

By: Lang

H.B. No. 2226

A BILL TO BE ENTITLED

AN ACT

relating to complaints filed against certain law enforcement officers, peace officers, detention officers, and county jailers.

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

SECTION 1. Subchapter B, Chapter 614, Government Code, is amended by adding Section 614.0205 to read as follows:

Sec. 614.0205. DEFINITION. In this subchapter, "law enforcement agency" means an agency of this state or an agency of a political subdivision of this state authorized by law to employ a law enforcement officer, including a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

SECTION 2. Section 614.021(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), this subchapter applies only to a complaint against:

(1) a law enforcement officer, including a peace officer under Article 2.12, Code of Criminal Procedure, or other law, appointed or employed by a law enforcement agency [~~of the State of Texas, including an officer of the Department of Public Safety or of the Texas Alcoholic Beverage Commission~~];

(2) a fire fighter [~~who is~~] employed by this state or a political subdivision of this state; or

(3) [~~a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed or employed by a~~]

1 ~~political subdivision of this state, or~~
2 [~~(4)~~] a detention officer or county jailer [~~who~~
3 ~~is~~] appointed or employed by a law enforcement agency [~~political~~
4 ~~subdivision of this state~~].

5 SECTION 3. Section 614.022, Government Code, is amended to
6 read as follows:

7 Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY
8 COMPLAINANT. To be considered by the head of a law enforcement
9 [~~state~~] agency or by the head of a fire department [~~or local law~~
10 ~~enforcement agency~~], the complaint must be:

- 11 (1) in writing; and
12 (2) signed by the person making the complaint.

13 SECTION 4. Sections 614.023(a) and (c), Government Code,
14 are amended to read as follows:

15 (a) A copy of a signed complaint against an officer or
16 employee that this subchapter applies to [~~a law enforcement officer~~
17 ~~of this state or a fire fighter, detention officer, county jailer,~~
18 ~~or peace officer appointed or employed by a political subdivision~~
19 ~~of this state~~] shall be given to the officer or employee within a
20 reasonable time after the complaint is filed.

21 (c) In addition to the requirement of Subsection (b), the
22 officer or employee may not be indefinitely suspended or terminated
23 from employment based on the subject matter of the complaint
24 unless:

- 25 (1) the complaint is investigated; and
26 (2) there is sufficient evidence to prove the
27 allegation of misconduct.

1 SECTION 5. Subchapter B, Chapter 614, Government Code, is
2 amended by adding Sections 614.024 and 614.025 to read as follows:

3 Sec. 614.024. COMPLAINT INVOLVING THREATENED OR ACTUAL USE
4 OF FORCE BY OFFICER OR EMPLOYEE. (a) The head of a law enforcement
5 agency may not discipline, demote, indefinitely suspend, or
6 terminate the employment of an officer or employee who is a law
7 enforcement officer, peace officer, detention officer, or county
8 jailer based on a complaint that alleges that the officer or
9 employee threatened the use of deadly force or used force against a
10 person that resulted in bodily injury or death unless:

11 (1) the agency investigates the complaint; and

12 (2) the head of the agency determines that there is
13 sufficient evidence that the officer or employee violated a written
14 policy or procedure of the agency.

15 (b) A law enforcement agency must notify an officer or
16 employee in writing if the head of the agency takes a disciplinary
17 action against the officer or employee under Subsection (a). The
18 notice must include:

19 (1) a statement that:

20 (A) indicates each policy or procedure of the
21 agency that the head of the agency determined the officer or
22 employee violated; and

23 (B) for each policy or procedure violated,
24 describes each act alleged to have been committed by the officer or
25 employee in violation of the policy or procedure;

26 (2) a statement that the officer or employee is
27 entitled to appeal the action to a hearing examiner as provided by

1 Section 614.025; and

2 (3) a statement that the officer or employee waives
3 the right to appeal to district court if the officer or employee
4 elects to appeal to the hearing examiner.

5 Sec. 614.025. APPEAL TO INDEPENDENT HEARING EXAMINER. (a)
6 A law enforcement officer, peace officer, detention officer, or
7 county jailer who is disciplined, demoted, indefinitely suspended,
8 or terminated from employment under Section 614.024 is entitled to
9 appeal the disciplinary action to a hearing examiner as provided by
10 this section.

11 (b) An officer or employee who elects to appeal to a hearing
12 examiner must notify the head of the law enforcement agency who
13 disciplined the officer or employee. The notice of appeal must:

14 (1) be in writing;

15 (2) state that the officer or employee elects to
16 appeal to a hearing examiner; and

17 (3) be filed with the head of the agency not later than
18 the 10th day after the date the officer or employee receives the
19 written notice prescribed by Section 614.024(b).

20 (c) If an officer or employee files a notice of appeal under
21 this section, the officer or employee and the head of the law
22 enforcement agency, or their designees, must attempt to agree on
23 the selection of an impartial hearing examiner. If the parties
24 cannot agree on a hearing examiner before the 11th day after the
25 date the notice of appeal is filed, the head of the agency shall
26 immediately request a list of seven qualified neutral arbitrators
27 from the American Arbitration Association or the Federal Mediation

1 and Conciliation Service, or a successor entity. The parties may
2 agree on one of the seven arbitrators on the list. If the parties
3 cannot agree on an arbitrator on the list before the sixth business
4 day after the date the parties receive the list, each party shall
5 alternate striking a name from the list and the name remaining is
6 the hearing examiner.

7 (d) The parties shall agree on a date for the hearing. The
8 hearing shall be scheduled to begin as soon as possible. If the
9 hearing examiner cannot begin the hearing before the 45th day after
10 the date the hearing examiner is selected, the parties must select a
11 new hearing examiner in the manner prescribed by Subsection (c) if:

12 (1) the officer or employee requests selection of a
13 new hearing examiner; and

14 (2) the request is made not later than the second day
15 after the date the officer or employee learns that the selected
16 hearing examiner cannot begin the hearing.

17 (e) The hearing examiner may issue a subpoena to compel the
18 attendance of a witness or the production of documents and
19 materials as necessary to conduct the hearing. The officer or
20 employee may request the hearing examiner to subpoena a witness,
21 documents, or materials that the officer or employee considers
22 relevant to the appeal. The officer or employee must make the
23 request for a subpoena before the 10th day before the date the
24 hearing will begin. The hearing examiner must notify the officer or
25 employee in writing before the third day before the date the hearing
26 will begin if the hearing examiner decides not to issue a subpoena
27 requested by the officer or employee. The notice must state the

1 reason the hearing examiner will not issue the subpoena and must be
2 read into the public record of the hearing.

3 (f) The hearing examiner shall conduct the hearing fairly
4 and impartially and shall render a just and fair decision. The
5 hearing examiner may require that a witness at the hearing not
6 discuss the hearing with another person. The hearing examiner may
7 consider only the evidence submitted at the hearing.

8 (g) The hearing examiner must promptly reverse any
9 disciplinary action that is the subject of an appeal under this
10 section and restore the officer or employee to the individual's
11 pre-disciplinary status if the hearing examiner determines that the
12 requirements of Section 614.024(b)(1) were not met.

13 (h) The hearing examiner shall:

14 (1) issue a final decision on the appeal not later than
15 the 10th day after the date the hearing ends, or another date agreed
16 to by the parties, if the parties request an expedited decision; or

17 (2) make a reasonable effort to issue a final decision
18 on the appeal not later than the 30th day after the date the hearing
19 ends if the parties do not request an expedited decision.

20 (i) The validity of a disciplinary action that is the
21 subject of the appeal and the final decision issued by the hearing
22 examiner for the appeal are not affected by the hearing examiner's
23 failure to comply with Subsection (h).

24 (j) Except as provided by Subsection (l), the final decision
25 issued by the hearing examiner for an appeal under this section is
26 final and binding on all parties to the appeal.

27 (k) The fees and expenses of the hearing examiner are shared

1 equally by the officer or employee and the law enforcement agency.

2 The cost of a witness is paid by the party who called the witness.

3 (1) A district court may hear an appeal of the final
4 decision of a hearing examiner under this section only on the ground
5 that the hearing examiner was without jurisdiction, the hearing
6 examiner exceeded the hearing examiner's jurisdiction, or that the
7 final decision of the hearing examiner was procured by fraud,
8 collusion, or other unlawful means. A person must file the appeal
9 in a district court having appropriate jurisdiction.

10 SECTION 6. The change in law made by this Act applies only
11 to a violation of a policy or procedure that occurs on or after the
12 effective date of this Act. A violation that occurs before the
13 effective date of this Act is governed by the law in effect on the
14 date the violation occurred, and the former law is continued in
15 effect for that purpose.

16 SECTION 7. This Act takes effect September 1, 2017.