87R1045 MEW-F

By:  Krause H.B. No. 1757

A BILL TO BE ENTITLED

AN ACT

relating to recordings of peace officer performance of official duties and interactions with the public; creating a criminal offense.

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

SECTION 1.  Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.13851 to read as follows:

Art. 2.13851.  NOTICE OF RECORDING INTERACTIONS WITH PUBLIC. (a) Except as provided by this article, if during the performance of the peace officer's official duties a peace officer makes a video or audio recording of the officer's interaction with a person, the peace officer must immediately disclose to the person that the officer is recording the interaction and the method by which the officer is making the recording.

(b)  A peace officer is not required to make the disclosure under Subsection (a) if the peace officer's interaction with a person occurs as part of an ongoing criminal investigation.

(c)  A peace officer is not required to make the disclosure under Subsection (a) immediately if making the disclosure immediately would be unsafe, unrealistic, or impracticable. Any justification for failing to make the disclosure immediately because it would be unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

SECTION 2.  Sections 37.09(c) and (d), Penal Code, are amended to read as follows:

(c)  An offense under Subsection (a), [~~or Subsection~~] (d)(1), or (d)(3) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(d)  A person commits an offense if the person:

(1)  knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; [~~or~~]

(2)  observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency; or

(3)  is a peace officer or other employee of a law enforcement agency who alters, destroys, or conceals another person's audio, visual, or photographic recording of a peace officer's performance of official duties without obtaining that other person's written consent.

SECTION 3.  Section 38.15(c), Penal Code, is amended to read as follows:

(c)  It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant:

(1)  was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code; or

(2)  consisted only of filming, recording, photographing, documenting, or observing a peace officer, if before or while engaging in the conduct, the defendant obeyed any reasonable and lawful order by a peace officer to change the defendant's proximity or position.

SECTION 4.  Section 542.501, Transportation Code, is amended to read as follows:

Sec. 542.501.  OBEDIENCE REQUIRED TO PEACE [~~POLICE~~] OFFICERS, SCHOOL CROSSING GUARDS, AND ESCORT FLAGGERS. (a) A person may not wilfully fail or refuse to comply with a lawful order or direction of:

(1)  a peace [~~police~~] officer, subject to Subsection (b);

(2)  a school crossing guard who:

(A)  is performing crossing guard duties in a school crosswalk to stop and yield to a pedestrian; or

(B)  has been trained under Section 600.004 and is directing traffic in a school crossing zone; or

(3)  an escort flagger who is directing or controlling the flow of traffic in accordance with a permit issued by the Texas Department of Motor Vehicles under Subtitle E for the movement of an oversize or overweight vehicle.

(b)  Subsection (a)(1) does not apply to an order or direction to cease filming, recording, photographing, documenting, or observing a peace officer while the officer is engaged in the performance of official duties. This subsection does not prohibit a peace officer from giving the person a reasonable and lawful order or direction to change the person's proximity or position relative to a peace officer who is engaged in the performance of official duties.

SECTION 5.  Section 37.09, Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6.  (a) Except as provided by Subsection (b) of this section, Section 38.15, Penal Code, and Section 542.501, Transportation Code, as amended by this Act, apply to the prosecution of an offense under one of those sections commenced before, on, or after the effective date of this Act.

(b)  A final conviction for an offense under Section 38.15, Penal Code, or Section 542.501, Transportation Code, that exists on the effective date of this Act is unaffected by this Act.

SECTION 7.  This Act takes effect September 1, 2021.