

SUBJECT: Creating model peace officer training, revising misconduct processes

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 5 ayes — White, Bowers, Goodwin, E. Morales, Patterson
4 nays — Harless, Hefner, Schaefer, Tinderholt

WITNESSES: For — Linda Nuno; Eric Schafer; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Susana Carranza, League of Women Voters of Texas; Louis Wichers, Texas Gun Sense; Joshua Houston, Texas Impact; Derek Cohen, Texas Public Policy Foundation; Jason Vaughn, Texas Young Republicans; and 10 individuals)

Against — (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas; Michael Fossum; Zoila Vega-Marchena)

On — (*Registered, but did not testify*: Michael Antu, Texas Commission on Law Enforcement)

BACKGROUND: Occupations Code sec. 1701.452 requires the head of a law enforcement agency to report to the Texas Commission on Law Enforcement (TCOLE) regarding a licensed peace officer who resigns or retires from the agency, whose appointment is terminated, or who separates from the agency for any other reason. Included in the report must be a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged, and an explanation of the circumstances under which the person resigned, retired, or was terminated.

Sec. 1701.501 requires TCOLE to revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of laws governing law enforcement officers, certain reporting requirements, or a TCOLE rule.

DIGEST: CSHB 1396 would revise laws governing policies and procedures that affecting peace officers, including related to certain model policies, duties of law enforcement agencies for officer misconduct, employment records and termination reports, and disciplinary action by the Texas Commission on Law Enforcement (TCOLE). The bill also would create an advisory committee on entities that credentialed law enforcement agencies and would limit the grant eligibility of agencies under certain circumstances.

Certain model policies. TCOLE, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas, would have to develop and make available to all law enforcement agencies model policies and associated training materials on:

- the issuance of citations for fine-only misdemeanor offenses;
- the use of a no-knock entry by a peace officer;
- the duty of a peace officer to intervene;
- the prohibition on the use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer, except in certain circumstances; and
- the duty of a peace officer to render aid.

Within 180 days of TCOLE making the model policies available, each law enforcement agency would have to adopt written policies on the issuance of citations for fine-only misdemeanor offenses, the use of a no-knock entry by a peace officer, and the duty of a peace officer to intervene. An agency would adopt the policies in consultation with judges, prosecutors, commissioners courts, governing bodies of municipalities, and local residents.

A policy would have to be approved by a district judge or the county judge in the agency's jurisdiction and ensure judicial efficiency, law enforcement efficiency and effectiveness, and community safety.

The policy related to fine-only misdemeanors would have to provide a procedure for a peace officer to verify a person's identity and issue a

citation and comply with certain requirements under the bill.

Coordinated response program model policy. TCOLE, in consultation with the Health and Human Service Commission and law enforcement agencies, would have to make available to all law enforcement agencies a model policy and associated training materials on the operation of a coordinated response program.

A "coordinated response program" would mean a program operated by a law enforcement agency in which a peace officer and a mental health professional jointly responded to a report of an alleged offense or other incident involving a person with a mental impairment, suffering from homelessness, or experiencing similar circumstances.

Duties of law enforcement agency for officer misconduct. Each law enforcement agency would have to report to TCOLE each substantiated incident of misconduct by a peace officer, including:

- 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 constituted a felony or a class A or B misdemeanor, regardless of whether the criminal offense was prosecuted;
- sexual harassment involving physical contact or misuse of official capacity;
- the misuse of official capacity or misappropriation of property, including the misuse of a law enforcement database or criminal records;
- an unprofessional relationship with a person arrested, detained, or otherwise in the custody of the officer or the agency;
- any false statements made by the officer in obtaining employment with the agency;
- tampering with or fabricating physical evidence of a crime; or
- tampering with a governmental record, including making false statements in the record or altering, destroying, or concealing the

record.

The agency also would have to report for each substantiated incident whether the agency terminated or took disciplinary action against the officer or permitted the officer to retire or resign in lieu of termination.

A report submitted to TCOLE would be confidential and not subject to disclosure under public information laws.

TCOLE would have to make all reported information accessible by all law enforcement agencies in the state and could make the information available to a federal law enforcement agency that was investigating an incident. TCOLE would have to make available on its website a report on reported incidents of misconduct that included the total number of incidents and information on:

- the most common types of misconduct reported;
- disciplinary action taken by the law enforcement agency, including termination or permitting the peace officer to retire or resign in lieu of termination; and
- any disciplinary action taken by TCOLE.

Employment termination report. The bill would remove the requirement that an employment termination report include a statement on whether the licensed peace officer was honorably discharged, generally discharged, or dishonorably discharged and an explanation of the circumstances under which the person resigned, retired, or was terminated. Instead, the employment termination report would have to indicate whether the peace officer was eligible for an honorable discharge or suspected of misconduct, regardless of whether the officer was terminated for misconduct.

The bill would redefine "honorable discharge" to mean the discharge of a license holder who, while in good standing and not under suspicion of committing misconduct, was separated from employment with or died while employed by a law enforcement agency.

"Misconduct" would include conduct by a license holder that was criminal conduct, regardless of whether the license holder was arrested for, charged with, or convicted of an offense.

A person who was subject to an employment termination report could contest an indication that the person was suspected of misconduct under the current process governing a petition for correction of such a report.

Employment records. A peace officer would be prohibited from entering into an agreement under which the officer's employing law enforcement agency was prohibited from making the officer's employment records available to another law enforcement agency.

A law enforcement agency, agency head, or other law enforcement official would not be liable for civil damages for making a person's employment records available to a hiring law enforcement agency.

Disciplinary action. The bill would expand the circumstances under which TCOLE would be required to revoke or suspend a license, place on probation a person whose license had been suspended, or reprimand a license holder to include if the license holder had engaged in conduct constituting a felony or a class A or B misdemeanor.

The bill would repeal provisions governing license suspension for an officer who had been dishonorably discharged if the officer had previously been dishonorably discharged from another agency.

Advisory committee on credentialing entities. TCOLE would have to establish an advisory committee to review entities that provided credentialing to law enforcement agencies. The advisory committee also would have to identify credentialing entities that, at a minimum, established standards and processes for reviewing adherence to the standards in certain aspects of a law enforcement agency's operations, including policies and training regarding use of force and de-escalation techniques, best practices regarding community engagement, and other

items listed in the bill.

TCOLE would have to designate one or more of the credentialing entities identified by the advisory committee for purposes of certifying that the policies of a law enforcement agency complied with grant eligibility requirements under the bill.

Limitation on grant eligibility. To be eligible to receive a grant or other discretionary funding by the governor, a law enforcement agency would have to consistently report incidents of misconduct as required by the bill and maintain current certification that the agency's use of force policies complied with all applicable laws and prohibited the use of choke holds or other physical maneuvers for purpose of incapacitation, unless the officer was justified in using deadly force. The bill would apply only to a grant awarded by the Office of the Governor on or after September 1, 2022.

Other provisions. The bill would repeal a provision that establishes that all information submitted to TCOLE is confidential and not subject to disclosure under public information laws, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

TCOLE would have to implement its requirements under the bill by June 1, 2022. By December 1, 2021, TCOLE would have to amend the employment termination report to comply with the bill.

Any changes the bill would make to laws governing employment records of law enforcement officers would apply only to a separation of a license holder that occurred on or after December 1, 2021.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 1396 would address concerns that current law lacks adequate procedures and accountability tools to ensure that safety and trust are maintained between law enforcement officers and the general public. In the aftermath of recent tragic deaths involving law enforcement officers,

some have called for taking steps to rebuild the relationship between law enforcement and communities to avoid future tragedies.

Modeled after the federal "Safe Policing for Safe Communities" executive action, the bill would take steps to ensure that conduct, training, transparency, and accountability of law enforcement was updated and would apply to all law enforcement agencies across the state. The bill would create model policies on a range of practices, including issuing citations for fine-only misdemeanors, using no-knock warrants, intervening to prevent another officer from using excessive force, and banning chokeholds and similar methods except under certain circumstances.

The bill would provide TCOLE with needed and additional authority to enforce standards of professional conduct by allowing the commission to take disciplinary action on a peace officer who engaged in conduct constituting a felony or a class A or B misdemeanor. This step would allow TCOLE to hold peace officers accountable as a professional licensing and regulatory agency.

The bill would improve transparency in the hiring process by ensuring law enforcement agencies had access to information on an officer's separation from a previous agency and on instances of misconduct, if any. The bill would prohibit an officer from preventing employment records being made available and would change the employment termination form, known as the F5 form, to include an indicator of misconduct rather than a category of separation to promote communication between law enforcement agencies in the hiring process.

**CRITICS
SAY:**

CSHB 1396 would provide TCOLE too much authority in personnel matters that should be handled on the local level. Allowing TCOLE to suspend or revoke licenses for conduct constituting a felony or a class A or B misdemeanor without a defined threshold for the conduct also could impact due process. This authority mimics that of licensing agencies of other occupations, but TCOLE is a licensing and training body, so the bill should only address those functions. Decisions and investigations relating

to disciplinary action for police officer misconduct should be left to local law enforcement agencies and developed through the current negotiation processes that give cities the discretion to adopt a framework that best fits their local departments and communities. With a suspended or revoked license, an agency would be forced to fire the officer, regardless of the result of the investigation, impacting the officer's career and the agency's force.

OTHER
CRITICS
SAY:

CSHB 1396 would overly burden TCOLE, and without substantially more resources provided to the commission, the bill would only take an incremental step and not go far enough toward addressing the issue of trust and accountability of law enforcement to the community.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$281,000 to general revenue through fiscal 2023.