88R5368 AJZ-F

By:  Thompson of Harris H.B. No. 2519

A BILL TO BE ENTITLED

AN ACT

relating to law enforcement misconduct and law enforcement interactions with certain detained or arrested individuals and other members of the public, to public entity liability for those interactions, and to the confinement, conviction, or release of detained or arrested individuals.

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

SECTION 1.  This Act shall be known as the George Floyd Act.

SECTION 2.  Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 117 to read as follows:

CHAPTER 117. PUBLIC ENTITY LIABILITY FOR DEPRIVATION OF CERTAIN RIGHTS, PRIVILEGES, OR IMMUNITIES UNDER COLOR OF LAW

Sec. 117.001.  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.

(3)  "Respondeat superior" means the common-law doctrine under which an employer is liable for the wrongful acts of the employer's employee or agent.

Sec. 117.002.  PUBLIC ENTITY RESPONSIBILITY. (a) For purposes of this chapter:

(1)  a public entity is a principal responsible for the wrongful acts or omissions of the entity's peace officers;

(2)  a peace officer is an agent of the public entity that employs the officer; and

(3)  a public entity is legally responsible for a wrongful act or omission of the entity's peace officer if the act or omission occurs under the color of law.

(b)  This chapter constitutes acceptance by a public entity employing a peace officer of responsibility under respondeat superior for the officer's conduct under the color of law, regardless of whether the officer acted in accordance with a policy or custom of the entity.

Sec. 117.003.  DEPRIVATION OF RIGHTS, PRIVILEGES, OR IMMUNITIES UNDER COLOR OF LAW. (a) An individual may bring an action for any appropriate relief, including legal or equitable relief, in a court of this state against a public entity on the basis that a peace officer under the entity's employment, by an act or omission under the color of law, deprived the individual of or caused the individual to be deprived of a right, privilege, or immunity under the laws or constitution of this state or the United States.

(b)  A claimant may recover in an action brought under this chapter damages resulting from an injury arising from a deprivation described by Subsection (a).

(c)  A claimant must bring an action under this chapter not later than two years after the day the cause of action accrues.

(d)  A claimant bringing an action under this chapter bears the burden of proving a deprivation of a right, privilege, or immunity under the laws or constitution of this state or the United States by a preponderance of the evidence.

Sec. 117.004.  APPLICABILITY OF OTHER LAW. Notwithstanding any other law, a statutory immunity or limitation on liability, damages, or attorney's fees does not apply to an action brought under this chapter.

Sec. 117.005.  PROHIBITED DEFENSES. A defendant in an action brought under this chapter may not assert as a defense or basis for immunity that:

(1)  the right, privilege, or immunity under the laws or constitution of this state or the United States was not clearly established at the time of the deprivation by the peace officer;

(2)  based on the state of the law at the time, the peace officer could not have been expected, reasonably or otherwise, to know whether the officer's conduct was lawful; or

(3)  the peace officer acted in good faith or believed, reasonably or otherwise, that the officer's conduct was lawful at the time it was committed.

Sec. 117.006.  JURISDICTION IN STATE COURT. (a) An action under this chapter arises from the laws of this state.

(b)  Jurisdiction over an action brought under this chapter is in the judicial system of this state under the laws of this state, including the Texas Rules of Civil Procedure.

Sec. 117.007.  JUDGMENT. (a) A judgment for an action brought under this chapter must be supported by findings of fact and conclusions of law.

(b)  A peace officer may not be found financially liable in an action brought under this chapter for a deprivation of a right, privilege, or immunity under the laws or constitution of this state or the United States.

Sec. 117.008.  ATTORNEY'S FEES AND COSTS. (a) In an action brought under this chapter, a court shall award reasonable attorney's fees and costs to a prevailing claimant.

(b)  Reasonable attorney's fees include fees incurred on an hourly or contingency basis or by an attorney providing legal services on a pro bono basis.

(c)  For purposes of this section, a claimant prevails if the claimant obtains any relief the claimant seeks in the claimant's petition, whether the relief is obtained by judgment, settlement, or the public entity's voluntary change in behavior.

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

Sec. 117.009.  JOINT AND SEVERAL LIABILITY. A defendant who is found liable in an action brought under this chapter is jointly and severally liable for damages, attorney's fees, and costs awarded by the court.

Sec. 117.010.  TERMINATION OF CONTRACT, AGREEMENT, OR EMPLOYMENT. (a) Notwithstanding any other law, contract, or agreement, a public entity may terminate a contract or agreement with or the employment of a peace officer if the court finds in an action brought under this chapter that the officer deprived a claimant of a right, privilege, or immunity under the laws or constitution of this state or the United States.

(b)  A public entity's termination of a contract or agreement with or the employment of a peace officer does not affect the entity's liability in an action brought under this chapter.

Sec. 117.011.  PUBLIC DISCLOSURE. All petitions, judgments, settlements, and consent decrees related to an action brought under this chapter are public information subject to disclosure under Chapter 552, Government Code.

Sec. 117.012.  WAIVER OF SOVEREIGN OR GOVERNMENTAL IMMUNITY. Sovereign or governmental immunity to suit and from liability is waived to the extent of liability created by this chapter.

SECTION 3.  Article 2.13(b), Code of Criminal Procedure, is amended to read as follows:

(b)  The officer [~~shall~~]:

(1)  may, if authorized [~~in every case authorized by the provisions of this Code~~], interfere without warrant to prevent or suppress crime;

(2)  shall execute all lawful process issued to the officer by any magistrate or court;

(3)  shall give notice to some magistrate of all offenses committed within the officer's jurisdiction, if [~~where~~] the officer has probable cause [~~good reason~~] to believe there has been a violation of the penal law; [~~and~~]

(4)  may, if authorized, arrest offenders without warrant so [~~in every case where the officer is authorized by law, in order~~] that they may be taken before the proper magistrate or court and be tried;

(5)  shall make an identification as a peace officer before taking any action within the course and scope of the officer's official duties unless the identification would render the action impracticable; and

(6)  shall intervene to prevent an action by another peace officer if:

(A)  the action includes the use of force in an amount that exceeds that which is reasonable under the circumstances;

(B)  the intervening officer knows or should know that the other officer's action violates department policy or local, state, or federal law; or

(C)  the action puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not:

(i)  immediately necessary to avoid imminent bodily injury to a peace officer or other person; or

(ii)  required to apprehend a person suspected of committing an offense.

SECTION 4.  Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.1309 and 2.36 to read as follows:

Art. 2.1309.  CITE AND RELEASE POLICY. (a) In this article, "law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(b)  Texas Southern University, in consultation with law enforcement agencies, law enforcement associations, law enforcement training experts, and community organizations engaged in the development of law enforcement policy, shall publish a written model policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only. The policy must provide a procedure for a peace officer, on a person's presentation of appropriate identification, to verify the person's identity and issue a citation to the person. The policy must comply with Articles 14.01, 14.03, and 14.06 of this code and Sections 543.001 and 543.004, Transportation Code.

(c)  Each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by fine only. The policy must meet the requirements for the model policy described by Subsection (b). A law enforcement agency may adopt the model policy published by Texas Southern University under Subsection (b).

Art. 2.36.  POLICY ON DE-ESCALATION AND PROPORTIONATE RESPONSE. (a) In this article, "law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(b)  Texas Southern University shall develop and make available to all law enforcement agencies in this state a model policy and associated training materials regarding the use of force by peace officers. The model policy must be:

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

(2)  consistent with the requirements of Subsection (e) and the guiding principles on the use of force issued by the Police Executive Research Forum.

(c)  In developing a model policy under this section, Texas Southern University shall consult with:

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

(2)  community organizations.

(d)  On request of a law enforcement agency, Texas Southern University shall provide the agency with training regarding the policy developed under Subsection (b).

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

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

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

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

(f)  A law enforcement agency may adopt the model policy developed by Texas Southern University under Subsection (b) or may adopt its own policy.

SECTION 5.  Article 2.33, Code of Criminal Procedure, as added by Chapter 534 (S.B. 69), Acts of the 87th Legislature, Regular Session, 2021, is redesignated as Article 2.34, Code of Criminal Procedure, and amended to read as follows:

Art. 2.34  [~~2.33~~]. USE OF NECK RESTRAINTS DURING SEARCH OR ARREST PROHIBITED. A peace officer may not intentionally use a choke hold, carotid artery hold, or similar neck restraint in searching or arresting a person unless:

(1)  the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person; and

(2)  the officer discontinues the restraint as soon as the threat of serious bodily injury or death described by Subdivision (1) has passed.

SECTION 6.  Article 2.33, Code of Criminal Procedure, as added by Chapter 979 (S.B. 2212), Acts of the 87th Legislature, Regular Session, 2021, is redesignated as Article 2.35, Code of Criminal Procedure, and amended to read as follows:

Art. 2.35  [~~2.33~~].  DUTY TO REQUEST AND RENDER AID. (a) Except as provided by Subsection (b), a peace officer who encounters an injured person while discharging the officer's official duties shall immediately and as necessary:

(1)  request emergency medical services personnel to provide the person with emergency medical services; and

(2)  while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training.

(b)  The peace officer is not required to request emergency medical services or provide first aid or treatment under Subsection (a) if:

(1)  making the request or providing the treatment would expose the officer or another person to a likely risk of serious bodily injury; or

(2)  the officer is injured and physically unable to make the request or provide the treatment.

SECTION 7.  Article 14.01, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c)  Notwithstanding Subsection (a) or (b), a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only, other than an offense under Section 22.01(a)(2) or (3), Penal Code, or Section 49.02, Penal Code.

SECTION 8.  Article 14.03, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i)  Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who only commits one or more offenses punishable by fine only, other than an offense under Section 22.01(a)(2) or (3), Penal Code, or Section 49.02, Penal Code.

SECTION 9.  Article 14.06, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  A peace officer who is charging a person, including a child, with committing an offense that is a [~~Class C~~] misdemeanor punishable by fine only, other than an offense under Section 49.02, Penal Code, shall [~~may~~], instead of taking the person before a magistrate, issue a citation to the person that contains:

(1)  written notice of the time and place the person must appear before a magistrate;

(2)  the name and address of the person charged;

(3)  the offense charged;

(4)  information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount; and

(5)  the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

(b-1)  Notwithstanding Subsection (b), a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor under Section 22.01(a)(2) or (3), Penal Code, punishable by fine only may, instead of taking the person before a magistrate, issue a citation to the person that contains all of the information required for a citation issued under Subsection (b).

SECTION 10.  Article 38.141, Code of Criminal Procedure, is amended to read as follows:

Art. 38.141.  CORROBORATION REQUIRED FOR CERTAIN TESTIMONY RELATING TO COVERT LAW ENFORCEMENT ACTIVITY [~~OF UNDERCOVER PEACE OFFICER OR SPECIAL INVESTIGATOR~~]. (a) A defendant may not be convicted of an offense under Chapter 481, Health and Safety Code, on the testimony of a person who is [~~not a licensed peace officer or a special investigator but who is~~] acting covertly on behalf of a law enforcement agency or under the color of law enforcement unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

(b)  Corroboration is not sufficient for the purposes of this article if the corroboration only shows the commission of the offense.

[~~(c)  In this article, "peace officer" means a person listed in Article 2.12, and "special investigator" means a person listed in Article 2.122.~~]

SECTION 11.  Subchapter B, Chapter 142, Local Government Code, is amended by adding Section 142.0605 to read as follows:

Sec. 142.0605.  PROGRESSIVE DISCIPLINARY MATRIX. (a) A public employer shall implement a progressive disciplinary matrix, as described by Section 143.0511, for municipal police officers if the municipality has not adopted Chapter 143.

(b)  The public employer shall adopt rules necessary to implement the progressive disciplinary matrix.

SECTION 12.  Section 142.067, Local Government Code, is amended to read as follows:

Sec. 142.067.  AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) Except as provided by Subsection (b), a [~~A~~] written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the law enforcement agency or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

(b)  An agreement under this subchapter:

(1)  must implement the progressive disciplinary matrix established under Section 142.0605 or 143.0511; and

(2)  may not conflict with and does not supersede a statute, ordinance, order, civil service provision, or rule concerning the disciplinary actions that may be imposed on a police officer under the progressive disciplinary matrix.

SECTION 13.  Section 143.003, Local Government Code, is amended by adding Subdivision (6) to read as follows:

(6)  "Progressive disciplinary matrix" means a formal schedule for disciplinary actions that may be taken against a police officer as described by Section 143.0511.

SECTION 14.  Section 143.008, Local Government Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c)  The commission shall adopt rules that prescribe cause for removal or suspension of a fire fighter [~~or police officer~~]. The rules must comply with the grounds for removal prescribed by Section 143.051.

(c-1)  The commission shall adopt rules that prescribe the disciplinary actions that may be taken against a police officer under a progressive disciplinary matrix.

SECTION 15.  Subchapter D, Chapter 143, Local Government Code, is amended by adding Section 143.0511 to read as follows:

Sec. 143.0511.  PROGRESSIVE DISCIPLINARY MATRIX. (a) The commission shall implement a progressive disciplinary matrix for infractions committed by police officers that consists of a range of progressive disciplinary actions applied in a standardized way based on the nature of the infraction and the officer's prior conduct record, including removal, suspension, change of duty or assignment, demotion, deduction of points from a promotional examination grade, retraining, a written warning, or a written reprimand.

(b)  The progressive disciplinary matrix must include:

(1)  standards for disciplinary actions relating to the use of force against another person, including the failure to de-escalate force incidents in accordance with departmental policy;

(2)  standards for evaluating the level of discipline appropriate for uncommon infractions; and

(3)  presumptive actions to be taken for each type of infraction and any adjustment to be made based on a police officer's previous disciplinary record.

SECTION 16.  Section 143.057, Local Government Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a)  In addition to the other notice requirements prescribed by this chapter, the written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, [~~or~~] a recommended demotion, or, if issued to a police officer, any other disciplinary sanction, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b-1)  A hearing examiner must presume a disciplinary action applied to a police officer under a progressive disciplinary matrix is reasonable unless the facts indicate that the department inappropriately applied a category of offense to the particular violation.

SECTION 17.  Section 143.307, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a)  Except as provided by Subsection (d), an [~~An~~] agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.

(b)  Except as provided by Subsection (d), an [~~An~~] agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.

(d)  An agreement under this subchapter affecting police officers:

(1)  must implement the progressive disciplinary matrix established under Section 143.0511; and

(2)  may not conflict with and does not supersede a statute, order, ordinance, or rule concerning the disciplinary actions that may be imposed on a police officer under the progressive disciplinary matrix.

SECTION 18.  Section 143.361, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a)  Except as provided by Subsection (d), a [~~A~~] written agreement ratified under this subchapter between a public employer and the bargaining agent supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, and other terms of employment other than pension benefits to the extent of any conflict with the previous statute.

(b)  Except as provided by Subsection (d), a [~~A~~] written agreement ratified under this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or a political subdivision or agent of the state, such as a personnel board, a civil service commission, or a home-rule municipality.

(d)  An agreement under this subchapter affecting police officers:

(1)  must implement the progressive disciplinary matrix established under Section 143.0511; and

(2)  may not conflict with and does not supersede an ordinance, order, statute, or rule concerning the disciplinary actions that may be imposed on a police officer under the progressive disciplinary matrix.

SECTION 19.  Section 174.005, Local Government Code, is amended to read as follows:

Sec. 174.005.  PREEMPTION OF OTHER LAW. (a) Except as provided by Subsection (b), this [~~This~~] chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.

(b)  An agreement under this chapter may not conflict with an ordinance, order, statute, or rule concerning the disciplinary actions that may be imposed on municipal police officers under a progressive disciplinary matrix implemented by the municipal public employer.

SECTION 20.  Section 174.006, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Except as provided by Subsection (a-1), a [~~A~~] state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.

(a-1)  A collective bargaining contract affecting municipal police officers may not conflict with a state or local civil service provision implementing a progressive disciplinary matrix under this chapter or other law.

SECTION 21.  Subchapter B, Chapter 174, Local Government Code, is amended by adding Section 174.024 to read as follows:

Sec. 174.024.  PROGRESSIVE DISCIPLINARY MATRIX FOR CERTAIN POLICE OFFICERS. (a) A municipal public employer shall implement a progressive disciplinary matrix, as described by Section 143.0511, for municipal police officers if the municipality has not adopted Chapter 143.

(b)  The municipal public employer shall adopt rules necessary to implement the progressive disciplinary matrix.

SECTION 22.  Section 1701.2551(b), Occupations Code, is amended to read as follows:

(b)  The basic peace officer training course must include training on:

(1)  the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint during a search or arrest by a peace officer as prescribed by Article 2.34, Code of Criminal Procedure [~~in searching or arresting a person, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person~~];

(2)  the duty of a peace officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A)  the amount of force exceeds that which is reasonable under the circumstances; and

(B)  the officer knows or should know that the other officer's use of force:

(i)  violates state or federal law;

(ii)  puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii)  is not required to apprehend the person suspected of committing an offense; and

(3)  the duty of a peace officer [~~who encounters an injured person while discharging the officer's official duties~~] to [~~immediately and as necessary~~] request [~~emergency medical services personnel to provide the person with emergency medical services~~] and render [~~, while waiting for emergency medical services personnel to arrive, provide first~~] aid for an injured [~~or treatment to the~~] person as prescribed by Article 2.35, Code of Criminal Procedure [~~to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment~~].

SECTION 23.  Section 1701.269(b), Occupations Code, as added by Chapter 722 (H.B. 3712), Acts of the 87th Legislature, Regular Session, 2021, is amended to read as follows:

(b)  The model training curriculum and model policies developed under Subsection (a) must include curriculum and policies regarding:

(1)  the prohibition against the intentional [~~curriculum and policies for banning the~~] use of a choke hold, carotid artery hold, or similar neck restraint during a search or arrest by a peace officer as prescribed by Article 2.34, Code of Criminal Procedure [~~in searching or arresting a person, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person~~];

(2)  [~~curriculum and policies regarding~~] the duty of a peace officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A)  the amount of force exceeds that which is reasonable under the circumstances; and

(B)  the officer knows or should know that the other officer's use of force:

(i)  violates state or federal law;

(ii)  puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii)  is not required to apprehend the person suspected of committing an offense; and

(3)  [~~curriculum and policies regarding~~] the duty of a peace officer [~~who encounters an injured person while discharging the officer's official duties~~] to [~~immediately and as necessary~~] request [~~emergency medical services personnel to provide the person with emergency medical services~~] and render [~~, while waiting for emergency medical services personnel to arrive, provide first~~] aid for an injured [~~or treatment to the~~] person as prescribed by Article 2.35, Code of Criminal Procedure [~~to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment~~].

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

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

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

(2)  before using force, the actor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 25.  Subchapter E, Chapter 9, Penal Code, is amended by adding Section 9.515 to read as follows:

Sec. 9.515.  PROHIBITED TECHNIQUES. Notwithstanding any other law, the use of force or deadly force against a person is not justified under Section 9.51 if the force or deadly force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

SECTION 26.  Section 543.001, Transportation Code, is amended to read as follows:

Sec. 543.001.  ARREST WITHOUT WARRANT AUTHORIZED. Any peace officer may arrest without warrant a person found committing a violation of this subtitle, other than a person found only committing one or more misdemeanors punishable by fine only.

SECTION 27.  Section 543.004(a), Transportation Code, is amended to read as follows:

(a)  An officer shall issue a written notice to appear if:

(1)  the offense charged is a misdemeanor under this subtitle that is punishable by fine only[~~:~~

[~~(A)  speeding;~~

[~~(B)  the use of a wireless communication device under Section 545.4251; or~~

[~~(C)  a violation of the open container law, Section 49.031, Penal Code~~]; and

(2)  the person makes a written promise to appear in court as provided by Section 543.005.

SECTION 28.  Section 9.51(e), Penal Code, is repealed.

SECTION 29.  Chapter 117, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 30.  (a) Not later than January 1, 2024, Texas Southern University shall publish the model policies required by Articles 2.1309(b) and 2.36(b), Code of Criminal Procedure, as added by this Act.

(b)  Not later than March 1, 2024, each law enforcement agency in this state shall adopt the policies required by Articles 2.1309(c) and 2.36(e), Code of Criminal Procedure, as added by this Act.

SECTION 31.  Articles 14.01, 14.03, and 14.06, Code of Criminal Procedure, as amended by this Act, Section 9.515, Penal Code, as added by this Act, and Sections 543.001 and 543.004, Transportation Code, as amended by this Act, apply 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 32.  Article 38.141, Code of Criminal Procedure, as amended by this Act, applies to any case in which a judgment is entered on or after the effective date of this Act. A case in which a judgment is entered before the effective date of this Act is governed by the law in effect on the date the judgment was entered, and the former law is continued in effect for that purpose.

SECTION 33.  The changes in law made by this Act to the Local Government Code apply only to a disciplinary action for conduct that occurs on or after March 1, 2024. Conduct that occurs before that date is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 34.  Sections 142.067(b), 143.307(d), 143.361(d), 174.005(b), and 174.006(a-1), Local Government Code, as added by this Act, apply only to an agreement entered into or renewed on or after March 1, 2024. An agreement entered into or renewed before March 1, 2024, is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose.

SECTION 35.  (a) The Bill Blackwood Law Enforcement Management Institute of Texas shall consult with law enforcement agencies of all sizes, law enforcement associations, law enforcement training experts, and appropriate organizations engaged in the development of law enforcement policy to develop a model progressive disciplinary matrix, as defined by Section 143.003(6), Local Government Code, as added by this Act, and associated training materials regarding the application of that matrix. The institute shall provide for a period of public comment before adopting the model progressive disciplinary matrix and training materials.

(b)  Not later than January 1, 2024, the institute shall adopt and disseminate the model progressive disciplinary matrix and training materials to all law enforcement agencies and civil service commissions in this state.

(c)  This section expires September 1, 2024.

SECTION 36.  Section 9.51, Penal Code, as amended by this Act, applies only to use of force that occurs on or after March 1, 2024.

SECTION 37.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 38.  This Act takes effect September 1, 2023.