

By: Dutton

H.B. No. 938

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, 2023.