86R1440 JSC-D

By:  West S.B. No. 332

A BILL TO BE ENTITLED

AN ACT

relating to preventing racial profiling and to video and audio equipment and recordings of certain law enforcement motor vehicle stops; creating an offense.

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

SECTION 1.  Article 2.131, Code of Criminal Procedure, is amended to read as follows:

Art. 2.131.  RACIAL PROFILING PROHIBITED. A peace officer may not engage in an act of racial profiling, as defined by the written policy required by Article 2.132(b) and adopted by the law enforcement agency employing the officer.

SECTION 2.  Article 2.132, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d)  On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include:

(1)  guidelines for when a peace officer should activate the camera or other equipment or discontinue a recording currently in progress;

(2)  provisions relating to data retention, including a provision requiring the retention of [~~standards for reviewing~~] video and audio recordings for a minimum period of 90 days;

(3)  provisions relating to storage of video and audio recordings, creation of backup copies of the recordings, and maintenance of data security;

(4)  guidelines for public access, through open records requests, to recordings that are public information;

(5)  procedures for supervisory or internal review; and

(6)  the handling and documenting of equipment and malfunctions of equipment [~~documentation~~].

(d-1)  A policy adopted under this article must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

SECTION 3.  Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.1325, 2.13851, 2.13852, 2.13853, 2.13854, and 2.13855 to read as follows:

Art. 2.1325.  RECORDING INTERACTIONS WITH THE PUBLIC. (a) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

(b)  A peace officer who uses a law enforcement motor vehicle or motorcycle equipped with video or audio equipment described by Article 2.132(d) shall act in a manner that is consistent with the policy of the law enforcement agency that employs the officer with respect to when and under what circumstances the equipment must be activated.

(c)  A peace officer who does not activate video or audio equipment in response to a call for assistance or on making a motor vehicle stop must include in the officer's incident report or otherwise note in the case file or record the reason for not activating the equipment.

(d)  Any justification for failing to activate the equipment because it is unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

Art. 2.13851.  RECORDINGS DOCUMENTING CERTAIN CONDUCT OF LAW ENFORCEMENT OFFICER. (a) Except as provided by Subsection (b), a video or audio recording under Article 2.1325 documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

(b)  A law enforcement agency may release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose.

(c)  This article does not affect the authority of a law enforcement agency to withhold under Section 552.108, Government Code, information related to a closed criminal investigation that did not result in a conviction or a grant of deferred adjudication community supervision.

Art. 2.13852.  RELEASE OF VIDEO OR AUDIO RECORDING. (a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for a video or audio recording under Article 2.1325:

(1)  the date and approximate time of the recording;

(2)  the specific location where the recording occurred; and

(3)  the name of one or more persons known to be a subject of the recording.

(b)  A failure to provide all of the information required by Subsection (a) to be part of a request for a recording does not preclude the requestor from making a future request for the same recording.

(c)  Except as provided by Subsection (d), a recording described by Subsection (a) that is held by a law enforcement agency is not subject to the requirements of Section 552.021, Government Code.

(d)  A recording that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

(e)  A law enforcement agency may:

(1)  seek to withhold a recording subject to Subsection (d) in accordance with procedures provided by Section 552.301, Government Code;

(2)  assert any exceptions to disclosure in Chapter 552, Government Code, or other law; or

(3)  release a recording requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.

(f)  The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this article. The fee amount must be sufficient to cover the cost of reviewing and making the recording. A law enforcement agency may provide a copy without charge or at a reduced charge if the agency determines that waiver or reduction of the charge is in the public interest.

(g)  A recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording:

(1)  was not required to be made under law or under a policy adopted by the appropriate law enforcement agency; and

(2)  does not relate to a law enforcement purpose.

Art. 2.13853.  VIDEO AND AUDIO RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested recording under Article 2.1325 falls within an exception to public disclosure is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(b)  Notwithstanding Section 552.301(d), Government Code, a governmental body's response to a requestor regarding a requested recording is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(c)  Notwithstanding Section 552.301(e), Government Code, a governmental body's submission to the attorney general of the information required by that subsection regarding a requested recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

(d)  Notwithstanding Section 552.301(e-1), Government Code, a governmental body's submission to a requestor of the information required by that subsection regarding a requested recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

Art. 2.13854.  PRODUCTION OF VIDEO OR AUDIO RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Notwithstanding Section 552.221(d), Government Code, an officer for public information who is employed by a governmental body and who in accordance with Article 2.13853 receives a voluminous request for recordings under Article 2.1325 is considered to have promptly produced the information for purposes of Section 552.221, Government Code, if the officer takes the actions required under that section before the 21st business day after the date of receipt of the written request.

(b)  For purposes of this article, "voluminous request" includes:

(1)  a request for recordings from more than five separate incidents;

(2)  more than five separate requests for recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or

(3)  a request or multiple requests from the same person in a 24-hour period for recordings that, taken together, constitute more than five total hours of video or audio recordings.

Art. 2.13855.  OFFENSE. (a) A peace officer or other employee of a law enforcement agency commits an offense if the officer or employee releases without permission of the applicable law enforcement agency a recording.

(b)  An offense under this article is a Class A misdemeanor.

SECTION 4.  (a)  A law enforcement agency operating video or audio equipment on the effective date of this Act may submit any existing policy of the agency regarding the use of the equipment to the Texas Commission on Law Enforcement to determine whether the policy complies with Article 2.132(d), Code of Criminal Procedure, as amended by this Act.

(b)  Notwithstanding Article 2.132(d), Code of Criminal Procedure, as amended by this Act, a law enforcement agency operating video or audio equipment on the effective date of this Act is not required to adopt or implement a policy that complies with that article before September 1, 2020.

(c)  Articles 2.13851, 2.13852, 2.13853, 2.13854, and 2.13855, Code of Criminal Procedure, as added by this Act, apply to a release of a recording on or after the effective date of this Act, regardless of whether the incident that is the subject of the recording occurred before, on, or after the effective date of this Act.

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