

By: Dutton

H.B. No. 1035

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of force by peace officers and certain other
3 persons to make an arrest or search or prevent an escape from
4 custody.

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

6 SECTION 1. Sections 9.51(a), (b), (c), and (d), Penal Code,
7 are amended to read as follows:

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

14 (1) the actor reasonably believes the arrest or search
15 is lawful or, if the arrest or search is made under a warrant, he
16 reasonably believes the warrant is valid; and

17 (2) before using force, the actor manifests his
18 purpose to arrest or search and identifies himself as a peace
19 officer or as one acting at a peace officer's direction, unless he
20 reasonably believes his purpose and identity are already known by
21 or cannot reasonably be made known to the person to be arrested.

22 (b) A person other than a peace officer (or one acting at his
23 direction) is justified in using force against another when and to
24 the degree [~~the actor reasonably believes~~] the force is objectively

1 reasonable and immediately necessary to make or assist in making a
2 lawful arrest, or to prevent or assist in preventing escape after
3 lawful arrest if, before using force, the actor manifests his
4 purpose to and the reason for the arrest or reasonably believes his
5 purpose and the reason are already known by or cannot reasonably be
6 made known to the person to be arrested.

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

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

16 (2) the actor reasonably believes there is a
17 substantial risk that the person to be arrested will cause death or
18 serious bodily injury to the actor or another if the arrest is
19 delayed.

20 (d) A person other than a peace officer acting in a peace
21 officer's presence and at his direction is justified in using
22 deadly force against another when and to the degree [~~the person~~
23 ~~reasonably believes~~] the deadly force is objectively reasonable and
24 immediately necessary to make a lawful arrest, or to prevent escape
25 after a lawful arrest, if the use of force would have been justified
26 under Subsection (b) and:

27 (1) the actor reasonably believes the felony or

1 offense against the public peace for which arrest is authorized
2 included the use or attempted use of deadly force; or

3 (2) the actor reasonably believes there is a
4 substantial risk that the person to be arrested will cause death or
5 serious bodily injury to another if the arrest is delayed.

6 SECTION 2. Section 9.52, Penal Code, is amended to read as
7 follows:

8 Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of
9 force to prevent the escape of an arrested person from custody is
10 justifiable when the force could have been employed to effect the
11 arrest under which the person is in custody, except that a guard
12 employed by a correctional facility or a peace officer is justified
13 in using any force, including deadly force, that is objectively
14 reasonable and [~~he reasonably believes to be~~] immediately necessary
15 to prevent the escape of a person from the correctional facility.

16 SECTION 3. The change in law made by this Act applies only
17 to an offense committed on or after the effective date of this Act.
18 An offense committed before the effective date of this Act is
19 governed by the law in effect on the date the offense was committed,
20 and the former law is continued in effect for that purpose. For
21 purposes of this section, an offense was committed before the
22 effective date of this Act if any element of the offense occurred
23 before that date.

24 SECTION 4. This Act takes effect September 1, 2021.