

By: Coleman

H.B. No. 3773

A BILL TO BE ENTITLED

AN ACT

relating to the use of deadly force in defense of a person or residence.

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

SECTION 1. Section 9.45, Penal Code, is added to read as follows:

Sec. 9.45. DEADLY FORCE TO PROTECT ONE'S OWN HABITATION

A person is justified in using deadly force against another to protect one's own habitation:

(1) if he would be justified in using force against the other under Section 9.41; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the habitation cannot be protected by any other means; or

(B) the use of force other than deadly force to

1 protect the habitation would expose the actor or another to a
2 substantial risk of death or serious bodily injury.

3 SECTION 2. Section 9.33, Penal Code, is amended to read as
4 follows:

5 Sec. 9.33. DEFENSE OF THIRD PERSON. (a) A person is
6 justified in using force [~~or deadly force~~] against another to
7 protect a third person if:

8 (1) under the circumstances as the actor reasonably
9 believes them to be, the actor would be justified under Section 9.31
10 [~~or 9.32~~] in using force [~~or deadly force~~] to protect the actor
11 [~~himself~~] against the unlawful force the actor [~~or unlawful deadly~~
12 ~~force he~~] reasonably believes to be threatening the third person
13 the actor [~~he~~] seeks to protect; and

14 (2) the actor reasonably believes that the actor's
15 [~~his~~] intervention is immediately necessary to protect the third
16 person.

17 (b) A person is justified in using deadly force against
18 another to protect a third person if:

19 (1) under the circumstances, the actor would be
20 justified under Section 9.32 in using deadly force to protect the
21 actor against the unlawful deadly force the actor is substantially
22 certain is threatening the third person the actor seeks to protect;
23 and

24 (2) the actor is substantially certain that the
25 actor's intervention is immediately necessary to protect the third
26 person.

27 SECTION 3. Section 9.32, Penal Code, is amended to read as

1 follows:

2 Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person
3 is justified in using deadly force against another if the actor is:

4 (1) ~~[if the actor would be]~~ justified in using force
5 against the other under Section 9.31; ~~[and]~~

6 (2) unable to safely retreat; and

7 (3) substantially certain ~~[when and to the degree the~~
8 ~~actor reasonably believes]~~ the deadly force is immediately
9 necessary:

10 (A) to protect the actor against the other's use
11 or attempted use of unlawful deadly force; or

12 (B) to prevent the other's imminent commission of
13 aggravated kidnapping, murder, sexual assault, or aggravated
14 sexual assault ~~[, robbery, or aggravated robbery]~~.

15 (b) ~~[The actor's belief under Subsection (a)(2) that the~~
16 ~~deadly force was immediately necessary as described by that~~
17 ~~subdivision is presumed to be reasonable if the actor:~~

18 ~~[(1) knew or had reason to believe that the person~~
19 ~~against whom the deadly force was used:~~

20 ~~[(A) unlawfully and with force entered, or was~~
21 ~~attempting to enter unlawfully and with force, the actor's occupied~~
22 ~~habitation, vehicle, or place of business or employment;~~

23 ~~[(B) unlawfully and with force removed, or was~~
24 ~~attempting to remove unlawfully and with force, the actor from the~~
25 ~~actor's habitation, vehicle, or place of business or employment; or~~

26 ~~[(C) was committing or attempting to commit an~~
27 ~~offense described by Subsection (a)(2)(B);~~

1 ~~[(2) did not provoke the person against whom the force~~
2 ~~was used; and~~

3 ~~[(3) was not otherwise engaged in criminal activity,~~
4 ~~other than a Class C misdemeanor that is a violation of a law or~~
5 ~~ordinance regulating traffic at the time the force was used.~~

6 ~~[(c)]~~ A person who is in the person's own habitation and
7 ~~[has a right to be present at the location where the deadly force is~~
8 ~~used,~~] who has not provoked the person against whom the deadly force
9 is used~~[, and who is not engaged in criminal activity at the time~~
10 ~~the deadly force is used]~~ is not required to retreat before using
11 deadly force as described by this section.

12 ~~[(d) For purposes of Subsection (a)(2), in determining~~
13 ~~whether an actor described by Subsection (c) reasonably believed~~
14 ~~that the use of deadly force was necessary, a finder of fact may not~~
15 ~~consider whether the actor failed to retreat.]~~

16 SECTION 4. Article 38.36(b), Code of Criminal Procedure, is
17 amended to read as follows:

18 (b) In a prosecution for murder, if a defendant raises as a
19 defense a justification provided by Section 9.31, 9.32, or 9.33,
20 Penal Code, the defendant, ~~[in order]~~ to establish the defendant's
21 required state of mind ~~[reasonable belief]~~ that use of force or
22 deadly force was immediately necessary, regardless of whether the
23 defendant's reasonable belief or substantial certainty is
24 required, shall be permitted to offer:

25 (1) relevant evidence that the defendant had been the victim
26 of acts of family violence committed by the deceased, as family
27 violence is defined by Section 71.004, Family Code; and

1 (2) relevant expert testimony regarding the condition of
2 the mind of the defendant at the time of the offense, including
3 those relevant facts and circumstances relating to family violence
4 that are the basis of the expert's opinion.

5 SECTION 4. The change in law made by this Act applies only
6 to an offense committed on or after the effective date of this Act.
7 An offense committed before the effective date of this Act is
8 governed by the law in effect on the date the offense was committed,
9 and the former law is continued in effect for that purpose. For
10 purposes of this section, an offense was committed before the
11 effective date of this Act if any element of the offense occurred
12 before that date.

13 SECTION 5. This Act takes effect September 1, 2013.