

By: Menéndez

S.B. No. 887

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the consideration of the gender identity or sexual
3 preference of certain victims, witnesses, or defendants in criminal
4 proceedings.

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

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

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

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

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

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

23 (c) If a charge described by this article is requested by
24 counsel, the court must include the special charge in the final

1 charge given to the jury.

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

4 Art. 36.19. REVIEW OF CHARGE ON APPEAL. Whenever it appears
5 by the record in any criminal action upon appeal that any
6 requirement of Articles 36.14, 36.15, 36.155, 36.16, 36.17, and
7 36.18 has been disregarded, the judgment shall not be reversed
8 unless the error appearing from the record was calculated to injure
9 the rights of defendant, or unless it appears from the record that
10 the defendant has not had a fair and impartial trial. All
11 objections to the charge and to the refusal of special charges shall
12 be made at the time of the trial.

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

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

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

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

27 (B) unlawfully and with force removed, or was

1 attempting to remove unlawfully and with force, the actor from the
2 actor's habitation, vehicle, or place of business or employment; or

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

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

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

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

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

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

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

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

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

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

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

15 SECTION 6. This Act takes effect September 1, 2019.