

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1134  
By: Whitmire  
Intergovernmental Relations  
3-20-97  
Committee Report (Substituted)

### **DIGEST**

Currently, state law relating to fire and police department records requires complaints and disciplinary actions of officers to be contained in the officer's personnel file. The concern exists that some overturned complaints maintained in an employee's personnel record are considered public record and may be used maliciously against a public employee. This bill requires a police or fire department in a city with a population of 1.5 million or more to transfer to an Internal Affairs Division file all documentation about completely overturned charges against a police officer or fire fighter.

### **PURPOSE**

As proposed, C.S.S.B. 1134 requires a police or fire department in a city with a population of 1.5 million or more to transfer to an Internal Affairs Division file all documentation about completely overturned charges against a police officer or fire fighter.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 143.1214, Local Government Code, as follows:

Sec. 143.1214. New heading: RECORDS CONCERNING CHARGES OF MISCONDUCT AND DISCIPLINARY ACTIONS. (a) Requires a department head to order records of a disciplinary taken against a fire fighter or police officer to be expunged from certain files, if the disciplinary action was overturned in its entirety by certain persons or entities. Provides that this subsection does not apply if the fire fighter or police officer is charged with excessive force, rather than applying an additional prohibition to this subsection if the disciplinary action was only reduced and not overturned.

(b) Requires a police or fire department to maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer, whether sustained or not, rather than to maintain a document relating to certain disciplinary actions that the department did not sustain. Authorizes the department to release information from investigatory files under Subsections (c) and (d), except that the department may release information from such investigatory files to another law enforcement agency or fire department.

(c) Requires only documents stipulating discipline received by a person to be forwarded by the department head to the personnel file maintained by the director. Sets forth requirements for documents to be forwarded.

(d) Prohibits files from being released to any party to an action until relevancy is judicially determined and an application for a protective order limiting the use of a file has been filed. Authorizes the department head or the department head's designee to stipulate that a file is relevant. Requires the department head to ascertain that an application for protective order limiting the use of the records to the immediate litigation has been filed each time such file is sought in a civil or criminal action, prior to any release of a department file.

(e) Provides that nothing in this section is to be construed to prevent a fire fighter or police officer from having access to any personnel file maintained by the department on the fire fighter or police officer pursuant to Section 143.089.

SECTION 2. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 3. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 1.

Amends Section 143.1214, Local Government Code, to rename heading to RECORDS CONCERNING CHARGES OF MISCONDUCT AND DISCIPLINARY ACTIONS from the proposed heading RECORDS CONCERNING COMPLAINTS AND DISCIPLINARY ACTIONS. Requires the department head to overturn a disciplinary action in its entirety. Deletes a provision prohibiting this section from applying if the disciplinary action was only reduced and not overturned. Requires the department to maintain an investigatory file that relates to disciplinary action against a fire fighter or police officer that was overturned on appeal or any document in the possession of the department that relates to a charge of misconduct. Authorizes a department head or the department head's designee to stipulate that a file is relevant. Requires the department head to ascertain that an application for protective order limiting the use of the records to the immediate litigation has been filed each time such a file is sought in a civil or criminal action, prior to any release of a department file. Provides that nothing in this section is to be construed to prevent a fire fighter or police officer from having access to any personnel file maintained by the department on the fire fighter or police officer pursuant to Section 143.089.