

By: Eckhardt

S.B. No. 218

A BILL TO BE ENTITLED

AN ACT

relating to the grounds for disciplinary action against peace officers and the use of body worn cameras by peace officers.

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

SECTION 1. Subchapter K, Chapter 1701, Occupations Code, is amended by adding Section 1701.5015 to read as follows:

Sec. 1701.5015. CERTAIN GROUNDS FOR DISCIPLINE OF PEACE OFFICER. (a) The commission by rule shall establish grounds under which the commission shall suspend or revoke a peace officer license on a determination by the commission that the license holder's continued performance of duties as a peace officer constitutes a threat to the public welfare.

(b) The grounds under Subsection (a) must include:

(1) lack of competence in performing the license holder's duties as a peace officer;

(2) illegal drug use or an addiction that substantially impairs the license holder's ability to perform the license holder's duties as a peace officer;

(3) lack of truthfulness in court proceedings or other governmental operations, including:

(A) making a false statement in an offense report or other report as part of an investigation, unless the false statement is recanted not later than the 10th day after the date the false statement is made;

1 (B) making a false statement to obtain employment
2 as a peace officer;

3 (C) making a false entry in court records or
4 tampering with evidence, including:

5 (i) damaging, disabling, or obstructing the
6 video or audio capabilities of or otherwise impairing the
7 functionality of a body worn camera, as defined by Section
8 1701.651; or

9 (ii) damaging, deleting, or failing to
10 properly store or maintain any portion of the video or audio from a
11 recording made by the camera; or

12 (D) engaging in conduct designed to impair the
13 results or procedure of an examination or testing process
14 associated with obtaining employment as a peace officer or a
15 promotion to a higher rank;

16 (4) failure to follow the directives of a supervising
17 officer or to follow the policies of the employing law enforcement
18 agency;

19 (5) discriminatory conduct, including engaging in a
20 course of conduct or a single egregious act, based on the race,
21 color, religion, sex, pregnancy, national origin, age, disability,
22 or sexual orientation of another that would cause a reasonable
23 person to believe that the license holder is unable to perform the
24 license holder's duties as a peace officer in a fair manner; or

25 (6) conduct indicating a pattern of:

26 (A) excessive use of force;

27 (B) abuse of official capacity;

1 (C) inappropriate relationships with persons in
2 the custody of the license holder;

3 (D) sexual harassment or sexual misconduct while
4 performing the license holder's duties as a peace officer; or

5 (E) misuse of information obtained as a result of
6 the license holder's employment as a peace officer and related to
7 the enforcement of criminal offenses.

8 (c) In making a determination under Subsection (a), the
9 commission may not consider whether the license holder is
10 prosecuted for or convicted of an offense based on the conduct that
11 is the ground for suspension or revocation.

12 SECTION 2. Sections 1701.655(b) and (c-1), Occupations
13 Code, are amended to read as follows:

14 (b) A policy described by Subsection (a) must ensure that a
15 body worn camera is activated only for a law enforcement purpose and
16 must include:

17 (1) guidelines for when a peace officer should
18 activate a camera or discontinue a recording currently in progress,
19 considering the need for privacy in certain situations and at
20 certain locations;

21 (2) provisions relating to data retention, including a
22 provision requiring the retention of video for a minimum period of
23 90 days;

24 (3) provisions relating to storage of video and audio,
25 creation of backup copies of the video and audio, and maintenance of
26 data security;

27 (4) provisions relating to the collection of a body

1 worn camera, including the applicable video and audio recorded by
2 the camera, as evidence;

3 (5) guidelines for public access, through open records
4 requests, to recordings that are public information;

5 (6) provisions:

6 (A) entitling an officer to access, watch,
7 examine, or otherwise review any recording of an incident involving
8 the officer before the officer is required to make a statement about
9 the incident; and

10 (B) prohibiting the officer or employing agency
11 from modifying the recording in any manner;

12 (7) procedures for supervisory or internal review; and

13 (8) the handling and documenting of equipment and
14 malfunctions of equipment.

15 (c-1) A policy described by Subsection (a) must require a
16 peace officer who is equipped with a body worn camera and actively
17 participating in an investigation to keep the camera activated for
18 the entirety of the officer's active participation in the
19 investigation [~~unless the camera has been deactivated in compliance~~
20 ~~with that policy~~].

21 SECTION 3. Section 1701.660, Occupations Code, is amended
22 to read as follows:

23 Sec. 1701.660. RECORDINGS AS EVIDENCE. (a) A [~~Except as~~
24 ~~provided by Subsections (a-1) and (b), a~~] recording created with a
25 body worn camera and documenting an incident that involves the use
26 of deadly force by a peace officer or that is otherwise related to
27 an administrative or criminal investigation of an officer may not

1 be deleted or ~~[,]~~ destroyed ~~[, or released to the public]~~ until all
2 criminal matters have been finally adjudicated and all related
3 administrative investigations have concluded.

4 (a-1) A law enforcement agency shall ~~[may]~~ permit a person
5 who is depicted in a recording of an incident described by
6 Subsection (a) or, if the person is deceased, the person's
7 authorized representative, to view the recording, on request of the
8 applicable person, provided that ~~[the law enforcement agency~~
9 ~~determines that the viewing furthers a law enforcement purpose and~~
10 ~~provided that]~~ any authorized representative who is permitted to
11 view the recording was not a witness to the incident. ~~[A person~~
12 ~~viewing a recording may not duplicate the recording or capture~~
13 ~~video or audio from the recording.]~~ A permitted viewing of a
14 recording under this subsection is not considered to be a release of
15 public information for purposes of Chapter 552, Government Code.

16 (b) A law enforcement agency shall adopt a policy for
17 releasing ~~[may release]~~ to the public a recording described by
18 Subsection (a) that prioritizes access to the recording in the
19 following order:

20 (1) the civilian oversight system associated with the
21 law enforcement agency, if any;

22 (2) the officer who used deadly force or is under
23 investigation and the individual who is the subject of the
24 recording, or if the individual is deceased, the individual's
25 authorized representative, and any attorney representing the
26 officer, individual, or representative described in this
27 subdivision; and

1 (3) the public [~~if the law enforcement agency~~
2 ~~determines that the release furthers a law enforcement purpose~~].

3 ~~[(c) This section does not affect the authority of a law~~
4 ~~enforcement agency to withhold under Section 552.108, Government~~
5 ~~Code, information related to a closed criminal investigation that~~
6 ~~did not result in a conviction or a grant of deferred adjudication~~
7 ~~community supervision.]~~

8 SECTION 4. Subchapter N, Chapter 1701, Occupations Code, is
9 amended by adding Sections 1701.6601 and 1701.6602 to read as
10 follows:

11 Sec. 1701.6601. INADMISSIBILITY OF CERTAIN EVIDENCE
12 RELATED TO BODY WORN CAMERAS: UNRECORDED STATEMENTS. (a) In this
13 section, with respect to a body worn camera, "tampering" includes:

14 (1) damaging, disabling, or obstructing the video or
15 audio capabilities of or otherwise impairing the functionality of a
16 body worn camera; or

17 (2) damaging, deleting, or failing to properly store
18 or maintain any portion of the video or audio from a recording made
19 by the camera.

20 (b) Any statement sought to be introduced in a judicial or
21 administrative proceeding by a peace officer's testimony is
22 presumed inadmissible if the statement relates to an incident that
23 was not recorded or is not otherwise accessible through a recording
24 because of the peace officer's:

25 (1) failure to activate or keep activated a body worn
26 camera as required by a policy described by Section 1701.655; or

27 (2) tampering with the body worn camera or recording.

1 (c) A party in the proceeding may rebut the presumption
2 described by Subsection (b) by showing that:

3 (1) the peace officer's failure to activate or keep
4 activated the body worn camera was attributable to a malfunction or
5 other technical error and was not caused by the peace officer or
6 another person employed by the peace officer's employing agency; or

7 (2) the statement sought to be introduced is against
8 the interest of the peace officer.

9 Sec. 1701.6602. INADMISSIBILITY OF CERTAIN EVIDENCE
10 RELATED TO BODY WORN CAMERAS: OFFICER'S PERSONAL INFORMATION.
11 Information described by Section 552.1175(b), Government Code,
12 that relates to a peace officer and is contained in a recording made
13 by a body worn camera is presumed inadmissible as irrelevant in a
14 judicial or administrative proceeding.

15 SECTION 5. Not later than January 1, 2024, the Texas
16 Commission on Law Enforcement shall adopt the rules required by
17 Section 1701.5015, Occupations Code, as added by this Act.

18 SECTION 6. Section 1701.5015, Occupations Code, as added by
19 this Act, applies only to conduct that occurs on or after January 1,
20 2024. Conduct that occurs before January 1, 2024, is governed by
21 the law in effect immediately before the effective date of this Act,
22 and the former law is continued in effect for that purpose.

23 SECTION 7. Sections 1701.6601 and 1701.6602, Occupations
24 Code, as added by this Act, apply only to a judicial or
25 administrative proceeding that commences on or after the effective
26 date of this Act. A proceeding that commences before the effective
27 date of this Act is governed by the law in effect on the date the

1 proceeding commenced, and the former law is continued in effect for
2 that purpose.

3 SECTION 8. This Act takes effect September 1, 2023.