

By: Reynolds

H.B. No. 3602

A BILL TO BE ENTITLED

AN ACT

relating to peace officers and the investigation and prosecution of criminal offenses.

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

SECTION 1. This Act may be cited as the Thurgood Marshall Criminal Justice Reform Act.

SECTION 2. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. PEACE OFFICER LIABILITY FOR DEPRIVATION OF CERTAIN RIGHTS, PRIVILEGES, OR IMMUNITIES

Sec. 135.0001. DEFINITIONS. In this chapter:

(1) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

(2) "Public entity" means:

(A) this state;

(B) a political subdivision of this state, including a municipality or county; and

(C) any other governmental agency whose authority is derived from the laws or constitution of this state.

Sec. 135.0002. PEACE OFFICER LIABILITY FOR DEPRIVATION OF RIGHTS, PRIVILEGES, OR IMMUNITIES UNDER COLOR OF LAW. (a) A person may bring an action for any appropriate relief, including legal or equitable relief, against a peace officer who, under the color of law, deprived the person of or caused the person to be deprived of a

1 right, privilege, or immunity secured by the Texas Constitution.

2 (b) A person must bring an action under this chapter not
3 later than two years after the day the cause of action accrues.

4 Sec. 135.0003. APPLICABILITY OF OTHER LAW; PROHIBITED
5 DEFENSES. (a) Notwithstanding any other law, a statutory immunity
6 or limitation on liability, damages, or attorney's fees does not
7 apply to an action brought under this chapter.

8 (b) Notwithstanding any other law, qualified immunity or a
9 defendant's good faith but erroneous belief in the lawfulness of
10 the defendant's conduct is not a defense to an action brought under
11 this chapter.

12 Sec. 135.0004. ATTORNEY'S FEES AND COSTS. (a) In an action
13 brought under this chapter, a court shall award reasonable
14 attorney's fees and costs to a prevailing plaintiff.

15 (b) In an action brought under this chapter, if a judgment
16 is entered in favor of a defendant, the court may award reasonable
17 attorney's fees and costs to the defendant only for defending
18 claims the court finds frivolous.

19 Sec. 135.0005. INDEMNIFICATION REQUIRED; EXCEPTION. (a)
20 Notwithstanding any other law and except as provided by Subsection
21 (b), a public entity shall indemnify a peace officer employed by the
22 entity for liability incurred by and a judgment imposed against the
23 officer in an action brought under this chapter.

24 (b) A public entity is not required to indemnify a peace
25 officer employed by the entity under Subsection (a) if the officer
26 was convicted of a criminal violation for the conduct that is the
27 basis for the action brought under this chapter.

1 SECTION 3. Article 20A.052(a), Code of Criminal Procedure,
2 is amended to read as follows:

3 (a) The foreperson shall:

4 (1) preside over the grand jury's sessions; ~~and~~

5 (2) conduct the grand jury's business and proceedings
6 in an orderly manner; and

7 (3) prevent a person present during a session of the
8 grand jury from displaying, through any visible means, support for
9 another person who would likely be involved in the prosecution of an
10 offense subject to indictment by the grand jury.

11 SECTION 4. Article 20A.202(a), Code of Criminal Procedure,
12 is amended to read as follows:

13 (a) Grand jury proceedings conducted in the course of the
14 grand jury's official duties are secret.

15 SECTION 5. Article 20A.203(b), Code of Criminal Procedure,
16 is amended to read as follows:

17 (b) A witness who reveals, before the end of the grand
18 jury's term, any matter about which the witness is examined or that
19 the witness observes during a grand jury proceeding, other than
20 when the witness is required to give evidence on that matter in due
21 course, may be punished by a fine not to exceed \$500, as for
22 contempt of court, and by a term of confinement not to exceed six
23 months.

24 SECTION 6. Article 20A.205(b), Code of Criminal Procedure,
25 is amended to read as follows:

26 (b) A petition for disclosure under Subsection (a) must be
27 filed in the district court in which the case is pending. The

1 defendant must also file a copy of the petition with the attorney
2 representing the state, the parties to the judicial proceeding, and
3 any other person the court requires. Each person who receives a
4 copy of the petition under this subsection is entitled to appear
5 before the court. ~~[The court shall provide interested parties with
6 an opportunity to appear and present arguments for or against the
7 requested disclosure.]~~

8 SECTION 7. Section 41.309(b), Government Code, is amended
9 to read as follows:

10 (b) To be eligible to serve as a counsellor, a person must ~~[+~~
11 ~~[(1)]~~ be a competent attorney certified in criminal
12 law by the Texas Board of Legal Specialization ~~[+~~

13 ~~[(2)] have at least five years of experience as a lawyer~~
14 ~~assisting prosecuting attorneys in prosecuting offenses or~~
15 ~~delinquent conduct committed on state property used for the custody~~
16 ~~of persons charged with or convicted of offenses or used for the~~
17 ~~custody of children charged with or adjudicated as having engaged~~
18 ~~in delinquent conduct or conduct indicating a need for supervision,~~
19 ~~or~~

20 ~~[(3)] have served for at least five years as a~~
21 ~~prosecuting attorney or as a judge of a district court, a court of~~
22 ~~appeals, or the court of criminal appeals].~~

23 SECTION 8. Subtitle A, Title 5, Local Government Code, is
24 amended by adding Chapter 142A to read as follows:

1 CHAPTER 142A. PROVISIONS GENERALLY APPLICABLE TO MUNICIPAL POLICE

2 OFFICERS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 142A.001. APPLICABILITY. This chapter applies to
5 municipal police departments regardless of whether the department
6 has adopted the provisions of Chapter 143.

7 Sec. 142A.002. CHAPTER SUPERSEDES OTHER LAW OR AGREEMENT.
8 To the extent this chapter conflicts with another law, rule,
9 including a rule of a civil service commission, or a collective
10 bargaining, meet and confer, or other agreement, this chapter
11 controls.

12 SUBCHAPTER B. HIRING

13 Sec. 142A.051. EXAMINATION ON IMPLICIT BIAS IN POLICE
14 DEPARTMENT. (a) A municipal police department shall, before
15 hiring an applicant for a position with the department as a peace
16 officer, require the applicant to take and pass an examination on
17 implicit bias.

18 (b) The police department shall collaborate with an
19 accredited institution of higher education or other nonprofit
20 research institution in:

- 21 (1) creating or selecting the examination;
22 (2) setting the minimum passing score; and
23 (3) setting a score that exceeds the minimum passing
24 score but below which an applicant is required to receive
25 individualized counseling on implicit bias before being hired for a
26 peace officer position.

27 (c) A police department:

1 (1) may not hire as a peace officer an applicant who
2 does not meet or exceed the passing score set under Subsection
3 (b)(2); and

4 (2) may hire as a peace officer an applicant who
5 receives a score set under Subsection (b)(3) only after the
6 applicant receives individualized counseling on implicit bias.

7 Sec. 142A.052. HIGHER EDUCATION REQUIREMENT. To be
8 eligible for a position with a police department as a peace officer,
9 an applicant hired on or after September 1, 2021, must:

10 (1) for a home-rule municipality located wholly or
11 partly in a county with a population of 500,000 or more, hold at
12 least a baccalaureate degree or equivalent from an accredited
13 institution of higher education; or

14 (2) for a home-rule municipality not described by
15 Subdivision (1), hold at least an associate's degree or equivalent
16 from an accredited institution of higher education.

17 Sec. 142A.053. HIRING AFTER CERTAIN TERMINATION OR
18 RESIGNATION. A municipal police department may not hire as a peace
19 officer a person formerly employed as a peace officer who was
20 terminated or resigned in lieu of termination from that position
21 for the unjustified use of deadly force.

22 SUBCHAPTER C. LABOR AGREEMENTS

23 Sec. 142A.101. COMMUNITY INVOLVEMENT IN COLLECTIVE
24 BARGAINING AND MEET AND CONFER. A municipality and a police officer
25 association recognized as a bargaining agent may not adopt a
26 collective bargaining, meet and confer, or other similar agreement
27 unless the parties have solicited participation by local community

1 members, including allowing an organization of local community
2 members to review and comment on any proposed agreement.

3 SECTION 9. Section 1701.255(c), Occupations Code, is
4 amended to read as follows:

5 (c) A person may not enroll in a peace officer training
6 program under Section 1701.251(a) unless the person has received an
7 associate's degree or any higher academic degree from an accredited
8 institution of higher education in or out of this state [+

9 ~~[(1) a high school diploma;~~

10 ~~[(2) a high school equivalency certificate; or~~

11 ~~[(3) an honorable discharge from the armed forces of~~
12 ~~the United States after at least 24 months of active duty service].~~

13 SECTION 10. Sections 9.51(a), (b), (c), and (d), Penal
14 Code, are amended to read as follows:

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

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

24 (2) before using force, the actor:

25 (A) manifests the actor's [~~his~~] purpose to arrest
26 or search and identifies the actor [~~himself~~] as a peace officer or
27 as a person [~~one~~] acting at a peace officer's direction, unless the

1 actor [~~he~~] reasonably believes the actor's [~~his~~] purpose and
2 identity are already known by or cannot reasonably be made known to
3 the person for whom the arrest or search is authorized;

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

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

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

8 (4) the actor immediately terminates the use of force
9 the moment the person against whom force is used becomes compliant
10 or is subdued; and

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

14 (b) A person who is not [~~other than~~] a peace officer [~~+~~] or
15 [~~one~~] acting at a peace officer's [~~his~~] direction [~~+~~] is justified
16 in using nonlethal force against another when and to the degree [~~the~~
17 ~~actor reasonably believes~~] the force is immediately necessary to
18 make or assist in making a lawful arrest, or to prevent or assist in
19 preventing escape after lawful arrest if:

20 (1) [~~+~~] before using force, the actor:

21 (A) manifests the actor's [~~his~~] purpose to arrest
22 and the reason for the arrest or reasonably believes the actor's
23 [~~his~~] purpose and the reason are already known by or cannot
24 reasonably be made known to the person for whom arrest is
25 authorized;

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

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

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

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

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

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

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

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

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

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

26 (4) no lesser degree of force could have eliminated
27 the imminent threat of death or serious bodily injury [~~if the arrest~~

1 ~~is delayed~~].

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

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

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

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

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

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

24 SECTION 11. Section 9.51(e), Penal Code, is repealed.

25 SECTION 12. Chapter 135, Civil Practice and Remedies Code,
26 as added by this Act, applies only to a cause of action that accrues
27 on or after the effective date of this Act.

1 SECTION 13. Section 41.309, Government Code, as amended by
2 this Act, applies only to a counsellor elected by the executive
3 board of the board of directors of the Special Prosecution Unit
4 under that section on or after the effective date of this Act. A
5 counsellor elected before the effective date of this Act is
6 governed by the law in effect on the date the counsellor was
7 elected, and the former law is continued in effect for that purpose.

8 SECTION 14. Section 142A.051, Local Government Code, as
9 added by this Act, applies only to an applicant who is hired by a
10 municipal police department as a peace officer on or after January
11 1, 2021.

12 SECTION 15. Section 1701.255, Occupations Code, as amended
13 by this Act, applies only to a person who submits an application for
14 a peace officer license under Chapter 1701, Occupations Code, on or
15 after the effective date of this Act. A person who submits an
16 application for a peace officer license under Chapter 1701,
17 Occupations Code, before the effective date of this Act is governed
18 by the law in effect on the date the application was submitted, and
19 the former law is continued in effect for that purpose.

20 SECTION 16. Section 9.51, Penal Code, as amended by this
21 Act, applies only to an offense committed on or after the effective
22 date of this Act. An offense committed before the effective date of
23 this Act is governed by the law in effect on the date the offense was
24 committed, and the former law is continued in effect for that
25 purpose. For purposes of this section, an offense was committed
26 before the effective date of this Act if any element of the offense
27 occurred before that date.

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