

BILL ANALYSIS

C.S.H.B. 1396
By: White
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the aftermath of the tragic deaths of George Floyd, Breonna Taylor, Sandra Bland, and many others, there have been calls to address instances where law enforcement officers have misused their authority and lost the trust of citizens. State law currently lacks adequate procedures and accountability tools to ensure that safety and trust are maintained between law enforcement officers and the general public. C.S.H.B. 1396 is an omnibus law enforcement reform measure modeled in part after the concepts put forward in the executive order "Safe Policing for Safe Communities" issued by then-President Trump in 2020.

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 rulemaking authority is expressly granted to the Texas Commission on Law Enforcement in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 1396 sets out provisions regulating law enforcement agencies and policies and procedures affecting peace officers.

Peace Officer Misconduct

C.S.H.B. 1396 amends the Code of Criminal Procedure to require the Texas Commission on Law Enforcement (TCOLE) by rule to require each law enforcement agency to report the following to TCOLE:

- each substantiated incident of misconduct by a peace officer the agency employs, including the following:
 - a conviction for a criminal offense committed in the course of performing the officer's duties;
 - the use of excessive force against a person suspected of committing an offense;
 - conduct that constitutes a felony or a Class A or B misdemeanor, regardless of whether the criminal offense is prosecuted;
 - sexual harassment involving physical contact or misuse of official capacity;
 - the misuse of official capacity or misappropriation of property;
 - an unprofessional relationship with a person arrested, detained, or otherwise in the custody of the peace officer or the law enforcement agency;
 - any false statements made by the officer in obtaining employment with the law enforcement agency;
 - tampering with or fabricating physical evidence of a criminal offense; or

- tampering with a governmental record; and
- for each substantiated incident of misconduct, whether it terminated or took disciplinary action against the officer or permitted the officer to retire or resign in lieu of termination for the misconduct.

The bill requires TCOLE to adopt the rules not later than June 1, 2022, and requires the adopted rules to provide for the manner in which the report is to be submitted, including prescribing a form for use in reporting information.

C.S.H.B. 1396 requires TCOLE to make the information reported to TCOLE accessible by all law enforcement agencies in Texas. TCOLE may make reported information regarding an incident of misconduct available to a federal law enforcement agency that is investigating the incident. The bill makes information submitted to TCOLE confidential and exempts the information from disclosure under state public information law.

C.S.H.B. 1396 requires TCOLE, as soon as practicable after each regularly scheduled TCOLE meeting, to make available on its website a report regarding incidents of misconduct reported since the previous report of incidents. The bill sets out certain information the report must include. The first report must be published not later than June 1, 2022.

Advisory Committee on Law Enforcement Agency Credentialing Entities

C.S.H.B. 1396 amends the Occupations Code to require TCOLE to establish an advisory committee not later than June 1, 2022, to advise TCOLE regarding law enforcement agency credentialing entities. The bill sets out provisions relating to the advisory committee's composition and provides the following:

- the committee must review entities that provide credentialing to law enforcement agencies and identify credentialing entities that, at a minimum, establish standards and processes for reviewing adherence to the standards in certain specified aspects of a law enforcement agency's operations; and
- TCOLE must designate, not later than June 1, 2022, one or more of the credentialing entities identified by the committee for purposes of certifying that a law enforcement agency's policies comply with certain certification requirements regarding the agency's use of force policies established under the bill's provisions.

Coordinated Response Program Model Policy

C.S.H.B. 1396 requires TCOLE, not later than June 1, 2022, and in consultation with the Health and Human Services Commission and state and local law enforcement agencies, to develop and make available to all law enforcement agencies in Texas a model policy and associated training materials regarding the operation of a coordinated response program operated by a law enforcement agency in which a peace officer and a mental health professional jointly respond to a report of an alleged offense or other incident involving a person with a mental impairment, suffering from homelessness, or experiencing similar circumstances. In developing the model policy, TCOLE must do the following:

- survey coordinated response programs implemented in Texas or another state; and
- consider the creation of specialized training programs for officers and mental health professionals participating in a coordinated response program.

Model Policies on Certain Police Conduct

C.S.H.B. 1396 requires TCOLE, not later than June 1, 2022, and in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas and any other interested parties selected by TCOLE, to develop and make available to all law enforcement agencies in Texas model policies and associated training materials regarding the following:

- the issuance of citations for fine-only misdemeanor offenses, including traffic offenses;
- the use of a no-knock entry by a peace officer;

- the intervention by a peace officer to stop or prevent another peace officer from using excessive force against a person suspected of committing an offense;
- the prohibition on the use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person; and
- the duty of a peace officer acting in an official capacity to render aid to a person who has suffered serious bodily injury from the use of force, unless the officer reasonably believes the provision of aid is likely to cause serious bodily injury to or the death of the peace officer or another person.

Required Policies

C.S.H.B. 1396 amends the Code of Criminal Procedure to require each law enforcement agency in Texas, in consultation with judges, prosecutors, commissioners courts, municipal governing bodies, and resident located within the agency's jurisdiction, to adopt written policies regarding the following:

- the issuance of citations for fine-only misdemeanor offenses, including traffic offenses;
- the use of a no-knock entry by a peace officer of the law enforcement agency; and
- the intervention by a peace officer of the agency to stop or prevent another peace officer from using excessive force against a person suspected of committing an offense.

"No-knock entry" is defined by the bill as 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. The bill requires an adopted policy to be approved by a district judge or the judge of a county court at law in the jurisdiction served by the law enforcement agency and ensure judicial efficiency, law enforcement efficiency and effectiveness, and community safety. In addition to the content requirements for the policy, the policy must also provide a procedure for a peace officer, on a person's presentation of appropriate identification, to verify the person's identity and issue a citation to the person and comply with requirements to take an offender before a magistrate or issue a notice to appear, as applicable.

C.S.H.B. 1396 requires each agency to adopt these policies not later than the 180th day after TCOLE makes the model policies on police conduct available.

Grant Eligibility

C.S.H.B. 1396 amends the Government Code to condition a law enforcement agency's eligibility to receive a grant or other discretionary funding by the governor on the agency doing the following:

- consistently reporting incidents of misconduct to TCOLE as required under the bill's provisions; and
- maintaining a current certification, issued by a credentialing entity designated under the bill's provisions, certifying that the agency's policies regarding use of force by peace officers comply with all applicable laws and prohibit the use of choke holds or other physical maneuvers to restrict a person's ability to breathe for purpose of incapacitation unless the officer is justified in using deadly force against the person.

The bill requires TCOLE, on request, to provide information to the governor's office regarding reporting of incidents of misconduct by a law enforcement agency for purposes of determining that eligibility. These provisions apply only to a grant awarded on or after September 1, 2022.

Employment Records

C.S.H.B. 1396 amends the Occupations Code to revise the required contents of a law enforcement employment termination report. The bill removes the requirement for the report to state whether the law enforcement officer separating from employment was honorably discharged, generally discharged, or dishonorably discharged and, as required by TCOLE, an explanation of the circumstances under which the officer resigned, retired, or was terminated.

The bill requires that the report instead indicate either whether the officer was eligible for an honorable discharge or was suspected of misconduct, regardless of whether the officer was terminated for misconduct. The bill limits the information in a termination report that may be contested to an indication of suspected misconduct. The bill requires TCOLE to update the form for an employment termination report as necessary to comply with the revised content requirements not later than December 1, 2021, and provides that these provisions apply only to a report required regarding a separation that occurs on or after that date. The bill specifies that "misconduct" includes conduct that is criminal, regardless of whether the officer was arrested for, charged with, or convicted of an offense and redefines "honorable discharge" to mean the officer was discharged while in good standing and not under suspicion of committed misconduct when separated from employment with or dying while employed by a law enforcement agency. The bill repeals a provision authorizing TCOLE to further specify the circumstances that constitute the different types of discharge. The bill requires the head of a law enforcement agency, or the head's designee, to submit a report each time an officer separates for any reason from the agency.

C.S.H.B. 1396 exempts a law enforcement agency, agency head, or other law enforcement official from liability for civil damages for making an officer's employment records available to a hiring law enforcement agency. The bill prohibits an officer from entering into an agreement with a law enforcement agency employing the person under which the agency is prohibited from making the person's employment records available to a hiring law enforcement agency and repeals provisions making information submitted to TCOLE as part of an officer's employment records confidential and excepted from disclosure under state public information law.

Disciplinary Action

C.S.H.B. 1396 includes engaging in conduct constituting a felony or a Class A or B misdemeanor offense among the circumstances under which TCOLE is required to revoke or suspend a law enforcement officer's license, place the officer on probation, or reprimand the officer. The bill repeals a provision setting out conditions for revoking and reinstating an officer's license due to a dishonorable discharge.

Repealers

C.S.H.B. 1396 repeals the following provisions of the Occupations Code:

- Section 1701.452(c);
- Section 1701.4521; and
- Section 1701.454.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1396 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 includes provisions not in the original regarding the following:

- the development of model policies on certain police conduct and the required adoption by each law enforcement agency of a conduct policy on the topics covered by these model policies;
- law enforcement employment records, including the content of an employment termination report; and
- the suspension or revocation of a law enforcement license.

The substitute includes procedural provisions establishing various deadlines and applicability regarding these new provisions.

The substitute revises the original's provisions regarding the duties of a law enforcement agency with respect to peace officer misconduct to do the following:

- require TCOLE to adopt rules requiring each law enforcement agency to report certain information related to peace officer misconduct, whereas the original did not have the rulemaking requirement and required the reporting of this information itself;
- provide that an agency must only report information regarding substantiated incidents of misconduct, whereas the original did not make a distinction between substantiated and unsubstantiated incidents;
- expand the types of conduct included among the reportable conduct established in the original;
- omit the requirement for TCOLE to make a database of reported information while retaining the requirement for TCOLE to make the reported information accessible to all other law enforcement agencies;
- change the frequency with which TCOLE must make a report of reported incidents of misconduct available on its website from annually to as soon as practicable after each regularly scheduled TCOLE meeting;
- expand the required content of the report TCOLE makes available online to include any disciplinary action taken by TCOLE on a reported incident; and
- omit a provision prohibiting TCOLE's report from including identifying information.

The substitute repeals provisions of the Occupations Code, whereas the original did not.

The substitute delays the deadline for TCOLE to establish the advisory committee and develop and make available the coordinated response program model policy from January 1, 2022, as in the original, to June 1, 2022.