

By: West

S.B. No. 1349

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.026 and 2.141 to read as follows:

Art. 2.026. SPECIAL DUTY OF ATTORNEY REPRESENTING THE STATE RELATING TO DEFENSIVE USE OF DEADLY FORCE. If a person claims a justification under Subchapter C or D, Chapter 9, Penal Code, for an incident involving the use of deadly force against another, the attorney representing the state in the prosecution of felonies in the county in which the use of force occurred shall ensure that the incident is thoroughly investigated by an appropriate law enforcement agency and shall review the sufficiency of the investigation.

Art. 2.141. LAW ENFORCEMENT INVESTIGATION OF INCIDENT INVOLVING DEFENSIVE USE OF DEADLY FORCE. (a) In this article, "law enforcement agency" means an agency of the state, a county, or a municipality that employs peace officers and investigates offenses under Title 5, Penal Code.

(b) A law enforcement agency shall adopt a written policy regarding the investigation of an incident in which a person claims a justification under Subchapter C or D, Chapter 9, Penal Code, for the use of deadly force against another. The policy must state that

1 the claim of a justification does not prohibit a peace officer
2 employed by the agency from:

3 (1) investigating an incident in which deadly force is
4 used, including taking possession of any weapon or firearm used in
5 the incident; or

6 (2) questioning or taking into custody the person who
7 used deadly force.

8 SECTION 2. Subchapter C, Chapter 72, Government Code, is
9 amended by adding Section 72.031 to read as follows:

10 Sec. 72.031. COLLECTION OF DATA RELATING TO INCIDENTS
11 INVOLVING DEFENSIVE USE OF DEADLY FORCE. (a) The office shall
12 collect and maintain data from law enforcement agencies and
13 district and county attorneys relating to incidents in which a
14 person claims a justification under Subchapter C or D, Chapter 9,
15 Penal Code, for the use of deadly force against another. The data
16 must include information regarding the outcome of any law
17 enforcement investigation and the disposition of any charges
18 resulting from the incident.

19 (b) Not later than December 1 of each even-numbered year,
20 the office shall file a report containing the data collected under
21 Subsection (a) for the preceding state fiscal biennium with the
22 governor, the lieutenant governor, the speaker of the house of
23 representatives, and the presiding officer of the standing
24 committee of each house of the legislature with jurisdiction over
25 criminal justice.

26 SECTION 3. Section 9.32, Penal Code, is amended by adding
27 Subsection (b-1) to read as follows:

1 (b-1) For purposes of Subsection (a)(2), in determining
2 whether an actor reasonably believed that the use of deadly force
3 was necessary, a finder of fact may consider:

4 (1) the physical proximity of the actor to the person
5 against whom the deadly force was used;

6 (2) whether the person against whom the deadly force
7 was used exhibited or used a weapon; and

8 (3) whether the person against whom the deadly force
9 was used was fleeing or retreating at the time the force was used.

10 SECTION 4. Section 9.42, Penal Code, is amended to read as
11 follows:

12 Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is
13 justified in using deadly force against another to protect land or
14 tangible, movable property:

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

17 (2) when and to the degree he reasonably believes the
18 deadly force is immediately necessary[+

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

22 ~~[(B) to prevent the other who is fleeing~~
23 ~~immediately after committing burglary, robbery, aggravated~~
24 ~~robbery, or theft during the nighttime from escaping with the~~
25 ~~property,]~~ and

26 (3) if he reasonably believes that:

27 (A) the land or property cannot be protected ~~[or~~

1 ~~recovered~~] by any other means; or

2 (B) the use of force other than deadly force to
3 protect ~~[or recover]~~ the land or property would expose the actor or
4 another to a substantial risk of death or serious bodily injury.

5 SECTION 5. Section 9.43, Penal Code, is amended to read as
6 follows:

7 Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person
8 is justified in using force ~~[or deadly force]~~ against another to
9 protect land or tangible, movable property of a third person if,
10 under the circumstances as he reasonably believes them to be, the
11 actor would be justified under Section 9.41 ~~[or 9.42]~~ in using force
12 ~~[or deadly force]~~ to protect his own land or property and:

13 (1) the actor reasonably believes the unlawful
14 interference constitutes attempted or consummated theft of or
15 criminal mischief to the tangible, movable property; or

16 (2) the actor reasonably believes that:

17 (A) the third person has requested his protection
18 of the land or property;

19 (B) he has a legal duty to protect the third
20 person's land or property; or

21 (C) the third person whose land or property he
22 uses force ~~[or deadly force]~~ to protect is the actor's spouse,
23 parent, or child, resides with the actor, or is under the actor's
24 care.

25 SECTION 6. Not later than January 1, 2014, a law enforcement
26 agency shall adopt and implement a policy required by Article
27 2.141, Code of Criminal Procedure, as added by this Act.

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

9 SECTION 8. This Act takes effect September 1, 2013.