

SUBJECT: Prohibiting governor's grants for multi-jurisdictional task forces

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Pena, Hodge, Raymond, Reyna
0 nays
3 absent — Denny, Escobar, P. Moreno

WITNESSES: For — Alan Bean, Friends of Justice; Jeff Blackburn, Tulia Legal Defense Project; Carol Brandon, MASS, Inc.; Joyce Ann Brown, Texas Justice Network; Imani Evans, Texas NAACP; Scott Henson, ACLU of Texas; Joshua Houston, Christian Life Commission; Charles F. Hurt, Texas Justice Network, Texas Inmate Families Association; James Maynard, Mothers (Fathers) for the Advancement of Social Systems, MASS, Inc.; Herbert Steptoe, Winners Circle Peer Support Network of Texas; Richard K. Watkins, State Conference of NAACP Criminal Justice Committee; Ana Yanez-Correa, National LULAC Legislative Liaison; Caleb Akroosh; Freddie Brookins, Sr.; Hulon Brown; Maurice Perry; Charles Workman.

Against — Thomas Kerss, Sheriff's Association of Texas

On — James P. O'Burke, Texas Department of Public Safety

BACKGROUND: Government Code, sec. 772.006 requires the governor to establish a criminal justice division to perform several duties, including awarding grants to state agencies and local government units for criminal justice purposes. Government Code, ch. 791 authorizes interlocal cooperation contracts between local governments to perform certain government functions.

The governor's criminal justice division administers several types of federal funds and grants for criminal justice efforts in Texas. In federal fiscal year 2004, Texas received about \$32 million in federal Edward Byrne memorial funds to reduce and prevent illegal drug activity, crime, and violence and awarded about 70 percent of these funds to multi-jurisdictional task forces.

The task forces generally involve two or more law enforcement entities from different jurisdictions combining resources and assigning peace officers to enforce drug laws.

DIGEST:

HB 1239 would prohibit the governor's criminal justice division from awarding a grant under Government Code, sec. 772.006 to a multi-jurisdictional drug task force.

The division would be authorized to award a grant to fund a unified drug enforcement strategy by multiple law enforcement agencies through an interlocal contract made under Government Code, ch. 791 if the contract were approved by the director of the Department of Public Safety (DPS). The contract would have to require the enforcement strategy to be under the command and control of the DPS director. Peace officers making arrests as part of the strategy who were outside of their jurisdictions would have to be:

- otherwise authorized to make arrests under the arrest authority given to peace officers in the Code of Criminal Procedure; or
- in the presence of another peace officer who served a law enforcement agency with jurisdiction where the arrest was being made.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

HB 1239 is necessary to address systemic problems with multi-jurisdictional drug task forces, including corruption, misuse of public funds, fabrication of evidence, and falsification of testimony. The problems — although not found with every task force — are widespread, numerous, recurrent, and serious enough to warrant the changes in HB 1239. Many problems stem from jurisdictional issues. HB 1239 would address these problems by modifying the current structure and funding of collaborative efforts and by establishing requirements for when officers working in regional collaborations could make arrests.

In a widely publicized case, the uncorroborated testimony of one undercover officer working with a task force in the Panhandle town of Tulia led to the conviction of about 39 defendants on drug offenses, with many sentenced to prison for terms ranging from 20 to 99 years. The

officer's testimony and methods were discredited, and he was convicted of perjury in 2005. Gov. Rick Perry pardoned 35 of the defendants in 2003. Members of other task forces have been accused of fabricating evidence, and a civil rights trial against a local prosecutor working with a task force is scheduled for May.

While DPS was given authority to command and control the task forces in 2002, legislation is needed to address ongoing jurisdictional issues and to ensure adequate oversight of task forces. Under HB 1239, state oversight would continue because the unified strategies receiving funding from the Governor's Office would be approved by DPS and under DPS command and control. DPS could continue developing policies and procedures and could change policies that were not working.

Prohibiting the governor's criminal justice division from awarding grants to multi-jurisdictional drug task forces would not automatically reduce funds going to regional drug enforcement efforts. The Governor's Office could support these efforts through unified drug enforcement strategies organized under interlocal agreements. Federal Byrne grant funds could continue to be used for collaborative efforts organized under the bill. Existing task forces could meet the requirements of HB 1239 by formalizing current agreements or modifying agreements to meet the bill's stipulations. Far from crippling local efforts to combine resources to combat drugs, HB 1239 could lead to more effective drug law enforcement.

HB 1239 specifically would address peace officer accountability by limiting grants to interlocal agreements that set requirements for officers making arrests outside of their jurisdictions. Currently, in these situations it is unclear which agency is responsible for the officer and to whom the officer is accountable. This makes it difficult to discipline an officer and difficult for Texans to know whom to question about officers' actions.

HB 1239 would establish accountability in these situations by allowing arrests by peace officers in a unified drug enforcement strategy who are outside of their jurisdiction only if the officers met the requirements set in Code of Criminal Procedure, art. 14.03 or if they were accompanied by a peace officer working for a law enforcement agency with jurisdiction in the area of the arrest. Subsec. (d) of Code of Criminal Procedure, art. 14.03 establishes limits and procedures for officers making arrests outside of their jurisdictions, and HB 1239 would make these requirements —

which apply to all other peace officers in the state — apply to officers working on unified drug enforcement strategies.

HB 1239 would not affect the governor's authority concerning criminal justice grants. The governor would continue to make grants and control the grant program. HB 1239 would be an appropriate exercise of the Legislature's obligation to oversee law enforcement efforts in Texas.

OPPONENTS
SAY:

HB 1239 is unnecessary because problems with oversight of the task forces largely have been addressed and mechanisms exist to strengthen oversight and accountability. Most task forces and officers do a good job, and their efforts should be supported and continued. Because criminal activity involving drugs is not limited to a specific jurisdiction but moves often and easily across counties, the state should not make any change that could harm efforts to work across jurisdictional lines.

Since being given operational command and control of the task forces in 2002, DPS has developed policies and procedures that provide oversight of task force efforts and accountability of officers. DPS requires background checks on the officers working on a task force and oversees task force operations, such as management of informants and evidence and the use of search warrants. DPS has staff working daily with most task forces, and task forces without a DPS representative are under the command of a DPS field captain. Problems can be addressed quickly because DPS captains assess the task forces quarterly. DPS assessment tools measure the effectiveness of a task force's efforts, not just the number of arrests. DPS and the governor's criminal justice division have shut down task forces that do not comply with DPS or directives.

The changes in HB 1239 could cripple efforts to enforce drug laws, resulting in effective task forces not receiving adequate funding to continue. Current grants could be stopped or less funding made available for drug law enforcement because federal funds are tied to multi-jurisdictional drug task forces. Rural areas could be hit especially hard because they do not have the resources to replace the efforts of current task forces.

HB 1239 could infringe on the governor's authority by restricting the grant-making programs of the governor's criminal justice division.

OTHER
OPPONENTS
SAY:

HB 1239 would not go far enough to address inadequate efforts by DPS to oversee the task forces. DPS has no authority to discipline officers or task forces that do not comply with DPS policies, short of urging the Governor's Office to strip the task force's funding, something that is at the discretion of the Governor's Office. DPS oversight policies also fail to go far enough in determining if task force members are complying with laws prohibiting racial profiling because of the way reporting requirements are structured. DPS policies and oversight also do not address a possible problem with task forces misusing so-called "consent searches" to stop vehicles, ask for permission to search them, then threaten to arrest drivers if permission is not given. This is often criticized as an inefficient use of resources and a potentially way unfairly to target minority citizens.

NOTES:

A related bill, SB 1125 by Hinojosa, pending in the Senate Criminal Justice Committee, would abolish multi-jurisdictional task forces that had not been awarded a grant from the governor's criminal justice division in 2004 and would require that 50 percent of the disposition of contraband seized by task forces be given to counties for the prevention of drug abuse, for chemical dependency treatment, and for other services or programs that could reduce drug use in the county.