



HB 2486/SB 781 will effectively eliminate existing independent oversight of jail deaths, police misconduct.

The bill seals records if “the agency determines there is insufficient evidence to sustain the charge of misconduct,” and then these records cannot be shared with “any agency or person.”

Sec. 1701.45351. DEPARTMENT FILE. (a) In this section, "department file" means a file maintained by a law enforcement agency for **each license holder** employed by the agency for the agency's use.

(b) The head of a law enforcement agency or the head's designee shall maintain a department file on each license holder employed by the agency.

(c) A department file must contain **any letter, memorandum, or document relating to the license holder** not included in a personnel file maintained under a policy adopted under Section 1701.4535, **including any letter, memorandum, or document relating to alleged misconduct** by the license holder for which **the agency determines there is insufficient evidence to sustain the charge of misconduct**.

(d) As provided by Section 1701.451, a law enforcement agency hiring a license holder is entitled to view the contents of the license holder's department file.

(e) A law enforcement agency shall provide contents from a license holder's department file to the commission in accordance with:

(1) Section 1701.4522(b)(1)(D); or

(2) a request by the commission as part of an ongoing investigation relating to the license holder.

(f) Except as provided by Subsections (d) and (e), **a law enforcement agency may not release any information contained in a license holder's department file to any other agency or person** requesting information relating to the license holder. The agency shall refer the person or agency requesting the information to the agency head or the head's designee. A department file maintained under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

This sounds like it will apply only to false charges, but it will apply to most police and jailer conduct for the following reasons:

- **Agencies will investigate themselves and decide whether there is “insufficient evidence.”**

The determination of insufficient evidence is entirely internal to the agency. In places where agencies keep this file now, called the “g file” in reference to LGC 143.089(g) the existence of the g-file has hamstrung existing oversight systems that include civilians or authorize independent investigations.

- **In the case of jail deaths, state law currently requires independent investigation,** but under this new system the agency in charge of the jail, which is the sheriff's office, may first investigate itself to determine if there is "insufficient evidence" of misconduct related to particular jailers, and then it will be able to seal its "**documents**" from "**any agency or person**" which would likely include the independent law enforcement agency assigned to investigate the incident and also the Texas Commission on Jail Standards (TCJS). Examples of documents that could be sealed are grievances and complaints filed by county jail detainees which could show a pattern of practice, especially in medical neglect and use of excessive force incidents. Whatever investigation is still possible would be sent to TCJS **minus** the material kept secret under this law. Without access to records necessary to evaluate the circumstances leading up to a custody death, such as staffing or face-to-face checks during a particular time window, the Commission's administrative review of the death investigations would likely be incomplete.
- **Sheriffs have enormous discretion over which cases get investigated and to what degree.**
Most jail deaths are not "fully" investigated (review of BWC footage, interviews with witnesses, interview of the officer or jailor, review of timesheets, staffing rosters and related documents.) Chiefs most often send the issue to a supervisor to decide. This has led to situations like the Dickinson case where an officer was cleared of any misconduct through internal investigation (presumably there was insufficient evidence to sustain a charge of misconduct) but the DA learned of the incident later and that officer now faces criminal charges. In the case of Javonte Myers who died in custody of Tarrant county jail from a seizure disorder deemed as a "natural death," two jailers were indicted for falsifying records about checking on Myers. One of them pled guilty and agreed to pay \$25,000 in restitution and the other jailer's case is still pending.
- **In the case of major incidents like Uvalde** each involved LE agency could first determine whether there is "sufficient evidence to sustain a charge of misconduct" before allowing material to be shared with an oversight body like the House and Senate investigation teams who authored the Uvalde report or the Texas State ALERRT team (based on a briefing by investigators, review of surveillance footage, cell video etc.)
- **This system creates a secrecy incentive against full investigations.**
An incident that an agency would prefer not to see in the headlines can be sent to a supervisor rather than to Internal Affairs, and even if it is sent to Internal Affairs there is enormous flexibility in the degree and seriousness of an investigation. The fact that the agency has "insufficient evidence" may be entirely a function of failing to collect more evidence in order to maintain a lid on the conduct, protecting both the agency and the city and or county from embarrassment or liability later.

For questions or concerns, please contact:

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