



The George Floyd Act: Police Use of Force and Accountability Omnibus Bill (Thompson/West)

From a likely false conviction by a corrupt narcotics officer to his death at the hands of police while other police stood and watched, the case of George Floyd calls out for justice in many different ways.

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In conjunction with the George Floyd family and the Legislative Black Caucus, Chairwoman Senfronia Thompson and Senator Royce West authored and filed the George Floyd Act to bring to Texas a range of reforms that will prevent others from experiencing the police misconduct that George Floyd and other Black Texans have experienced.

Summary of the Bill

1. Creates state cause of action for deprivation of rights under color of law, to address qualified immunity.
2. Requires corroboration for the testimony of an undercover police officer in narcotics cases (just as corroboration is already required for non-police informants.) George Floyd was among 160 people notified by Harris County that his old conviction on drug charges, based solely on the testimony of undercover narcotics officer Gerald Goines, could be overturned. He never got the notice.
3. Amends duties of police by adding duty to intervene, duty to render aid, and duty to identify. Eliminates “duty” to arrest on every minor charge to bring arrest authority into line with other parts of the code.
4. Reduces excessive force by prohibiting chokeholds, limiting lethal force to imminent threat of serious bodily injury or death, requires force to be proportionate to the circumstance and the seriousness of the underlying violation, requires officers to protect bystanders, and terminate lethal force as soon as the threat is lessened.
5. Ends arrest for non-jailable fine only violations other than Class C assault and Class C public intoxication and requires a local policy.
6. Requires violations of policy and law by police to be set out in a clear, progressive disciplinary matrix that cannot be overturned or changed by contract with the police union.

With adherence to matrix, discipline is presumed reasonable on appeal. Model will be produced in statewide process.

WHY IT IS NEEDED

Often, police conduct that people find horrifying is not considered misconduct because officers are acting as the law allows and within their training. When someone sues to establish that the law and training have violated their fundamental rights, the lawsuits are dismissed because police officers enjoy what is known as “qualified immunity.” Qualified immunity allows a court to dismiss a case before getting to the constitutional questions if the specific right has not been clearly established in a prior case. This is a catch 22 that has resulted in a diminishment of our individual rights.

Texas’ lethal force statute is exceedingly broad and allows lethal force against a suspect who is “suspected” of a violent felony even when that person poses no immediate threat.

Texas law makes it a “duty” of police to arrest on all charges, no matter how small, but it is NOT a duty to save a life or intervene when another officer is doing harm.

Unnecessary arrests for fine-only violations at traffic stops generate resistance because drivers guilty of minor infractions feel that an arrest is an abuse of authority. Officers know it is currently legal and command people to obey. The recent incident in Keller Texas illustrates the typical scenario. An officer asked Mr. Puentes for permission to search. Mr. Puentes said no. Mr. Puentes became arrested for his “wide right turn” and the officer conducted a search incident to arrest him. By the end of the incident, both Mr. Puentes and his father faced “resisting” charges and the incident escalated entirely out of control. There were at least 64,100 such arrests in Texas reported by law enforcement in 2019.

This statutory framework explains better than anything else why District Attorneys often cannot successfully convict when officers when they harm people. Due to certain laws in place, we have statutorily said it is ok to do so, and even ok to stand around while someone dies. A recent Attorney General opinion for Chairman James White noted that Texas law does not currently require an officer to intervene to save a life when another officer has gone too far.

WHY IT IS NEEDED - CONTINUED

Texas law implies that an undercover police officer's word heavily weighs the verdict made in a drug case investigation, even despite what history has shown us. From the Tulia drug sting to the Dallas "sheetrock" scandal, and most recently Gerold Goine's long and sordid history of false arrest in Houston, narcotics officers have been responsible for some of Texas' worst human rights scandals to date.

Once conduct has been clearly established as unacceptable, police chiefs need stronger tools to terminate problem officers and keep them off of active duty. A disciplinary matrix is a tool that ensures fairness for officers and prevents discipline from being overturned on appeal.

The George Floyd Act identifies the most important ways in which the statute authorizes and directs police to take action. The aim of accountability is not to take away authority and tools to keep the public safe but to ensure there are clear guidelines that allow law enforcement the opportunity to safely do their jobs.