

SUBJECT: Revoking sheriff's license for felony or official misconduct conviction

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 6 ayes — Driver, Latham, Allen, Frost, Ortiz, West

0 nays

1 absent — Vo

WITNESSES: For — Bruce Elfant, Justices of Peace and Constables Association;
Donald Lee, Texas Conference of Urban Counties

Against — None

On — Timothy A. Braaton, Texas Commission on Law Enforcement Standards and Education; Will Harrell, American Civil Liberties Union of Texas; (*Registered, but did not testify*: J. Frank Woodall, Texas Commission on Law Enforcement Standards and Education)

BACKGROUND: The Texas Constitution provides for the election of sheriffs and constables as peace officers in this state.

In 1965, the Legislature created the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to determine appropriate training and certification standards for improving the performance and professionalism of peace officers in Texas. The standards developed by TCLEOSE initially were voluntary, but were made mandatory by the Legislature in 1969.

On November 2, 1993, voters approved Proposition 5 (SJR 18 by Parker), which amended the Texas Constitution to authorize the Legislature to set training and certification standards for sheriffs. The 73rd Legislature in 1993 enacted SB 339 by Parker, the enabling legislation for SJR 18, which established requirements for licensing sheriffs and allowed TCLEOSE to establish rules for the revocation, suspension, or denial of a sheriff's license.

Occupations Code, sec. 1701.302 (b) requires that TCLEOSE establish the requirements for issuance, revocation, suspension, or denial of the license of peace officers elected under the Texas Constitution, including a sheriff. Occupations Code, sec. 1701.501 (b) allows TCLEOSE to establish rules to revoke a peace officer's license, except for a license issued to a constitutionally elected peace officer.

Penal Code, sec. 39.02 defines abuse of official capacity when a public servant, including a peace officer, violates a law governing the operations of that office or misuses government property, services, or personnel. Abuse of official capacity is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), and misuse of government property can be punished as a misdemeanor or a felony, depending on the value of the property.

Penal Code, sec. 39.03 defines official oppression as when peace officers acting under the color of their office mistreat or subject someone to sexual harassment. Official oppression is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST:

HB 488 would amend Occupations Code, sec. 1701.501 (b) to allow TCLEOSE to establish rules to revoke a license held by a constitutionally elected peace officer, including a sheriff, only if the officer were convicted of a felony or a criminal offense directly involving an officer's duties.

The bill would take effect on September 1, 2007.

SUPPORTERS
SAY:

HB 488 would clarify the ability of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to suspend or revoke an elected peace officer's license by eliminating the conflicting provisions of current law. A 1999 non-substantive revision of the Occupations Code apparently created a discrepancy between sections that govern TCLEOSE's ability to revoke certain licenses (secs. 1701.302 (b) and 1701.501 (b)), and the bill would fix that problem.

Existing commission rules establish an automatic procedure to suspend or revoke the license of a constitutionally elected peace officer convicted of a felony or a misdemeanor involving official misconduct. The bill would clarify that TCLEOSE may establish rules to revoke a license only if the officer was convicted of a felony or a criminal offense directly involving the officer's duties, such as abuse of official capacity or official

oppression. This would tighten the standard and preclude any costly legal challenge to the commission's authority based on conflicts in current law.

Sheriffs enjoy no civil service protection at the ballot box. Voters in both large urban counties and small rural ones have shown no reluctance to defeat incumbent sheriffs who only have been accused of misconduct or malfeasance. The political process can supplement, or replace, the need to prosecute sheriffs who failed to meet the high standards expected of public servants.

**OPPONENTS
SAY:**

HB 488 could further weaken the powers of TCLEOSE by restricting the commission from considering anything other than convictions in revoking the license of a sheriff. Local political pressures could preclude vigorous prosecution of misconduct and corruption by peace officers. TCLEOSE would have more independent authority to investigate and punish misconduct by private investigators than by sworn peace officers. In effect, the commission only could act to ratify an act of a local prosecutor.

NOTES:

The companion bill, SB 721 by Hegar, was reported favorably, without amendment by the Senate Criminal Justice Committee on April 16, with a recommendation that it be placed on the Local and Uncontested Calendar.