



Legislative UPDATE

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The Deadline Is upon Us: State-Mandated Cybersecurity Training

As promised, the Texas Municipal League Intergovernmental Risk Pool (TML IRP) has released a [free cybersecurity training program](#), including an online video. TML IRP did so in response to a new [state law](#) mandating that every city employee who has access to a city's computer system complete cybersecurity training by June 14, 2020, and annually thereafter. The law also requires that every mayor and councilmember, regardless of whether they have access to a city's computer system, complete the training annually.

The Texas Department of Information Resources (DIR) also has certified other programs, with more information available on the agency's cybersecurity awareness training certification [web page](#).

DIR has launched an online tool called Texas by Texas (TxT) to help local governments track compliance. By using TxT, city employees can self-report their training compliance, and DIR will later send a detailed report from the TxT application to each city verifying their compliance. Cities that wish to use TxT for employee self-reporting must fill out the [TxT Self Reporting Form](#).

If the city chooses not to use TxT, DIR has created an [acknowledgement form](#) to document compliance. Cities are not required to use either application and can track their compliance using any method they chose. A city will not submit training records, employee certificates of completion, or audits to DIR, but the city should retain some form of documentation with internal training and auditing records.

City officials and employees who have completed the training requirement can also individually certify their training compliance [here](#). The compliance form can be submitted by whomever the local government authorizes. The authorized individual submitting the form will need access to their email account as they will be required to enter a confirmation code to finalize submission. The form is due by June 15, 2020.

Democrats Introduce Federal Police Reform Bill

Last Monday, House and Senate Democrats unveiled a broad policing reform bill following weeks of protests prompted by the death of George Floyd.

The *Justice in Policing Act of 2020* introduced by the Congressional Black Caucus Chair Karen Bass (D – CA), Senators Corey Booker (D – NJ), Kamala Harris (D – CA), and House Judiciary Committee Chair Jerrold Nadler (D – NY) would: (1) establish a national standard for the operation of police departments; (2) mandate data collection on police encounters; (3) reprogram existing funds to invest in transformative community-based policing programs; and (4) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations.

The House Judiciary Committee held its first hearing on the bill last Wednesday. The House should vote on the bill by the end of this month. Senate Republicans have tasked Senator Tim Scott (R – SC) to lead a group of Senators to draft their police reform plan. TML will report on the details of that plan when it is released.

The *Justice in Policing Act of 2020* would, among other things, do the following:

- **Enable individuals to recover damages in civil court when law enforcement officers violate their constitutional rights by eliminating qualified immunity for law enforcement.**
- Prohibit federal, state, and local law enforcement from racial, religious, and discriminatory profiling.
- Mandate training on racial, religious, and discriminatory profiling for all law enforcement officers.
- Require law enforcement to collect data on all investigatory activities.
- Ban chokeholds and carotid holds at the federal level and condition law enforcement funding for state and local governments on banning chokeholds.
- Ban no-knock warrants in drug cases at the federal level and condition law enforcement funding for state and local governments on banning no-knock warrants at the state and local level.

- Require that deadly force be used only as a last resort and require officers to employ de-escalation techniques first.
- Limit the transfer of military-grade equipment to state and local law enforcement.
- Require federal uniformed police officers to wear body cameras and requires state and local law enforcement to use existing federal funds to ensure the use of police body cameras.
- Amend the federal criminal statute from “willfulness” to a “recklessness” standard to successfully identify and prosecute police misconduct.
- Improve the use of pattern and practice investigations at the federal level by granting the Department of Justice Civil Rights Division subpoena power and create a grant program for state attorneys general to develop authority to conduct independent investigations into problematic police departments.
- Establish public safety innovation grants for community-based organizations to create local commissions and task forces to help communities to re-imagine and develop concrete, just and equitable public safety approaches.
- Establish a National Police Misconduct Registry to prevent problematic officers who are fired or leave one agency from moving to another jurisdiction without any accountability.
- Create law enforcement development and training programs to develop best practices.
- Require the creation of law enforcement accreditation standard recommendations based on President Obama’s Taskforce on 21st Century Policing.
- Require state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.
- Establishes a Department of Justice task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.
- Make it a federal crime to conspire to violate existing federal hate crime laws

The League will continue to monitor and report on police reform legislation.

FCC Preempts Cities Again

On June 9, the Federal Communications Commission adopted a [Declaratory Ruling and Notice of Proposed Rulemaking](#) on a 3-2 vote that, among many other things, imposes shot clocks for so-called “6409(a)” structures, which are generally existing poles to which industry wishes to add wireless facilities.

The FCC frequently characterizes its preemptive orders as leading the way for increased rural service. This order is no different. According to the FCC, “these clarifications and potential rule changes would address the critical need to upgrade existing sites for 5G networks, particularly in rural areas.” It’s hard to connect those dots. How does limiting city authority over the placement of cellular facilities in highly-populated, urban areas lead to more rural broadband?

League staff will provide more detailed information shortly.

Texas Supreme Court Refuses to Consider City of Austin’s Paid Sick Leave Ordinance

On June 5, the Texas Supreme Court – without issuing a written opinion – [refused to review](#) a lower court’s opinion that the City of Austin’s “paid sick leave” ordinance is preempted by state law.

The case stems from a 2018 city ordinance that requires private employers to provide paid sick leave to some of their employees. In November 2018, the Austin Court of Appeals [concluded](#) that paid sick leave equates to “wages” under the Texas Minimum Wage Act. The ordinance requires private employers to give leave with pay, which essentially means employers are paying more than the minimum wage, which is preempted by the Act.

The Supreme Court’s refusal to hear the case means that the Austin Court of Appeals opinion controls within that court’s jurisdiction. The refusal doesn’t halt cases involving the cities of Dallas and San Antonio (those cities are within the jurisdiction of different appeals courts) from proceeding, but it makes their success questionable.

The City of San Antonio’s paid sick leave ordinance has been enjoined [pending](#) resolution in a state district court. Similarly, the City of Dallas’ paid sick leave ordinance has been challenged in federal court on both state and federal claims. A federal district court recently granted a [preliminary injunction](#) halting the enforcement of the Dallas’ ordinance pending resolution of the case.

The League will continue to monitor and report on the pending cases.

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are being archived [chronologically](#) as well as by [subject matter](#).

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