86R5425 ADM-F

By:  Thompson of Harris H.B. No. 887

A BILL TO BE ENTITLED

AN ACT

relating to the use of force to make an arrest or search and law enforcement policies regarding de-escalation and proportionate response.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.33 to read as follows:

Art. 2.33.  LAW ENFORCEMENT POLICY ON DE-ESCALATION AND PROPORTIONATE RESPONSE. (a) In this article, "law enforcement agency" has the meaning assigned by Article 2.1386.

(b)  Each law enforcement agency shall adopt a detailed policy regarding de-escalation and proportionate response that is designed to affirm the sanctity of human life and safely reduce the use of force by the agency's peace officers. The policy must:

(1)  require each peace officer to complete training regarding:

(A)  conflict de-escalation techniques;

(B)  the use of force at a level not to exceed that which is proportional to the threat faced by the officer or to the societal interest at stake; and

(C)  strategies to achieve law enforcement objectives in the manner least injurious to peace officers and persons suspected of committing an offense; and

(2)  include procedures designed to minimize the frequency and severity of violent incidents involving peace officers.

(c)  A law enforcement agency may adopt the model policy developed by the Texas Commission on Law Enforcement under Section 1701.165, Occupations Code, or may adopt its own policy.

SECTION 2.  Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.165 to read as follows:

Sec. 1701.165.  MODEL POLICY ON DE-ESCALATION AND PROPORTIONATE RESPONSE. (a) The commission shall develop and make available to all law enforcement agencies in this state a model policy and associated training materials regarding de-escalation and proportionate response that are designed to affirm the sanctity of human life and safely reduce the use of force by peace officers. The model policy must satisfy the requirements of Article 2.33(b), Code of Criminal Procedure.

(b)  In developing a model policy under this section, the commission shall consult with:

(1)  law enforcement agencies and organizations, including national experts on police management and training; and

(2)  community organizations.

(c)  On request of a law enforcement agency, the commission shall provide the agency with the training materials developed under Subsection (a).

SECTION 3.  Sections 9.51(a), (b), (c), and (d), Penal Code, are amended to read as follows:

(a)  A peace officer, or a person acting in a peace officer's presence and at the officer's [~~his~~] direction, is justified in using nonlethal force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1)  the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, the actor [~~he~~] reasonably believes the warrant is valid; [~~and~~]

(2)  before using force, the actor manifests the actor's [~~his~~] purpose to arrest or search and identifies the actor [~~himself~~] as a peace officer or as a person [~~one~~] acting at a peace officer's direction, unless the actor [~~he~~] reasonably believes the actor's [~~his~~] purpose and identity are already known by or cannot reasonably be made known to the person for whom arrest is authorized; and

(3)  the peace officer using force, or directing another person to use force, acts in accordance with the policy adopted under Article 2.33, Code of Criminal Procedure, by the agency employing the peace officer [~~to be arrested~~].

(b)  A person who is not [~~other than~~] a peace officer [~~(~~] or [~~one~~] acting at a peace officer's [~~his~~] direction [~~)~~] is justified in using nonlethal force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests the actor's [~~his~~] purpose to arrest and the reason for the arrest or reasonably believes the actor's [~~his~~] purpose and the reason are already known by or cannot reasonably be made known to the person for whom arrest is authorized [~~to be arrested~~].

(c)  A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) and[~~:~~

[~~(1)  the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or~~

[~~(2)~~]  the actor reasonably believes [~~there is a substantial risk~~] that the person for whom arrest is authorized poses an imminent threat of [~~to be arrested will cause~~] death or serious bodily injury to the actor or another [~~if the arrest is delayed~~].

(d)  A person who is not [~~other than~~] a peace officer but is acting in a peace officer's presence and at the officer's [~~his~~] direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if:

(1)  the use of force would have been justified under Subsection (b);

(2)  the peace officer directing the person to use deadly force acts in accordance with the policy adopted under Article 2.33, Code of Criminal Procedure, by the agency employing the peace officer; and

(3)  [~~:~~

[~~(1)  the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or~~

[~~(2)~~]  the actor reasonably believes [~~there is a substantial risk~~] that the person for whom arrest is authorized poses an imminent threat of [~~to be arrested will cause~~] death or serious bodily injury to another [~~if the arrest is delayed~~].

SECTION 4.  (a) Not later than December 1, 2019, the Texas Commission on Law Enforcement shall develop and make available the model policy and associated training materials required under Section 1701.165, Occupations Code, as added by this Act.

(b)  Not later than June 1, 2020, each law enforcement agency in this state shall adopt a policy as required by Article 2.33, Code of Criminal Procedure, as added by this Act.

(c)  Section 9.51, Penal Code, as amended by this Act, applies only to use of force that occurs on or after June 1, 2020.

SECTION 5.  This Act takes effect September 1, 2019.