

BILL ANALYSIS

C.S.H.B. 1758
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Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

With the onset of new drone technology, there are concerns about potential misuse and the deadly consequences of that misuse. There have been calls for the state to take steps to learn how law enforcement is utilizing this technology and prevent misuse. C.S.H.B. 1758 seeks to answer those calls by requiring each law enforcement agency to adopt and submit a policy on the use of force by drone and providing for circumstances under which the use of force by drone is justified.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1758 amends the Code of Criminal Procedure to require each state or local law enforcement agency to adopt and update as necessary a written policy regarding the agency's use of force by means of a drone. Each agency must submit their policy to the Texas Commission on Law Enforcement (TCOLE) in the manner prescribed by TCOLE not later than January 1 of each even-numbered year beginning in 2022. The bill defines, among other terms, "drone" as an unmanned aircraft, watercraft, or ground vehicle or a robotic device that is controlled remotely by a human operator or that operates autonomously through computer software or other programming.

C.S.H.B. 1758 amends the Penal Code to limit the circumstances under which the use of force, including deadly force, involving a drone is justified to when the following conditions are satisfied:

- at the time the use of force occurred, the actor was employed by a state or local law enforcement agency;
- the use of force would have been justified under applicable state law and did not involve the use of deadly force by means of an autonomous drone; and
- before the use of force occurred, the law enforcement agency employing the actor adopted and submitted to TCOLE a policy on the agency's use of force by means of a drone and the use of force conformed to the requirements of that policy.

These provisions apply only to an offense committed on or after January 1, 2022.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1758 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions that appeared in the original creating a Class A misdemeanor offense for a person who operates an unmanned aircraft equipped with certain weapons.

The substitute includes provisions not in the original that do the following:

- require each law enforcement agency to adopt a policy regarding the agency's use of force by means of a drone and submit that policy to TCOLE on a biennial basis; and
- require the initial policies to be adopted and submitted not later than January 1, 2022.

The substitute revises provisions of the original limiting the circumstances under which the use of force involving an unmanned aircraft is justified to do the following:

- expand the scope of the provisions to encompass the use of any type of drone, rather than only unmanned aircraft;
- omit as a condition that must be satisfied for the use of force to be justified the condition in the original that, before the actor's use of force occurred, the governor, on a case-by-case basis, specifically approved the use of force by that means; and
- include the following as additional conditions not in the original that must be satisfied:
 - at the time the use of force occurred, the actor was employed by a law enforcement agency; and
 - before the use of force occurred, the law enforcement agency employing the actor adopted and submitted to TCOLE a policy on the agency's use of force by means of a drone and the use of force conformed to the requirements of that policy.

Whereas the original provided that the use of deadly force involving an unmanned aircraft is not justified, the substitute does not. The substitute instead provides that the use of deadly force involving a drone is justified if the use of that force meets all necessary conditions, except that deadly force by means of an autonomous drone is not justified.

The substitute changes the offenses to which the bill's provisions regarding the justification of the use of force apply from those committed on or after the bill's effective date, as in the original, to those committed on or after January 1, 2022.