

By: White, et al.

H.B. No. 1396

Substitute the following for H.B. No. 1396:

By: White

C.S.H.B. No. 1396

A BILL TO BE ENTITLED

AN ACT

relating to law enforcement agencies and policies and procedures affecting peace officers.

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

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1308 to read as follows:

Art. 2.1308. CERTAIN POLICIES REQUIRED. (a) In this article:

(1) "Law enforcement agency" means an agency of this state or an agency of a political subdivision of this state authorized by law to employ peace officers.

(2) "No-knock entry" means a peace officer's entry, for the purpose of executing a warrant, into a building or other place without giving notice of the officer's authority or purpose before entering.

(b) Each law enforcement agency, in consultation with judges, prosecutors, commissioners courts, governing bodies of municipalities, and residents located within the agency's jurisdiction, shall adopt written policies regarding:

(1) the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only;

(2) the use of a no-knock entry by a peace officer of the law enforcement agency; and

1 (3) the intervention by a peace officer of the agency
2 to stop or prevent another peace officer from using excessive force
3 against a person suspected of committing an offense.

4 (c) A policy adopted under this article must:

5 (1) be approved by a district judge or the judge of a
6 county court at law in the jurisdiction served by the law
7 enforcement agency; and

8 (2) ensure judicial efficiency, law enforcement
9 efficiency and effectiveness, and community safety.

10 (d) In addition to the requirements of Subsection (c), the
11 policy required by Subsection (b)(1) must:

12 (1) provide a procedure for a peace officer, on a
13 person's presentation of appropriate identification, to verify the
14 person's identity and issue a citation to the person; and

15 (2) comply with Article 14.06 of this code and Section
16 543.004, Transportation Code.

17 SECTION 2. Chapter 2, Code of Criminal Procedure, is
18 amended by adding Article 2.1397 to read as follows:

19 Art. 2.1397. DUTIES OF LAW ENFORCEMENT AGENCY REGARDING
20 PEACE OFFICER MISCONDUCT. (a) In this article:

21 (1) "Commission" means the Texas Commission on Law
22 Enforcement.

23 (2) "Law enforcement agency" means an agency of this
24 state or an agency of a political subdivision of this state
25 authorized by law to employ peace officers.

26 (b) The commission by rule shall require each law
27 enforcement agency to report to the commission:

1 (1) each substantiated incident of misconduct by a
2 peace officer employed by the agency, including:

3 (A) a conviction for a criminal offense committed
4 in the course of performing the officer's duties;

5 (B) the use of excessive force against a person
6 suspected of committing an offense;

7 (C) conduct that constitutes a felony or a Class
8 A or B misdemeanor, regardless of whether the criminal offense is
9 prosecuted;

10 (D) sexual harassment involving physical contact
11 or misuse of official capacity;

12 (E) the misuse of official capacity or
13 misappropriation of property, including the misuse of a law
14 enforcement database or criminal records;

15 (F) an unprofessional relationship with a person
16 arrested, detained, or otherwise in the custody of the peace
17 officer or the law enforcement agency;

18 (G) any false statements made by the officer in
19 obtaining employment with the law enforcement agency;

20 (H) tampering with or fabricating physical
21 evidence of a criminal offense; or

22 (I) tampering with a governmental record,
23 including making false statements in the record or altering,
24 destroying, or concealing the record; and

25 (2) for each substantiated incident of misconduct
26 reported under Subdivision (1), whether the agency terminated or
27 took disciplinary action against the peace officer or permitted the

1 peace officer to retire or resign in lieu of termination for the
2 misconduct.

3 (c) The rules adopted under Subsection (b) must provide for
4 the manner in which the report is to be submitted to the commission,
5 including prescribing a form for use in reporting information under
6 this article.

7 (d) The commission shall make information reported to the
8 commission under this article accessible by all law enforcement
9 agencies in this state.

10 (e) The commission may make information regarding an
11 incident of misconduct that is reported to the commission under
12 this article available to a federal law enforcement agency that is
13 investigating the incident.

14 (f) Except as provided by Subsections (d) and (e), a report
15 submitted to the commission under this article is confidential and
16 not subject to disclosure under Chapter 552, Government Code.

17 (g) As soon as practicable after each regularly scheduled
18 commission meeting, the commission shall make available on its
19 Internet website a report regarding incidents of misconduct
20 reported since the commission's previous report under this
21 subsection. The report must include:

22 (1) the total number of incidents reported to the
23 commission under this article and the number reported since the
24 previous report; and

25 (2) information regarding:

26 (A) the most common types of misconduct reported;

27 (B) disciplinary action taken by the law

1 enforcement agency, including termination or permitting the peace
2 officer to retire or resign in lieu of termination; and

3 (C) any disciplinary action taken by the
4 commission.

5 SECTION 3. Subchapter A, Chapter 772, Government Code, is
6 amended by adding Section 772.0055 to read as follows:

7 Sec. 772.0055. LIMITATION ON ELIGIBILITY FOR GRANT. (a) In
8 this section, "law enforcement agency" means an agency of this
9 state or an agency of a political subdivision of this state
10 authorized by law to employ peace officers.

11 (b) Notwithstanding any other law, to be eligible to receive
12 a grant or other discretionary funding by the governor, a law
13 enforcement agency must:

14 (1) consistently report incidents of misconduct as
15 required by Article 2.1397, Code of Criminal Procedure; and

16 (2) maintain a current certification, issued by a
17 credentialing entity designated under Section 1701.165(d),
18 Occupations Code, certifying that the agency's policies regarding
19 use of force by peace officers:

20 (A) comply with all applicable laws; and

21 (B) prohibit the use of choke holds or other
22 physical maneuvers to restrict a person's ability to breathe for
23 purpose of incapacitation, unless the officer is justified in using
24 deadly force against the person.

25 (c) For purposes of Subsection (b)(1), on request, the Texas
26 Commission on Law Enforcement shall provide information to the
27 governor's office regarding reporting of incidents of misconduct by

1 a law enforcement agency.

2 SECTION 4. Subchapter D, Chapter 1701, Occupations Code, is
3 amended by adding Sections 1701.165, 1701.166, and 1701.167 to read
4 as follows:

5 Sec. 1701.165. ADVISORY COMMITTEE ON LAW ENFORCEMENT AGENCY
6 CREDENTIALING ENTITIES. (a) The commission shall establish an
7 advisory committee to advise the commission regarding law
8 enforcement agency credentialing entities.

9 (b) The advisory committee must include representatives of:

10 (1) municipal and county law enforcement agencies,
11 including agencies of varying size and from different areas of this
12 state;

13 (2) the Department of Public Safety;

14 (3) the Texas Department of Criminal Justice; and

15 (4) entities that operate correctional facilities
16 under contract with a county or the Texas Department of Criminal
17 Justice.

18 (c) The advisory committee shall review entities that
19 provide credentialing to law enforcement agencies and shall
20 identify credentialing entities that, at a minimum, establish
21 standards and processes for reviewing adherence to the standards in
22 the following aspects of a law enforcement agency's operations:

23 (1) policies and training regarding use of force and
24 de-escalation techniques;

25 (2) performance management tools;

26 (3) procedures to ensure prompt identification of
27 peace officers requiring intervention; and

1 (4) best practices regarding community engagement.

2 (d) The commission shall designate, for purposes of
3 certifying that the policies of a law enforcement agency comply
4 with the requirements of Section 772.0055(b)(2), Government Code,
5 one or more of the credentialing entities identified by the
6 advisory committee under Subsection (c).

7 Sec. 1701.166. COORDINATED RESPONSE PROGRAM MODEL POLICY.

8 (a) In this section, "coordinated response program" means a
9 program operated by a law enforcement agency in which a peace
10 officer and a mental health professional jointly respond to a
11 report of an alleged offense or other incident involving a person
12 with a mental impairment, suffering from homelessness, or
13 experiencing similar circumstances.

14 (b) The commission, in consultation with the Health and
15 Human Services Commission and state and local law enforcement
16 agencies, shall develop and make available to all law enforcement
17 agencies in this state a model policy and associated training
18 materials regarding the operation of a coordinated response
19 program.

20 (c) In developing the model policy, the commission shall:

21 (1) survey coordinated response programs implemented
22 in this state or another state; and

23 (2) consider the creation of specialized training
24 programs for officers and mental health professionals
25 participating in a coordinated response program.

26 Sec. 1701.167. CERTAIN MODEL POLICIES. (a) In this
27 section, "no-knock entry" has the meaning assigned by Article

1 2.1308, Code of Criminal Procedure.

2 (b) The commission, in consultation with the Bill Blackwood
3 Law Enforcement Management Institute of Texas and any other
4 interested parties selected by the commission, shall develop and
5 make available to all law enforcement agencies in this state model
6 policies and associated training materials regarding:

7 (1) the issuance of citations for misdemeanor
8 offenses, including traffic offenses, that are punishable by fine
9 only;

10 (2) the use of a no-knock entry by a peace officer;

11 (3) the intervention by a peace officer to stop or
12 prevent another peace officer from using excessive force against a
13 person suspected of committing an offense;

14 (4) the prohibition on the use of a choke hold, carotid
15 artery hold, or similar neck restraint by a peace officer, unless
16 the officer reasonably believes the restraint is necessary to
17 prevent serious bodily injury to or the death of the peace officer
18 or another person; and

19 (5) the duty of a peace officer acting in an official
20 capacity to render aid to a person who has suffered serious bodily
21 injury from the use of force, unless the officer reasonably
22 believes the provision of aid is likely to cause serious bodily
23 injury to or the death of the peace officer or another person.

24 SECTION 5. Section [1701.451\(c\)](#), Occupations Code, is
25 amended to read as follows:

26 (c) If the commission receives from a law enforcement agency
27 a request that complies with Subsections (a)(1) and (b), the

1 commission [~~employee having the responsibility to maintain any~~
2 ~~employment termination report regarding the person who is the~~
3 ~~subject of the request~~] shall release the report to the agency.

4 SECTION 6. Sections 1701.452(a), (b), (d), and (g),
5 Occupations Code, are amended to read as follows:

6 (a) The head of a law enforcement agency or the head's
7 designee shall submit a report to the commission on a form
8 prescribed by the commission regarding a person licensed under this
9 chapter [~~who resigns or retires from employment with the law~~
10 ~~enforcement agency, whose appointment with the law enforcement~~
11 ~~agency is terminated, or~~] who separates from the law enforcement
12 agency for any [~~other~~] reason. The report must be submitted by the
13 head or the designee not later than the seventh business day after
14 the date the license holder:

15 (1) [~~resigns, retires, is terminated, or~~] separates
16 from the agency; and

17 (2) exhausts all administrative appeals available to
18 the license holder, if applicable.

19 (b) The head of a law enforcement agency or the head's
20 designee shall indicate [~~include~~] in the report required under
21 Subsection (a) [~~a statement on~~] whether the license holder was
22 eligible for an honorable discharge or suspected of misconduct,
23 regardless of whether the license holder was terminated for
24 misconduct [~~honorably discharged, generally discharged, or~~
25 ~~dishonorably discharged and, as required by the commission, an~~
26 ~~explanation of the circumstances under which the person resigned,~~
27 ~~retired, or was terminated~~]. For purposes of this subsection:

1 (1) "Honorable discharge" [~~"Honorably discharged"~~]
2 means the discharge of a license holder who, while in good standing
3 and not under suspicion of committing misconduct, is [~~because of~~
4 ~~pending or final disciplinary actions or a documented performance~~
5 ~~problem, retired, resigned, or~~] separated from employment with or
6 died while employed by a law enforcement agency.

7 (2) "Misconduct" includes conduct by a license holder
8 that is criminal conduct, regardless of whether the license holder
9 was arrested for, charged with, or convicted of an offense
10 [~~"Generally discharged" means a license holder who:~~

11 [~~(A) was terminated by, retired or resigned from,~~
12 ~~or died while in the employ of a law enforcement agency and the~~
13 ~~separation was related to a disciplinary investigation of conduct~~
14 ~~that is not included in the definition of dishonorably discharged,~~
15 ~~or~~

16 [~~(B) was terminated by or retired or resigned~~
17 ~~from a law enforcement agency and the separation was for a~~
18 ~~documented performance problem and was not because of a reduction~~
19 ~~in workforce or an at-will employment decision].~~

20 [~~(3) "Dishonorably discharged" means a license holder~~
21 ~~who:~~

22 [~~(A) was terminated by a law enforcement agency~~
23 ~~or retired or resigned in lieu of termination by the agency in~~
24 ~~relation to allegations of criminal misconduct, or~~

25 [~~(B) was terminated by a law enforcement agency~~
26 ~~or retired or resigned in lieu of termination by the agency for~~
27 ~~insubordination or untruthfulness.]~~

1 (d) The head of the law enforcement agency from which a
2 license holder [~~resigns, retires, is terminated, or~~] separates for
3 reasons other than death, or the head's designee, shall provide to
4 the license holder a copy of the report. The report must be provided
5 to the license holder not later than the seventh business day after
6 the date the license holder:

7 (1) [~~resigns, retires, is terminated, or~~] separates
8 from the agency; and

9 (2) exhausts all administrative appeals available to
10 the license holder, if applicable.

11 (g) The head of a law enforcement agency or the head's
12 designee must submit a report under this section each time a person
13 licensed under this chapter [~~resigns, retires, is terminated, or~~]
14 separates for any [~~other~~] reason from the agency. The report is an
15 official government document.

16 SECTION 7. Sections 1701.4525(a), (d), and (e), Occupations
17 Code, are amended to read as follows:

18 (a) A person who is the subject of an employment termination
19 report maintained by the commission under this subchapter may
20 contest an indication under Section 1701.452(b) that the person was
21 suspected of misconduct [~~information~~] contained in the report by
22 submitting to the law enforcement agency and to the commission a
23 written petition on a form prescribed by the commission for a
24 correction of the report not later than the 30th day after the date
25 the person receives a copy of the report. On receipt of the
26 petition, the commission shall refer the petition to the State
27 Office of Administrative Hearings.

1 (d) A proceeding to contest an indication of misconduct
2 [~~information~~] in an employment termination report is a contested
3 case under Chapter 2001, Government Code.

4 (e) In a proceeding to contest an indication of misconduct
5 [~~information~~] in an employment termination report [~~for a report~~
6 ~~based on alleged misconduct~~], an administrative law judge shall
7 determine if the alleged misconduct occurred by a preponderance of
8 the evidence regardless of whether the person who is the subject of
9 the report was terminated for the misconduct [~~or the person~~
10 ~~resigned, retired, or separated in lieu of termination~~]. If the
11 alleged misconduct is not supported by a preponderance of the
12 evidence, the administrative law judge shall order the commission
13 to change the report. The commission shall send the changed report
14 to the law enforcement agency that prepared the original employment
15 termination report. The law enforcement agency shall replace the
16 original employment termination report with the changed report.

17 SECTION 8. Section 1701.456(b), Occupations Code, is
18 amended to read as follows:

19 (b) A law enforcement agency, agency head, or other law
20 enforcement official is not liable for civil damages for:

21 (1) a report made by that agency or person if the
22 report is made in good faith; or

23 (2) making a person's employment records available to
24 a hiring law enforcement agency under Section 1701.451(a-1).

25 SECTION 9. Subchapter J, Chapter 1701, Occupations Code, is
26 amended by adding Section 1701.459 to read as follows:

27 Sec. 1701.459. CERTAIN AGREEMENTS RELATED TO EMPLOYMENT

1 RECORDS PROHIBITED. A person licensed under this chapter may not
2 enter into an agreement with a law enforcement agency employing the
3 person under which the agency is prohibited from making the
4 person's employment records available to another law enforcement
5 agency under Section 1701.451(a-1).

6 SECTION 10. Section 1701.501(a), Occupations Code, is
7 amended to read as follows:

8 (a) Except as provided by Subsection (d), the commission
9 shall revoke or suspend a license, place on probation a person whose
10 license has been suspended, or reprimand a license holder if the
11 license holder has:

12 (1) engaged in conduct constituting a felony or a
13 Class A or B misdemeanor; or

14 (2) violated [~~for a violation of~~]:

15 (A) [~~(1)~~] this chapter;

16 (B) [~~(2)~~] the reporting requirements provided by
17 Articles 2.132 and 2.134, Code of Criminal Procedure; or

18 (C) [~~(3)~~] a commission rule.

19 SECTION 11. The following provisions of the Occupations
20 Code are repealed:

21 (1) Section 1701.452(c);

22 (2) Section 1701.4521; and

23 (3) Section 1701.454.

24 SECTION 12. Section 772.0055, Government Code, as added by
25 this Act, applies only to a grant awarded by the office of the
26 governor on or after September 1, 2022. A grant awarded before
27 September 1, 2022, is governed by the law in effect immediately

1 before the effective date of this Act, and the former law is
2 continued in effect for that purpose.

3 SECTION 13. Not later than the 180th day after the date the
4 Texas Commission on Law Enforcement makes available the model
5 policies required by Section 1701.167, Occupations Code, as added
6 by this Act, each law enforcement agency shall adopt the policies
7 required by Article 2.1308, Code of Criminal Procedure, as added by
8 this Act.

9 SECTION 14. (a) Not later than June 1, 2022, the Texas
10 Commission on Law Enforcement shall:

11 (1) adopt the rules required by Article 2.1397, Code
12 of Criminal Procedure, as added by this Act;

13 (2) publish on the commission's Internet website the
14 first report required by Article 2.1397(g), Code of Criminal
15 Procedure, as added by this Act;

16 (3) establish the advisory committee required by
17 Section 1701.165, Occupations Code, as added by this Act; and

18 (4) develop and make available the model policies and
19 associated training materials required by Sections 1701.166 and
20 1701.167, Occupations Code, as added by this Act.

21 (b) Not later than June 1, 2022, the Texas Commission on Law
22 Enforcement shall designate one or more credentialing entities as
23 required by Section 1701.165, Occupations Code, as added by this
24 Act.

25 SECTION 15. Not later than December 1, 2021, the Texas
26 Commission on Law Enforcement shall update the form for an
27 employment termination report as necessary to comply with Section

1 1701.452, Occupations Code, as amended by this Act.

2 SECTION 16. The changes in law made by this Act to
3 Subchapter J, Chapter 1701, Occupations Code, apply only to a
4 report required to be submitted under Section 1701.452, Occupations
5 Code, as amended by this Act, regarding a separation of a license
6 holder that occurs on or after December 1, 2021. A separation that
7 occurs before December 1, 2021, is governed by the law in effect
8 immediately before the effective date of this Act, and the former
9 law is continued in effect for that purpose.

10 SECTION 17. Section 1701.501(a), Occupations Code, as
11 amended by this Act, applies only to conduct that occurs on or after
12 the effective date of this Act. Conduct that occurs before the
13 effective date of this Act is governed by the law in effect on the
14 date the conduct occurred, and the former law is continued in effect
15 for that purpose.

16 SECTION 18. This Act takes effect September 1, 2021.