

By: Harris of Anderson

H.B. No. 799

A BILL TO BE ENTITLED

AN ACT

relating to a limitation on the use of certain unsubstantiated information relating to peace officer misconduct.

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

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1398 to read as follows:

Art. 2.1398. LIMITATION ON USE OF CERTAIN UNSUBSTANTIATED INFORMATION RELATING TO PEACE OFFICER MISCONDUCT. (a) In this article:

(1) "Attorney representing the state" means an attorney authorized by law to represent the state in a criminal case, including a district attorney, criminal district attorney, county attorney with criminal jurisdiction, or city or municipal attorney.

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

(b) A law enforcement agency may not disclose to an attorney representing the state information relating to misconduct by a peace officer who is or will serve as a witness in a criminal proceeding unless the allegation of misconduct has been finally adjudicated as sustained.

(c) When evaluating the credibility of a peace officer who is serving or will serve as a witness in a criminal proceeding, the

1 attorney representing the state may not consider an allegation of
2 misconduct by the peace officer that has not been finally
3 adjudicated as sustained.

4 (d) For purposes of this article, an allegation of
5 misconduct by a peace officer is not considered finally adjudicated
6 as sustained if the allegation is currently under appeal through an
7 administrative process or judicial proceeding and the finder of
8 fact has not yet issued a finding.

9 (e) A peace officer who is the subject of a report of
10 misconduct submitted to an attorney representing the state by a law
11 enforcement agency or who has been notified of a determination by
12 the attorney representing the state that the officer is not
13 considered credible to testify in a criminal proceeding as a result
14 of an allegation of misconduct may dispute that report or
15 determination by filing a petition with the State Office of
16 Administrative Hearings. The attorney representing the state shall
17 provide specific details of the allegation to the peace officer for
18 purposes of a dispute made under this subsection. Notwithstanding
19 any other law, the State Office of Administrative Hearings shall
20 conduct a contested case hearing in accordance with Chapter 2001,
21 Government Code, for the petition.

22 (f) In a contested case under Subsection (e), an
23 administrative law judge employed by the State Office of
24 Administrative Hearings shall determine by a preponderance of the
25 evidence whether the alleged misconduct occurred regardless of
26 whether the applicable officer was terminated or whether that
27 officer resigned, retired, or separated in lieu of termination. If

1 the allegation of misconduct is not supported by a preponderance of
2 the evidence, the administrative law judge shall provide notice of
3 the finding to any attorney representing the state the petitioner
4 identifies as having received a report or as having made a
5 determination as described by Subsection (e). The attorney
6 representing the state may not consider the allegation of
7 misconduct when evaluating the peace officer's credibility as a
8 witness.

9 SECTION 2. This Act takes effect September 1, 2023.