

SUBJECT: Exempting jailers from private security licenses for off-duty work

COMMITTEE: Law Enforcement — committee substitute recommended

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

0 nays

1 absent — Allen

WITNESSES: For — Roger Dovalina, Avery D. Walker, Bexar County Deputy Sheriffs Association; David Salinas; Charley Wilkison, Combined Law Enforcement Associations of Texas (CLEAT); (*Registered, but did not testify*: Brian Barabasz, Jeff Allan Baumgaertner, Debra Fernandez, Hector M. Garcia-Delgado, Elisa R. Gonzalez, Carmen Inman, Joel Janssen, Corey Maciel; Richard Ramos, Mark Anthony Waits, Bexar County Deputy Sheriffs Association; Richard Newby, Harris County Deputy Sheriffs Association; Amadeo Ortiz; Mark Thomas

Against — John Reynolds, Bexar County Sheriff Ralph Lopez

On — Timothy A. Braaten, Texas Commission on Law Enforcement Officers Standards and Education; (*Registered, but did not testify*: Cliff Grumbles, Texas Department of Public Safety)

BACKGROUND: Occupations Code, ch. 1701 requires that peace officers hold licenses issued through the Texas Commission on Law Enforcement Officer Standards and Education. (TCLEOSE). Occupations Code, ch. 1702 requires that private security officers be licensed by the Texas Private Security Board.

Under Occupations Code, sec. 1702.322, a full-time peace officer does not have to apply for a private security license to work part-time as a patrolman, guard, extra job coordinator or watchman, provided that the officer:

- is employed in an employee-employer relationship or employed on an individual contractual basis;
- is not in the employ of another peace officer;

- is not a reserve peace officer; and
- works as a peace officer on the average of 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision.

In March 2006, Tom Green County Attorney Chris Taylor requested an attorney general's opinion on whether a county jailer who is a TCLEOSE certified peace officer is required to obtain a private security license to work as a private security guard. On September 25, 2006, Attorney General Opinion GA-0465 determined that “whether a peace officer who is *both* a jailer *and* a deputy sheriff is ‘employed full-time as a peace officer,’ and thus exempt from the provisions of the Private Security Act by section 1702.322, Texas Occupations Code, is a question of fact that will vary with the nature of the employment.” The opinion determined that county jailers and deputy sheriffs are statutorily distinct positions, even though jailers are routinely commissioned as deputy sheriffs and perform duties of both. The exact determination is left to individual sheriffs in the 254 counties.

DIGEST:

CSHB 1423 would amend Occupations Code, sec. 1702.322 to allow a peace officer who was licensed through TCLEOSE to work a part-time security job without obtaining a private security license. These peace officers would include:

- police chiefs;
- sheriffs;
- constables;
- chief administrators for law enforcement agencies; and
- other peace officers who were appointed, elected or employed by a law enforcement agency.

The bill would take effect on September 1, 2007.

SUPPORTERS  
SAY:

CSHB 1423 would provide statutory guidance to clarify the currently ambiguous definition of “peace officer” in the Penal Code. As a matter of practice, the Department of Public Safety, which administers the Private Security Act, considers deputy sheriffs working off-duty security work to be exempt from the additional licensing requirements. The bill would adopt this common-sense interpretation.

Both jailers and deputy sheriffs are required to meet strict training and licensing requirements through TCLEOSE. Requiring additional private security licenses would be an unnecessary expense because the TCLEOSE process has requirements not included for private security officers. The public safety would be better protected because certified peace officers working security have authority and training that private security licensees do not. Peace officers may direct traffic, perform crowd control duties, and make arrests while private security license holders cannot.

Off-duty security work allows peace officers to supplement their wages so that they can provide for their families and remain in the community. The off-duty exemption for detention officers provides additional incentives for them to keep their peace officer licenses and certifications current. Having an economic incentive for off-duty work helps ensure that enough trained and skilled Texans remain in law enforcement.

Jailers must fulfill almost 1,000 hours of training for their TCLEOSE certification, which is far more than that required of officers not assigned to county jails. In contrast, private security officers must obtain only 30 hours of training.

CSHB 1423 would provide a needed statewide resolution to the question of whether all deputy sheriffs and jailers should be considered peace officers. This is not a problem merely for large urban counties. The quandary that led to the attorney general's opinion on jailer's exemptions came from Tom Green County, a medium-sized county. One standard should prevail statewide, rather than having 254 different sheriffs set their own policies.

The bill would not detract from the sheriff's ability to make personnel decisions and select which employees are considered to be peace officers. It would end a distinction based on the job title listed on an officer's county paycheck.

**OPPONENTS  
SAY:**

CSHB 1423 could limit sheriffs' authority to set personnel and training policies and effectively manage their departments. Sheriffs have a constitutional obligation to manage the jails and determine the duties of deputy sheriffs and jailers. The attorney general's opinion correctly observed that jailer and deputy sheriff positions are statutorily distinct, and it should be up to the sheriff to decide how or whether to combine those positions.

TCLEOSE certification and training requirements for jailers – while rigorous – may not be adequate for those serving outside of detention facilities. Jailers should go through the private security licensing process.

**OTHER  
OPPONENTS  
SAY:**

Debates about licensing requirements sidestep more serious public policy issues. Law enforcement is an exacting and risky profession. The state and local governments should pay these dedicated public servants enough so they can make a decent living without feeling compelled to “moonlight” at other jobs.

**NOTES:**

The companion bill, SB 1712 by Hegar, has been referred to the Senate Criminal Justice Committee.