SUBJECT:	Establishing statewide database of persons who threaten peace officers
COMMITTEE:	Public Safety — committee substitute recommended
VOTE:	7 ayes — B. Turner, Keel, Berman, Driver, Hupp, Isett, Villarreal
	0 nays
	2 absent — Gutierrez, P. King
WITNESSES:	For — Chris Heaton, Texas Municipal Police Association; Mike Sheffield, Austin Police Association; Jimmy Fawcett, Texas Police Chiefs Association
	Against — Rick Lannoye, American Civil Liberties Union
	On — Marshall Caskey, Texas Department of Public Safety
DIGEST:	CSHB 3149 would require the Department of Public Safety (DPS) to establish and maintain a central index in its law enforcement information system to collect and disseminate information about threats made by people to injure peace officers, regardless of whether the threat was a criminal offense, and to alert peace officers of these threats. The DPS director could adopt rules to implement and enforce these provisions.

Criminal justice agencies would have to enter immediately into the system an electronic report of a person who made a threat against a peace officer. DPS would have to disseminate the information to criminal justice agencies as reasonably necessary to protect peace officers. The agencies would have to use the information in the manner provided by DPS rules.

DPS would have to respond promptly to a request by a person who was listed in the database to disclose information in the database about that person. A person in the database could ask the DPS director, the director's designee, or a court to review the information to decide whether the information complied with rules adopted by the DPS director. The review would have to be conducted according to Code of Criminal Procedure guidelines for reviewing criminal information in gang databases.

Peace officers and criminal justice agencies would not be liable for acts or omissions relating to the collection, use, or dissemination of information collected in the database. Information in the database would be exempt from public information requirements.

The bill would take effect May 1, 2002.

SUPPORTERS
SAY:

CSHB 3149 would give law enforcement officers an additional tool to protect themselves as they go about their dangerous jobs. Peace officers could exercise special caution when dealing people who had threatened officers in the past. This bill could help prevent tragedies like the death of state trooper Randall Vetter, who was killed last August while making a traffic stop of a man who had a history of threatening law enforcement officers.

Many law enforcement agencies already keep files or databases about people who have threatened peace officers. CSHB 3149 would allow DPS to compile these local databases into a statewide database. This is necessary because of the mobility in today's society. For example, peace officers in Dallas easily could encounter a person who had threatened officers in nearby Carrollton. The bill would allow information about people who threatened peace officers to be retrieved on the basis of driver's licenses, motor vehicle registrations, home addresses, or some other identifying factor.

CSHB 3149 would not infringe on anyone's due process or other rights. The database would comply with requirements for law enforcement databases in the Code of Federal Regulations that require due process and other procedures. The database required by the bill would be similar to the state's gang database. Entries would be based on previous threats to officers or on a history of encounters with officers and would have to involve substantiated, factual threats to inflict future bodily injury on a police officer. People would not be entered into the database randomly. Those entered into the database would retain their constitutional and statutory rights and could not be arrested or charged with crimes simply because of information in the database. This would be no different from DPS' criminal history database, from which officers can get information about arrests — not only convictions — and the state's gang database, from which peace officers can get information about gang members.

CSHB 3149 would contain safeguards to ensure that people in the database could find out what information was included about them and could ask DPS or a court to review the information. CSHB 3149 would protect people's privacy by exempting the database from public information laws and by allowing access only by law enforcement officers and people in the database.

Officers who knew about previous threats from a person simply would be more careful and would not act inappropriately, because they would be held to the same legal standards and department policies that are always in force.

Although Penal Code offenses may cover some situations in which people threaten peace officers, CSHB 3149 would allow peace officers to be aware of people whose conduct may not have risen to the level of an offense but still could be dangerous, or those whose threats were not prosecuted for some reason. Also, charging someone with an offense under the Penal Code would mean taking action after an offense already had occurred, whereas CSHB 3149 would help prevent harm to officers.

Requiring local law enforcement agencies to submit information to the database would not burden those agencies. They already routinely submit other information to DPS, and the amount of information required by CSHB 3149 should not be large.

OPPONENTS SAY:

Secretly placing people into a statewide law enforcement database without any type of notification, trial, or open procedure would infringe on people's rights to due process.

Because the bill would not define a "threat" to peace officers, people unfairly could be entered into the database on the basis of noncriminal, ambiguous comments that police officers subjectively viewed as threatening. A threat even could mean a gesture. Because the information would be kept secret, no one would know if the threat truly was dangerous or whether inclusion in the database was threatening a person's free speech.

Because CSHB 3149 would establish no standards for evidence to place someone in the database or to verify information, peace officers could place people in it arbitrarily or even on someone else's uncorroborated word. The statewide gang database requires at least two pieces of evidence from among

a list before someone can be included, but CSHB 3149 would include no such safeguard.

Although the bill would allow people to ask the DPS director or a court to decide if the information complied with rules for the database, with no statutory standards requiring accurate, corroborated evidence, the review could be meaningless, and the decision maker would have no basis for a decision. Peace officers and agencies would not be liable for hurting people with information in the database, even if it were incorrect.

CSHB 3149 could lead officers to react quickly, violently, and inappropriately when they encountered a person in the database on a routine traffic violation or for some other reason. Also, officers could be more quick to perform searches and seizures on people who showed up in the database. The database could result in a person who never had threatened a peace officer being branded as a troublemaker. For example, if an innocent person borrowed the car of someone who was in the database, a police officer could mistake the driver for the person in the database.

Other, better ways to deal with people who threaten peace officers would ensure that people were afforded due process. Several Penal Code offenses cover threatening a peace officer. Under the assault statute in Penal Code, sec. 22.01, it is a Class C misdemeanor intentionally or knowingly to threaten another with imminent bodily injury. Under Penal Code, sec. 42.01, it is a Class C misdemeanor to abuse or threaten a person in a public place in an obviously offensive manner. Sec. 22.07 makes it a Class B misdemeanor to issue a terroristic threat, which can include placing any person in fear of imminent serious bodily injury. Other Penal Code statutes also could be used, including sec. 36.06, obstruction; sec. 36.03, coercion of a public servant; and sec. 36.05, tampering with a witness.

OTHER
OPPONENTS
SAY:

CSHB 3149 should make submissions to the database by local law enforcement agencies voluntary, not mandatory, to avoid forcing another state mandate on overburdened agencies.

NOTES:

The bill as filed would have applied to people who made threats against public servants. The committee substitute would apply only to people who threatened peace officers.

The bill's fiscal note estimates that creating the new database would cost DPS $180,000 in fiscal 2002.