86R2541 ADM-D

By:  Menéndez S.B. No. 887

A BILL TO BE ENTITLED

AN ACT

relating to the consideration of the gender identity or sexual preference of certain victims, witnesses, or defendants in criminal proceedings.

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

SECTION 1.  Chapter 36, Code of Criminal Procedure, is amended by adding Article 36.155 to read as follows:

Art. 36.155.  REQUESTED SPECIAL CHARGE: GENDER IDENTITY OR SEXUAL PREFERENCE OF VICTIM, WITNESS, OR DEFENDANT. (a) In this article:

(1)  "Gender identity" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the person's actual or perceived sex.

(2)  "Sexual preference" means a preference for heterosexuality, homosexuality, or bisexuality.

(b)  Counsel on both sides may request a special charge be given instructing the jury not to let bias, sympathy, prejudice, or public opinion toward persons having a particular gender identity or sexual preference influence the jury's ability to impartially evaluate the credibility of a victim, witness, or defendant.

(c)  If a charge described by this article is requested by counsel, the court must include the special charge in the final charge given to the jury.

SECTION 2.  Article 36.19, Code of Criminal Procedure, is amended to read as follows:

Art. 36.19.  REVIEW OF CHARGE ON APPEAL. Whenever it appears by the record in any criminal action upon appeal that any requirement of Articles 36.14, 36.15, 36.155, 36.16, 36.17, and 36.18 has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal of special charges shall be made at the time of the trial.

SECTION 3.  Section 9.31(a), Penal Code, is amended to read as follows:

(a)  Except as provided in Subsection (b) and Section 9.315, a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.  The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1)  knew or had reason to believe that the person against whom the force was used:

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

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

(C)  was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

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

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

SECTION 4.  Subchapter C, Chapter 9, Penal Code, is amended by adding Section 9.315 to read as follows:

Sec. 9.315.  GENDER IDENTITY OR SEXUAL PREFERENCE OF VICTIM NOT JUSTIFICATION. (a) In this section:

(1)  "Gender identity" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the person's actual or perceived sex.

(2)  "Sexual preference" means a preference for heterosexuality, homosexuality, or bisexuality.

(b)  The use of force against another is not justified if the conduct occurs solely in response to the actor's discovery or knowledge of the gender identity or sexual preference of the person against whom the force is used.

(c)  This section applies regardless of whether the actor's discovery or knowledge was accurate.

(d)  If, in the trial of an offense arising from the actor's use of force against another, evidence is introduced that the actor used the force in response to the actor's discovery or knowledge of the gender identity or sexual preference of the person against whom the force was used, the court shall charge the jury in accordance with the provisions of this section.

SECTION 5.  The change in law made by this Act applies 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 6.  This Act takes effect September 1, 2019.