punitive action and who
 3-19 elects not to appeal the action may file a written response as
 3-20 prescribed by this subsection within 10 days after the date the
 3-21 person is given written notice of the punitive action from the
 3-22 sheriff.

3-23 (k) If the sheriff or any investigator violates any
 3-24 provision of this section while conducting an investigation, the
 3-25 county or department shall reverse any punitive action taken based
 3-26 on the investigation, including a reprimand, and any information
 3-27 obtained during the investigation may not be admitted into evidence
 3-28 in any proceeding against the county law enforcement officer.

3-29 Sec. 158.064. ONGOING CRIMINAL INVESTIGATIONS. (a) If the
 3-30 county law enforcement officer is suspected and under investigation
 3-31 for ongoing criminal activity, an investigator shall:

3-32 (1) on or before the 180th day after the date the
 3-33 county becomes aware of the suspected criminal activity, notify the
 3-34 sheriff or the sheriff's designee in writing of the pending ongoing
 3-35 criminal investigation;

3-36 (2) show good cause for the continued criminal
 3-37 investigation; and

3-38 (3) state the approximate time the criminal
 3-39 investigation is likely to be concluded.

3-40 (b) The county is not required to comply with the
 3-41 requirements of Section 158.063 until the completion of the
 3-42 criminal investigation. Not later than the fifth day after the date
 3-43 of the completion of the criminal investigation, the county shall
 3-44 comply with the requirements of Section 158.063.

3-45 Sec. 158.065. RIGHTS OF COUNTY LAW ENFORCEMENT OFFICERS IN
 3-46 INVESTIGATIONS. (a) In all investigations which arise from
 3-47 complaints from sources other than law enforcement personnel, the
 3-48 complainant must first be given and pass a polygraph examination
 3-49 before the investigation can continue.

3-50 (b) A county law enforcement officer may not be required to
 3-51 submit to a polygraph examination unless the officer has been given
 3-52 written notice not less than 48 hours before the polygraph
 3-53 examination or the officer voluntarily agrees to take the polygraph
 3-54 examination. If the officer voluntarily submits to the polygraph
 3-55 examination, the results of the polygraph examination shall be
 3-56 provided to the officer immediately following conclusion of the
 3-57 exam. The officer is entitled to legal representation prior to,
 3-58 during, and after the polygraph examination.

3-59 (c) A county law enforcement officer shall be notified in
 3-60 writing not less than 48 hours before a predisciplinary or
 3-61 disciplinary hearing.

3-62 (d) A county law enforcement officer is entitled to request
 3-63 the officer's disciplinary hearing be postponed pending the outcome
 3-64 of a criminal case based on the same conduct.

3-65 (e) A predisciplinary or disciplinary hearing may not be
 3-66 held on Saturday, Sunday, or any state or federal holiday. All
 3-67 predisciplinary and disciplinary hearings, or investigative
 3-68 interviews, shall be held during normal business hours.

3-69 (f) A county law enforcement officer is entitled to be

4-1 accompanied by a representative of the officer's choosing at any
4-2 predisciplinary or disciplinary hearing, or at an investigative
4-3 interview.

4-4 (g) A county law enforcement officer involved in a
4-5 line-of-duty shooting is entitled to have an attorney present
4-6 during any investigation by the county.

4-7 (h) If a county law enforcement officer is required to give
4-8 a statement regarding any allegation of misconduct, the
4-9 investigator may not amend the officer's statement in any way
4-10 without the officer's permission and signature. If the employee
4-11 agrees to the amendment, the investigator shall provide the officer
4-12 with a copy of the amended statement immediately following the
4-13 amendment.

4-14 Sec. 158.066. OUTCOME OF INVESTIGATION. If an
4-15 investigation reveals the county law enforcement officer has not
4-16 committed an act of misconduct:

4-17 (1) the complaint may not be placed in the officer's
4-18 file; and

4-19 (2) the complaint may not be used against the officer
4-20 in a subsequent investigation, punitive action proceeding, or
4-21 disciplinary action.

4-22 Sec. 158.067. SANCTIONS FOR VIOLATIONS OF THIS SUBCHAPTER.

4-23 (a) If a county law enforcement officer who appeals a punitive
4-24 action or that officer's representative can demonstrate by a
4-25 preponderance of the evidence the provisions of Section 158.063,
4-26 158.064, or 158.065 were violated, the evidence gained as a
4-27 consequence of the violation shall be permanently excluded from the
4-28 investigator's file and may not be considered in rendering a
4-29 decision.

4-30 (b) If a county law enforcement officer or that officer's
4-31 representative is in a dispute with the county regarding evidence
4-32 obtained during the investigation, before the evidence may be used
4-33 and before the officer's appeal hearing convenes, the commission
4-34 shall hear supporting arguments from opposing parties. If the
4-35 commission rules in favor of the officer and finds the county in
4-36 violation of Section 158.063, 158.064, or 158.065, the commission
4-37 shall:

4-38 (1) order that any information obtained and found in
4-39 violation of Section 158.063, 158.064, or 158.065 during the
4-40 investigation be excluded from introduction into evidence in the
4-41 proceeding against the officer; or

4-42 (2) if the commission determines that the violation
4-43 was knowing or intentional:

4-44 (A) reverse the punitive action decision and
4-45 instruct the county to immediately restore the officer to the
4-46 employee's prior position; and

4-47 (B) order repayment of any lost wages and loss of
4-48 benefits.

4-49 SECTION 3. (a) Subsection (a), Section 158.034, Local
4-50 Government Code, as amended by this Act, applies to an appointment
4-51 or reappointment that occurs on or after the effective date of this
4-52 Act.

4-53 (b) Subchapter C, Chapter 158, Local Government Code, as
4-54 added by this Act, applies only to an investigation of conduct that
4-55 occurred on or after the effective date of this Act.

4-56 SECTION 4. This Act takes effect September 1, 2009.

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