

By: Thompson of Harris

H.B. No. 833

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 Art. 2.33. LAW ENFORCEMENT POLICY ON DE-ESCALATION AND
9 PROPORTIONATE RESPONSE. (a) In this article, "law enforcement
10 agency" means an agency of the state or an agency of a political
11 subdivision of the state authorized by law to employ peace
12 officers.

13 (b) Each law enforcement agency shall adopt a detailed
14 written policy regarding the use of force by peace officers. The
15 policy must:

16 (1) emphasize conflict de-escalation and the use of
17 force in a manner proportionate to the threat posed and to the
18 seriousness of the alleged offense;

19 (2) mandate that deadly force is only to be used by
20 peace officers as a last resort; and

21 (3) affirm the sanctity of human life and the
22 importance of treating all persons with dignity and respect.

23 (c) A law enforcement agency may adopt the model policy
24 developed by the Texas Commission on Law Enforcement under Section

1 1701.165, Occupations Code, or may adopt its own policy.

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

4 Sec. 1701.165. MODEL POLICY ON USE OF FORCE. (a) The
5 commission shall develop and make available to all law enforcement
6 agencies in this state a model policy and associated training
7 materials regarding the use of force by peace officers. The model
8 policy must:

9 (1) be designed to minimize the number and severity of
10 incidents in which peace officers use force; and

11 (2) be consistent with the requirements of Article
12 2.33(b), Code of Criminal Procedure, and the guiding principles on
13 the use of force issued by the Police Executive Research Forum.

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

16 (1) law enforcement agencies and organizations,
17 including the Police Executive Research Forum and other national
18 experts on police management and training; and

19 (2) community organizations.

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

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

25 (a) A peace officer, or a person acting in a peace officer's
26 presence and at the officer's [~~his~~] direction, is justified in
27 using nonlethal force against another when and to the degree [~~the~~

1 ~~actor reasonably believes]~~ the force is immediately necessary to
2 make or assist in making an arrest or search, or to prevent or
3 assist in preventing escape after arrest, if:

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

7 (2) before using force, the actor:

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

14 (B) attempts to de-escalate the situation; and

15 (C) issues a warning that force will be used;

16 (3) the force used is proportionate to the threat
17 posed and to the seriousness of the alleged offense;

18 (4) the actor immediately terminates the use of force
19 the moment the person against whom force is used becomes compliant
20 or is subdued; and

21 (5) the use of force does not present a serious risk of
22 injury to any person other than the actor or the person against whom
23 the force is used [~~to be arrested~~].

24 (b) A person who is not [~~other than~~] a peace officer [~~+~~] or
25 [~~one~~] acting at a peace officer's [~~his~~] direction [~~+~~] is justified
26 in using nonlethal force against another when and to the degree [~~the~~
27 ~~actor reasonably believes]~~ the force is immediately necessary to

1 make or assist in making a lawful arrest, or to prevent or assist in
2 preventing escape after lawful arrest if:

3 (1) [7] before using force, the actor:

4 (A) manifests the actor's [his] purpose to arrest
5 and the reason for the arrest or reasonably believes the actor's
6 [his] purpose and the reason are already known by or cannot
7 reasonably be made known to the person for whom arrest is
8 authorized;

9 (B) attempts to de-escalate the situation; and

10 (C) issues a warning that force will be used;

11 (2) the force used is proportionate to the threat
12 posed and to the seriousness of the alleged offense;

13 (3) the actor immediately terminates the use of force
14 the moment the person against whom force is used becomes compliant
15 or is subdued; and

16 (4) the use of force does not present a serious risk of
17 injury to any person other than the actor or the person against whom
18 the force is used [to be arrested].

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

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

27 [~~(2) the actor reasonably believes there is a~~

1 ~~substantial risk that~~ the person for whom arrest is authorized
2 poses an imminent threat of [~~to be arrested will cause~~] death or
3 serious bodily injury to the actor or another;

4 (2) the deadly force is used only against the person
5 for whom arrest is authorized;

6 (3) the actor immediately terminates the use of deadly
7 force the moment the imminent threat of death or serious bodily
8 injury is eliminated; and

9 (4) no lesser degree of force could have eliminated
10 the imminent threat of death or serious bodily injury [~~if the arrest~~
11 ~~is delayed~~].

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

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

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

26 (2) the deadly force is used only against the person
27 for whom arrest is authorized;

1 (3) the actor immediately terminates the use of deadly
2 force the moment the imminent threat of death or serious bodily
3 injury is eliminated; and

4 (4) no lesser degree of force could have eliminated
5 the imminent threat of death or serious bodily injury [~~if the arrest~~
6 ~~is delayed~~].

7 SECTION 4. Section 9.51(e), Penal Code, is repealed.

8 SECTION 5. (a) Not later than January 1, 2022, 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 March 1, 2022, each law enforcement
13 agency in this state shall adopt the policy required by Article
14 2.33, Code 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 March 1, 2022.

17 SECTION 6. This Act takes effect September 1, 2021.