

SUBJECT: Revising standards for termination reports for peace officers

COMMITTEE: Law Enforcement — committee substitute recommended

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

0 nays

1 absent — Allen

WITNESSES: For — (*On original version*): Tom Gaylor, Texas Municipal Police Association; (*Registered, but did not testify*: W. M. "Bill" Elkin, Houston Retired Officers Association, Ken Evans, Round Rock Police Department; James Jones, Southeast Texas Law Enforcement Administrators Association; Steve Lyons, Houston Police Department; Larry Zacharias, Texas Police Chief Association)

(*On the committee substitute*): Dave Barber, Texas Police Chiefs Association; Chris W. Jones, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify*: Deborah Ingersoll, Texas State Troopers Association)

Against — None

On — (*On original version*): Timothy A. Braaten, Texas Commission on Law Enforcement Officers Standards and Education

BACKGROUND: 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.

Occupations Code, ch. 1701, subch. J relates to employment records of peace officers. Sec. 1701.452 states that if an officer resigns, the head of the officer's law enforcement agency must submit a report to TCLEOSE explaining the circumstances under which the officer resigned or was terminated.

In the 2005 regular session, the 79th Legislature enacted HB 2677 by Driver, which amended Occupations Code, sec. 1701.452 to require that the law enforcement agency's report to TCLEOSE must include an explanation of the circumstances under which the person resigned or was terminated and one of the following designations:

- retired — applying only to an officer who left the agency while in good standing and who was eligible to collect a pension;
- honorably discharged — applying only to an officer who left the agency while in good standing and who did not leave the agency while under investigation for a criminal violation or while facing disciplinary action;
- dishonorably discharged — applying only to an officer whose employment was terminated for a violation of law or department policy or for other substantiated misconduct;
- generally discharged — applying only to an officer who left an agency in lieu of disciplinary action while under investigation for a potential criminal violation or who left an agency for less than honorable reasons but did not leave because of pending or final disciplinary action;
- killed in the line of duty;
- died; or
- disabled.

The bill also amended Occupations Code, sec. 1701.451 to require a law enforcement agency, before it hired an officer, to request any termination report regarding the officer from TCLEOSE. The agency also is required to submit confirmation to TCLEOSE that the agency had:

- conducted a criminal background check on the officer;
- obtained the officer's written consent for the agency to view the officer's employment records;
- obtained from TCLEOSE any education records regarding the officer; and
- contacted each of the officer's previous law enforcement employers.

Other Occupation Code sections allow an officer receive a copy of the termination report and provide a means to appeal and contest information in the report. TCLEOSE also is required to release requested information to the agency hiring an officer.

Penal Code, sec. 37.10 makes tampering with a government record a criminal offense that could be prosecuted as a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) up to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000)

DIGEST:

CSHB 2445 would change the designations of officers who separate from a law enforcement agency and would allow TCLEOSE to suspend the license of an officer who had been "dishonorably discharged" twice from law enforcement agencies.

The bill would require the head of a law enforcement agency, or the head's designee, to file a report with TCLEOSE within seven business days after a person licensed by the commission resigned, retired, separated from the agency, or exhausted all administrative appeals if the officer was terminated for allegations of misconduct.

The law enforcement agency head or designee would have to report whether a license holder was considered:

- "honorably discharged" — a case where the license holder is in good standing or is not subject to disciplinary actions or documented performance problem when the officer retires, is terminated or separated, resigns or dies while employed by the agency.
- "generally discharged" — a case where the officer is terminated, retires, resigned or died and the separation is related to a disciplinary investigation for conduct not included in the definition or dishonorably discharge, or if separation was due to a documented performance problem and not a reduction of force or at-will employment decision;
- "dishonorably discharged" — a case where the officer is terminated or retires or resigns in lieu of termination after allegations of criminal misconduct or for insubordination or untruthfulness.

TCLEOSE would be permitted to develop rules to specify the differences among the circumstances warranting a "honorable," "general," and "dishonorable" discharge.

The head of a law enforcement agency would be required to provide a license holder, or the next of kin if the licensee was deceased, a copy of the TCLEOSE report within seven business days.

CSHB 2445 would required TCLEOSE to suspend the law enforcement license of officer who had been dishonorably discharged from two law enforcement agencies. The officer would be allowed to appeal the suspension within 30 days. TCLEOSE would determine whether to revoke or reinstate the license, but the license would be revoked if the officer does not file an appeal. The officer also would have the right to appeal TCLEOSE's decision through the State Office of Administrative Hearings.

Other provisions would provide venue for prosecution under Penal Code, sec. 37.10, for knowingly submitting a false record or tampering with a government record, in either the county where the record was submitted or in Travis County.

The bill would apply to employment termination reports made after the bill's September 1, 2007, effective date.

**SUPPORTERS
SAY:**

CSHB 2445 would bolster efforts to prevent "gypsy cops" from moving easily from one law enforcement agency to another despite poor performance records or unethical behavior. Legislation enacted last session has enjoyed a measure of success as law enforcement agencies are providing clearer reasons for terminations and are conducting more thorough background checks. CSHB 2445 would narrow the definition of "gypsy cop" to those officers who have been fired for misconduct by two agencies.

The bill would provide a balance of respecting rights of individual officers and protecting public safety. The definitions of "honorable," "general," and "dishonorable" discharges would be more clear and narrowed so that this information could be recorded on the F-5 form law enforcement agencies now are required to file with TCLEOSE.

The bill also would provide for a right to notice and appeal. TCLEOSE now can revoke an officer's license after two "dishonorable" discharges, and these undesirable officers are removed from the job market after all their appeals have been exhausted. The bill would ensure the integrity of the law enforcement profession. Citizens, even in smaller or rural jurisdictions, could be assured that their public servants met high standards.

CSHB 2445 would expand the definition of misconduct subject to a "dishonorable" discharge to include insubordination and untruthfulness.

Credibility of all peace officers is challenged every time an officer submits a report or testifies in court. Officers who are untruthful to their supervisors or colleagues should not be allowed to remain employed in law enforcement.

CSHB 2445 also specifically would define the TCLEOSE form as a government document and provides criminal penalties for providing false information or tampering with the form.

**OPPONENTS
SAY:**

Background checks and termination reports only are useful if law enforcement agencies are honest and truthful with each other. No legislation, no matter how carefully crafted, would solve this problem entirely. Sharing information makes law enforcement effective, and law enforcement agencies should let others know about the good or bad employment record of its former officers.

NOTES:

The committee substitute differs from the original bill by adding a requirement that a law enforcement to make a termination report to TCLEOSE within seven business days. The substitute also would make changes to the definitions of "honorable," "general" and "dishonorable" discharges.

The companion bill, SB 1395 by Williams, was reported favorably, as substituted, by the Senate Criminal Justice Committee on April 19.