

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

1 frequency and severity of violent incidents involving peace
2 officers.

3 (c) A law enforcement agency may adopt the model policy
4 developed by the Texas Commission on Law Enforcement under Section
5 1701.165, Occupations Code, or may adopt its own policy.

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

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

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

- 18 (1) law enforcement agencies and organizations,
19 including national experts on police management and training; and
20 (2) community organizations.

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

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

26 (a) A peace officer, or a person acting in a peace officer's
27 presence and at the officer's [~~his~~] direction, is justified in

1 using nonlethal force against another when and to the degree the
2 actor reasonably believes the force is immediately necessary to
3 make or assist in making an arrest or search, or to prevent or
4 assist in preventing escape after arrest, if:

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

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

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

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

1 to the person for whom arrest is authorized [~~to be arrested~~].

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

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

10 [(~~2~~)] the actor reasonably believes [~~there is a~~
11 ~~substantial risk~~] that the person for whom arrest is authorized
12 poses an imminent threat of [~~to be arrested will cause~~] death or
13 serious bodily injury to the actor or another [~~if the arrest is~~
14 ~~delayed~~].

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

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

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

27 (3) [+]

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

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

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

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

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

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