

BILL ANALYSIS

C.S.H.B. 30
By: Moody
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Several decades ago, the Texas Legislature created an exception to the public availability requirement under state public information law for information related to criminal cases that did not result in a conviction or deferred adjudication. This was a measure intended to protect innocent targets of investigations but has been increasingly used as a loophole in "dead suspects" cases such as police shootings and in-custody deaths which cannot by definition result in a disposition in court. C.S.H.B. 30 seeks to close this "dead suspects" loophole.

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. 30 amends the Government Code to provide the following with respect to the provisions of state public information law establishing exceptions to that law's public availability requirement for certain law enforcement, corrections, and prosecutorial information:

- the exception for information held by a law enforcement agency or prosecutor that deals with the detention, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication, as well as the exception for an internal record or notation maintained for internal use that relates to law enforcement matters only in relation to such an investigation, do not apply to information, records, or notations under the following circumstances:
 - if a person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or
 - if each person who is described by or depicted in the information, record, or notation consents to the release of the information, record, or notation;
- the provisions do not except from the public availability requirement a letter, memorandum, or document regarding a police officer's alleged misconduct in the officer's personnel file under the following circumstances:
 - if a person who is described by or depicted in the letter, memorandum, or document, other than the police officer, is deceased or incapacitated; or
 - if each person who is described by or depicted in the letter, memorandum, or document consents to its release; and
- a governmental body that releases information, records, or notations to a family member of a deceased or incapacitated person who is described by or depicted in that information, record, or notation is not considered to have voluntarily made that information available

to the public and does not waive the ability to assert in the future that the information is excepted from required disclosure under the law.

C.S.H.B. 30 amends the Local Government Code to make a conforming change.

C.S.H.B. 30 applies to information, records, notations, letters, memoranda, and documents collected, made, assembled, or maintained before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 30 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the following provisions that were in the introduced:

- a provision requiring the attorney general's office to establish and maintain on its website a database containing reports submitted to the office regarding officer-involved injury or death and regarding instances in which a peace officer, while performing an official duty, is injured or killed due to the discharging of a firearm by a person who is not a peace officer;
- a provision including the following among the personnel records of a commissioned officer of the Department of Public Safety (DPS) that are subject to disclosure under state public information law:
 - a report made by the officer concerning the use of force or firearms by the officer or witnessed by the officer, as well as any log or database tracking or compiling those reports by one or more officers regardless of whether the officer making the report is identified; and
 - a report made by an officer concerning physical or property damage caused by a DPS vehicle, as well as any log or database tracking or compiling those incidents or reports;
- a provision revising the exception to the public availability requirement under state public information law for certain law enforcement, corrections, and prosecutorial information to exclude basic information about a criminal investigation and basic information contained in the following:
 - a search warrant;
 - testimony, an affidavit, or other information used to support a finding of probable cause to execute a search warrant;
 - an arrest warrant, an arrest report, an incident report, or an accident report;
 - a mug shot; or
 - a report relating to an officer-involved shooting;
 - a report relating to an incident involving the discharge of a firearm by a peace officer, including the unintentional discharge of a firearm in the course of duty or in response to a call, regardless of whether a person is hit by gunfire or an allegation of misconduct is made;
 - a report relating to a peace officer's use of force resulting in death or serious bodily injury; or
 - a report related to the death or serious bodily injury of an arrestee or detainee while the person is in the custodial care of a law enforcement agency;
- provisions establishing a right under state public information law to access video recordings of critical law enforcement incidents, including provisions that do the following:

- establish what constitutes a "critical incident" for this purpose and the video recordings to which the right applies;
- require a law enforcement agency, not later than the 60th day after the date an incident occurs, to make public any applicable video recordings in the agency's possession involving the incident;
- require a law enforcement agency, not later than 60th day after the date an incident occurs, to begin providing copies of the video recording to persons who request a copy or, if the agency determines the video recording cannot be released, to begin providing certain notification not later than the 45th day after the date the incident occurs;
- establish that the exemption from required disclosure under state public information law for certain law enforcement, corrections, and prosecutorial information does not apply to an applicable video recording in a law enforcement agency's possession;
- provide for the authority of a law enforcement agency to withhold an applicable video recording under certain conditions and to redact or edit the video recording for certain privacy concerns;
- authorize a law enforcement agency to delay the release of an applicable video recording to protect certain individuals, proceedings, sources, or constitutional rights and provide for related notification procedures, which must begin not later than the 45th day after the date the incident occurs; and
- require a law enforcement agency to make a reasonable attempt to notify and consult with certain individuals or offices not later than 48 hours before the time the agency releases an applicable video recording;
- a provision replacing the authorization for a fire or police department to maintain a personnel file on a fire fighter or police officer employed by the department for the department's internal use with an authorization for the department to maintain a personnel file on such an employee to store sensitive personal information;
- a provision requiring a fire or police department to disclose law enforcement disciplinary record information reasonably necessary to identify an allegation against a fire fighter or police officer that resulted in a sustained finding of misconduct;
- a provision requiring that, for purposes of the state's body worn camera program, a peace officer's body worn camera be capable of recording, or transmitting to be recorded remotely, video and audio simultaneously, rather than only having to record or transmit either video or audio as is the current law; and
- provisions that, with respect to information recorded by a body worn camera:
 - repealed the prohibition against a law enforcement agency releasing any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a fine-only misdemeanor that does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative;
 - established that, for purposes of state public information law, information recorded by a body worn camera is considered to be a video representation held in computer memory, thus including the information among the general forms in which media containing public information exist;
 - removed the requirement for a member of the public to provide certain information about the information recorded by a body worn camera when submitting a written request for the recorded information; and
 - required a law enforcement agency to treat a written request for information recorded by a body worn camera as a request for public information under state public information law.

The substitute revises provisions in the introduced relating to the release of certain types of information if a person who is a subject of the information is deceased or incapacitated or if each person who is the subject of the information consents to its release by replacing references

to "subject of" with references to "described by or depicted in." The substitute further revises the provision in the introduced relating to the release under such circumstances of a letter, memorandum, or document regarding a peace officer's alleged misconduct in the officer's personnel file to replace the references to "peace officer" with references to "police officer."