

\$9.95

WHEN CAN I LEGALLY SHOOT?

KNOWING THE LAW OF DEADLY FORCE IN TEXAS

2016 EDITION
INCLUDES CHANGES FROM THE 84TH LEGISLATURE





I'M CHARGED WITH WHAT?

Justification Is Available As A Defense

Discharge of a Firearm in the City Limits
in Violation of a Municipal Ordinance
– Class C Misdemeanor

Disorderly Conduct: Intentional Discharge
of a Firearm on or Across a Public Road
– Class C Misdemeanor

Disorderly Conduct: Intentional
Discharge of a Firearm in a
Public Place
– Class B Misdemeanor

Disorderly Conduct:
Intentional Display of a
Weapon in a Public Place
in a Manner Calculated to
Alarm
– Class B Misdemeanor

Reckless Discharge of a
Firearm in a City over
100,000 People
– Class A Misdemeanor

Intentional Failure to
Conceal a Handgun not
in a belt or shoulder
holster by a LTC Holder
– Class A Misdemeanor

MISDEMEANORS

Deadly Conduct
– Class A Misdemeanor
- **Recklessly** engaging in conduct
that places another person in
imminent danger of serious
bodily injury

HOW BAD IS IT?



Under Texas Law, For The Following Crimes:

FELONIES

Capital Murder

- Capital Felony
- Murder
- 1st Degree Felony
- **Intentional** acts causing the death of another

Manslaughter

- 2nd Degree Felony
- **Recklessly** causing the death of another

Criminally Negligent Homicide

- State Jail Felony
- Causing the death of another due to the gross deviance from the ordinary standard of care

PUNISHMENT

• Capital Felony:

Life W/O Parole or Death

• 1st Degree Felony:

Life or 5-99 Years in Prison

• 2nd Degree Felony:

2-20 Years in Prison

• 3rd Degree Felony:

2-10 Years in Prison

• State Jail Felony:

180 Days – 2 Years in State Jail

• Class A Misdemeanor:

Up to 1 Year in County Jail

• Class B Misdemeanor:

Up to 180 Days in County Jail

• Class C Misdemeanor:

Fine Only/No Jail Time

Deadly Conduct:

Discharge of a Firearm

- 3rd Degree Felony
- **Knowingly** discharging a firearm at or in the direction of another person

Aggravated Assault with a Deadly Weapon

- 2nd Degree Felony
- An act **intentionally** causing serious bodily injury to another and/or exhibiting a deadly weapon while causing or threatening bodily injury to another

• Reference Texas Penal Code §42.01, §42.12, §46.035, §22.05, §22.02, §19.05, §19.04, and §19.02



WHAT TO DO AFTER BANG!

Invoke Your Legal Rights!

Many countless men and women have sacrificed their lives and fortunes so that we Americans may have legal rights – don't waive them. If you are involved in a shooting, you may need every legal right available.

The 911 Call

If you use your gun, call 9-1-1 and get medical and police assistance. However, the only information that the 9-1-1 dispatcher needs to know from YOU is your name, the location of the emergency, what assistance is needed, and that you have been a victim of a crime. **DO NOT DISCUSS WHAT HAPPENED WITH THE OPERATOR!** All calls are recorded.

Don't Talk After A Shooting

Talk to your lawyer before you make any statements about a shooting. If what you say does not match the physical or material evidence at the scene, you may have a huge problem regardless of how innocent your mistake may be. Your freedom, liberty, and fortune are at risk, so invoke your right to remain silent and your right to a lawyer.

The Role Of The Police

Law enforcement's main job after a shooting is to investigate. Remember, what you say to the police can and **WILL** be used against you. Note: the U.S. Supreme Court, in 2010, held that a police interrogation may go on indefinitely until you invoke your legal rights – so **INVOKE YOUR RIGHTS!**

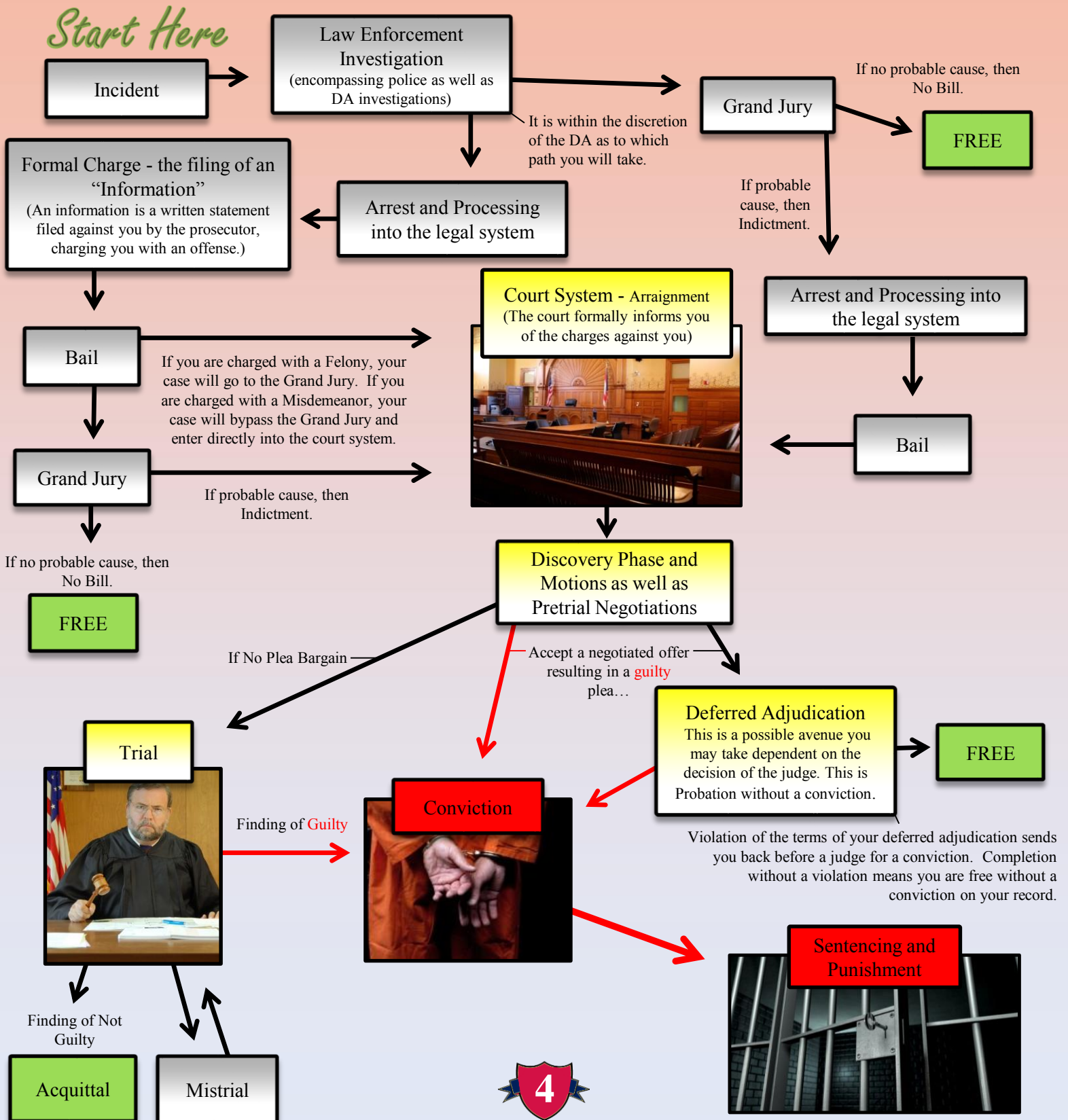
Make sure the threat has been controlled.
Call 911.
Return the firearm to safe keeping if possible.
Do not disturb the scene.
CALL YOUR LAWYER!
When police arrive, comply with all commands in a non-threatening manner, keeping your hands clearly visible. The police do not know who the good guys and bad guys are when they first arrive.
Inform the police that you have been a victim of a crime. State to the police: "I wish to invoke my right to remain silent, and I want to consult my attorney before making any statements."
Make no statement to anyone about the incident; wait to talk to your attorney.
If asked to accompany law enforcement, comply, but make no statements.
Do not make jokes or cute remarks and say nothing, even if you believe you have done nothing wrong.





TEXAS CRIMINAL LEGAL PROCESS

This is the standard progression through the legal system for incidents relating to firearms. Charges may be dismissed at any time, thus ending the process.

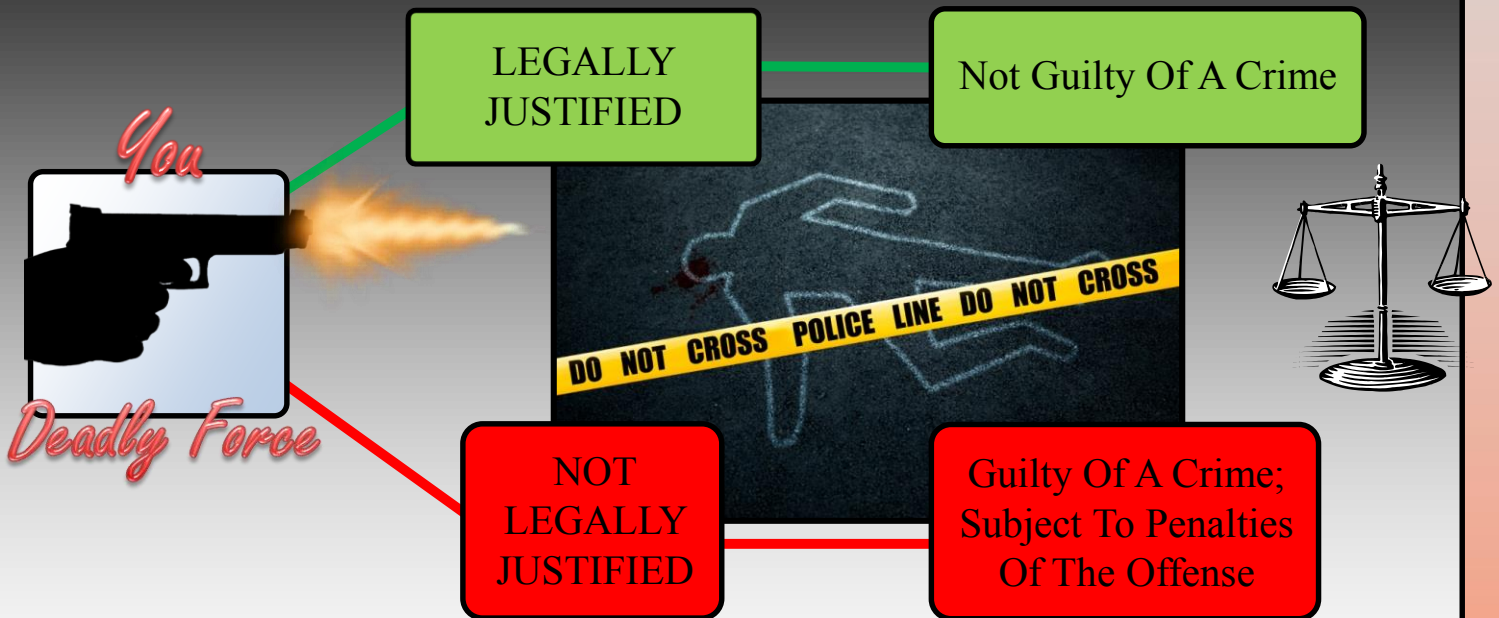




WHEN IS IT NOT A CRIME?

Legal Justification Of Deadly Force

Legal justification is a set of circumstances that the law says is a valid excuse for a person doing something that would otherwise be a crime.



As a general rule, it is illegal to shoot someone, however, if done under a particular set of circumstances (*e.g.*, self-defense/defense of others, *etc.*) the law states a person is excused from the illegality or is legally justified.

What is Deadly Force?

Texas law defines deadly force as force that is intended or known by the actor to cause, or in a manner of its use or intended use is capable of causing, death or serious bodily injury. Firing a gun is considered a use of deadly force.

What is Serious Bodily Injury?

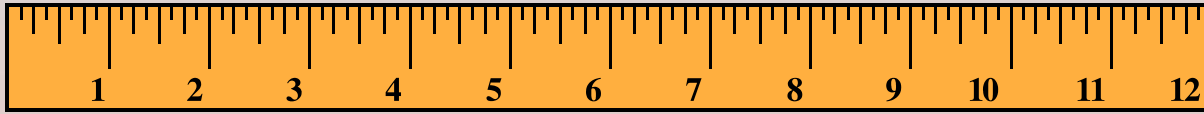
Bodily Injury – a physical pain, illness, or any impairment of physical condition.

Serious Bodily Injury – the substantial risk of death, permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ.

REASONABLE PERSON STANDARD

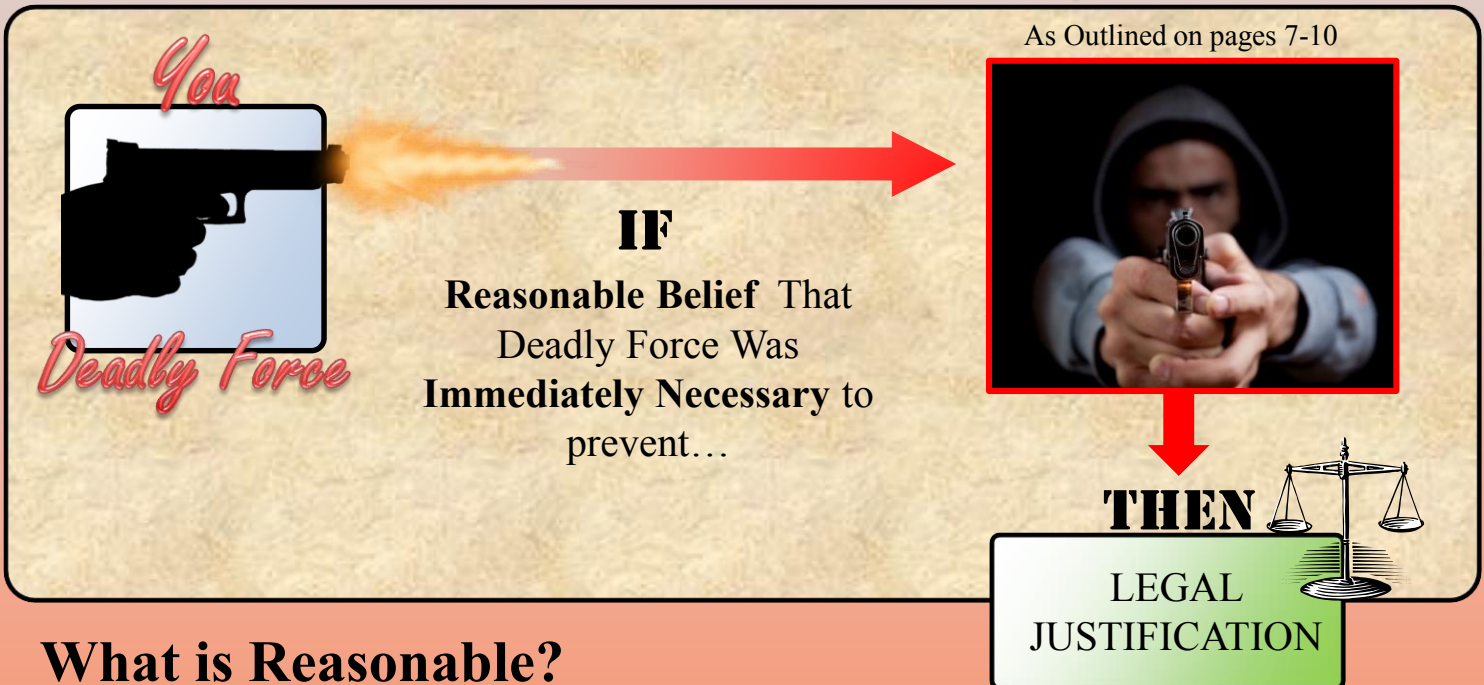


If You Use Deadly Force, Your Conduct Will Be Measured By A Reasonable Person Standard



Threats

As Outlined on pages 7-10



What is Reasonable?

The law will judge your actions (*i.e.*, use of deadly force) by using the reasonable person standard. That is – would a reasonable person under the same or similar circumstances agree that deadly force was immediately necessary? This reasonable person standard is the law’s attempt to make the concept of reasonableness an objective test. The law does not focus on whether you believed deadly force was reasonable, but whether a reasonable person would consider it reasonable. If the legal system (ultimately this could be a jury) determines that a reasonable person would agree that deadly force was immediately necessary, then you were legally justified in using deadly force. However, juries, judges, and prosecutors are simply human beings and people can have vastly different ideas of how a reasonable person should act under any given circumstances. This is particularly true if asked to decide whether deadly force was immediately necessary or not.





WHEN CAN YOU LEGALLY USE DEADLY FORCE...

Threats

Law of Self Defense

In Texas, Deadly Force Is Legally Justified If You Reasonably Believe It Is Immediately Necessary To Prevent:

You



Deadly Force

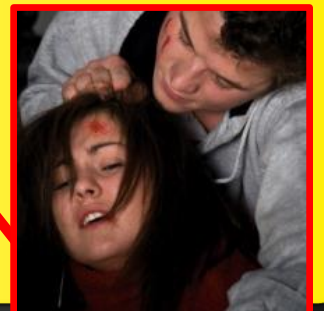
Murder/Deadly Force

Home Invasion and Carjacking

Aggravated Kidnapping

Robbery and Aggravated Robbery

Sexual Assault and Aggravated Sexual Assault



Texas Penal Code §9.32 provides “a person is justified in using deadly force” when and to the degree the person reasonably believes deadly force is immediately necessary to protect themselves from the commission or attempted commission of:

- Murder/Deadly Force (Aggravated Assault)
- Aggravated Kidnapping
- Sexual Assault and Aggravated Sexual Assault
- Robbery and Aggravated Robbery
- The unlawful and forcible entrance or attempted entrance into a person’s occupied habitation, vehicle, or place of business
- The unlawful and forcible removal or attempted removal of a person from an occupied habitation, vehicle, or place of business

WHEN CAN YOU LEGALLY USE DEADLY FORCE...



Law of Defense of Others

In Texas, Deadly Force Is Legally Justified If You Reasonably Believe It Is Immediately Necessary To Prevent:

You



Deadly Force



Victim

Murder/Deadly Force

Home Invasion and Carjacking

Aggravated Kidnapping

Robbery and Aggravated Robbery

Sexual Assault and Aggravated Sexual Assault

Texas Penal Code §9.33 provides “a person is justified in using deadly force” against another to protect a third person, if a person reasonably believes that the intervention is immediately necessary to protect the third person from the commission or attempted commission of:

- Murder/Deadly Force (Aggravated Assault)
- Aggravated Kidnapping
- Sexual Assault and Aggravated Sexual Assault
- Robbery and Aggravated Robbery
- The unlawful and forcible entrance or attempted entrance into a person’s occupied habitation, vehicle, or place of business
- The unlawful and forcible removal or attempted removal of a person from an occupied habitation, vehicle, or place of business

Threats





WHEN CAN YOU LEGALLY USE DEADLY FORCE...

Protection of Your Property

Trespasser

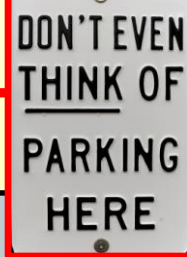
DON'T SHOOT! Deadly Force is **NOT** legally justified!



Trespass



Interference



with Property



BUT non-deadly force is legally justified.

NO DEADLY FORCE!

§9.41 of the Texas Penal Code allows for legal use of force, **NOT** deadly force, to terminate a trespass or interference with property.

But, IF...

Trespasser

Commits or Attempts to Commit...

Arson



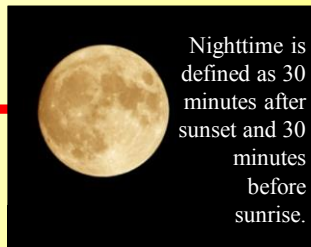
Robbery/Burglary



Aggravated Robbery

Theft During the Nighttime

Criminal Mischief During the Nighttime



Nighttime is defined as 30 minutes after sunset and 30 minutes before sunrise.

Deadly Force is justified if you reasonably believe it is immediately necessary to prevent:

Arson, Burglary, Robbery, Aggravated Robbery, Theft During The Nighttime, Or Criminal Mischief During The Nighttime.

In addition, §9.42 of the Texas Penal Code provides if you reasonably believe deadly force is immediately necessary to prevent another's "fleeing immediately after committing burglary, robbery, aggravated robbery" from escaping with the property, and you reasonably believe that "the land or property cannot be protected or recovered by other means" or the use of "force other than deadly force" would expose you to "substantial risk of death or serious bodily injury," then you are legally justified to use deadly force.

WHEN CAN YOU LEGALLY USE DEADLY FORCE...



Protection of a 3rd Party's Property

Texas Penal Code §9.43 provides that you may protect a third person's property to the same extent as the law allows you to protect your own property if you reasonably believe:

- The third person has requested protection of their land or property;
 - You have a legal duty to protect the third person's property;
- or
- The third person's land or property is that of your spouse, parent, child, a person residing with you, or a person under your care;
- or
- You reasonably believe the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property.

Protection Against Animals

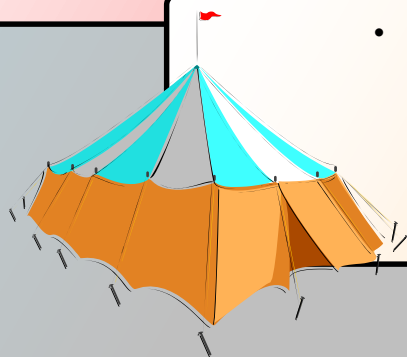
Texas law does not provide a general statutory justification for using deadly force against an animal, outside *the defense of necessity*, however, this does not mean you and your loved ones are at the mercy of the animal kingdom. The laws for legally using deadly force against animals are located in many different statutes; the following are some of the most relevant.



You can claim a defense of necessity if your action was urgently and immediately necessary to avoid imminent harm, and the action clearly outweighed harm which was prevented.



- Texas law specifically allows you to use deadly force against a **dog** or **coyote** who is attacking or has immediately attacked your livestock, fowl, or domestic animal.
- Texas law allows for the killing of raccoons, opossums, skunks, and other small mammals if they are damaging crops or other property.
- In addition, it is specifically a defense to the crime of Disorderly Conduct: Discharge of a Firearm, if the firearm was discharged in response to a reasonable fear of bodily injury from a "dangerous wild animal."



- If the circus comes to town, be sure to keep an eye out for these "Dangerous Wild Animals," as defined by §822.101 of the Texas Health and Safety Code:
 - Lion
 - Tiger
 - Cougar
 - Ocelot
 - Leopard
 - Jaguar
 - Hyena
 - Gorilla
 - Baboon
 - Chimpanzee
 - And several others



THEFT AND ROBBERY

The Following Is An Explanation Of Select Crimes In Texas

The Crime of Theft

A **Theft** Occurs When Someone:



“Appropriates,”
Your Property
With Intent To
“Deprive.”

Texas Penal Code §31.03

Appropriates:

- Bringing about a transfer or purported transfer of title...
- To acquire or otherwise exercise control...

Deprive:

- To withhold property from owner permanently or for an extended period...
- To return only on payment of reward...
- To dispose of property in a manner that makes recovery unlikely by the owner...

The Crime of Robbery

Robbery Occurs When, In
The Course Of A Theft, A

Thief



Intentionally,
Knowingly, or
Recklessly...

Causes *You* ...

**Bodily
Injury**

OR

Intentionally or
Knowingly...

Threatens or Causes *You* Fear of...

**Imminent
Bodily
Injury Or
Death**

Texas Penal Code §29.02

The Crime of Aggravated Robbery

Aggravated Robbery Occurs
When A

Robber



① Causes...

or

③

You
Serious Bodily Injury



or

②

Uses or Exhibits...

**A Deadly
Weapon**

**Robs you if you are 65 years
old or older or are a
“disabled person.”**

Texas Penal Code §29.03



BURGLARY



The Crime of Burglary

Burglary Occurs When A

Perpetrator



Enters,
Without Consent
Of The Owner,
Or Remains
Concealed In...

A Habitation or



Any Portion Of
A Building



With
“intent to
commit” or
“does
commit”

A Felony

A Theft

**An
Assault**

Texas Penal Code §30.02

Do I Have To Drag The Body Inside?

For purposes of determining if a burglary has occurred, Texas law provides, a person **enters** a building or habitation when:



Any Part Of Their Body

OR



Any Physical Object
Connected To Their Body

Intrudes Into A
Building Or
Habitation

Texas Penal Code §30.02



ASSAULT AND AGGRAVATED ASSAULT

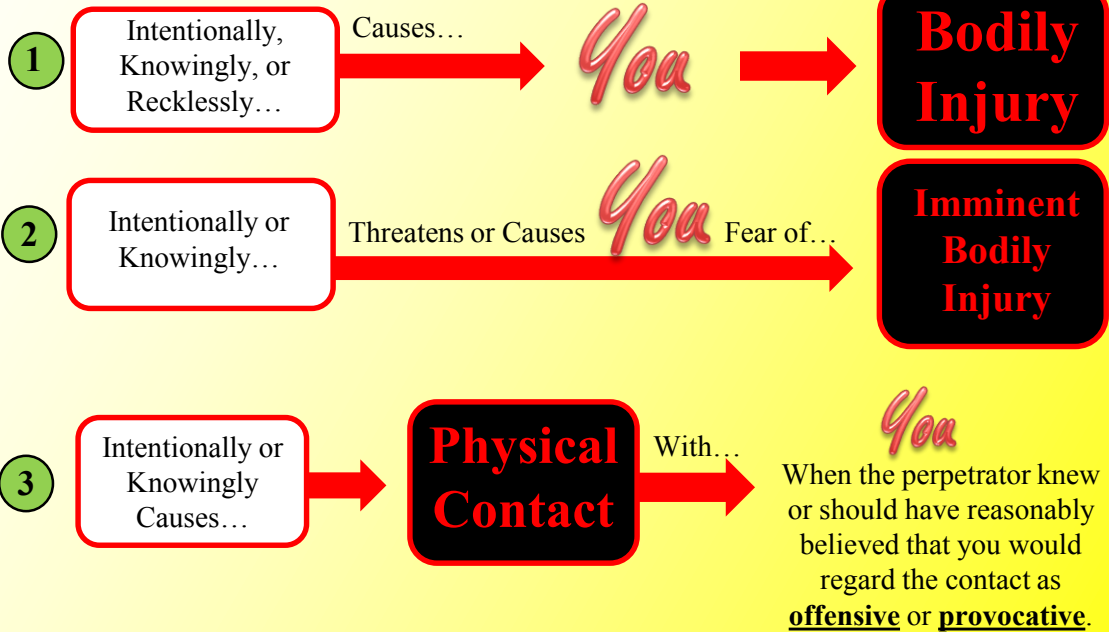
The Law of Assault

Perpetrator

An Assault occurs under any of the following scenarios:



OR

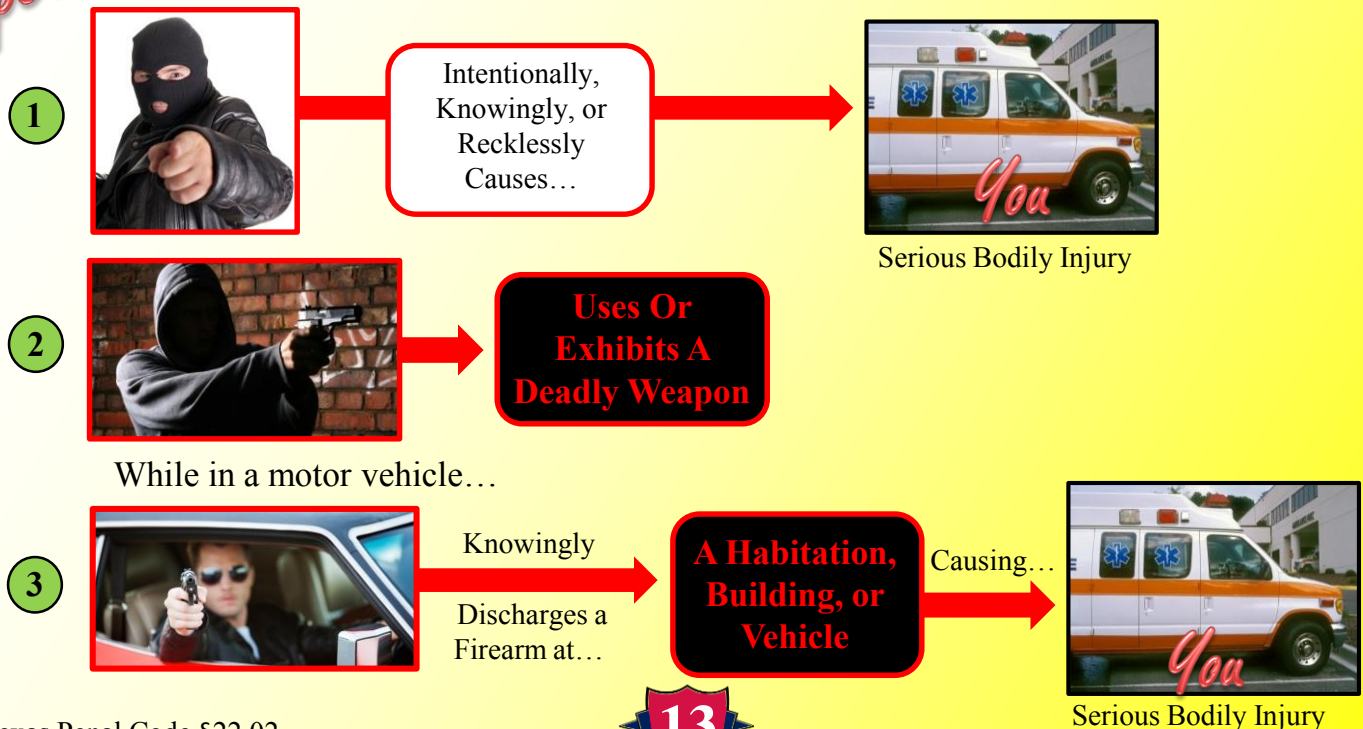


Texas Penal Code §22.01

What Makes An Assault Aggravated?

Perpetrator

An Aggravated Assault occurs under any of the following scenarios:



Texas Penal Code §22.02



DO I HAVE TO RETREAT?

No Legal Duty To Retreat!

“Stand Your Ground” is the popular name for a legal philosophy referred to in the law as “No Duty to Retreat.” If you qualify under the statute, a prosecutor or law enforcement officer cannot argue that you had a reasonable “escape route” or that you should have had to “fall back” before justifiably using deadly force.

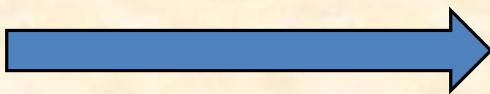
“I shall never surrender or retreat.”
- William Travis, Commander of the Alamo, February 24, 1836

Am I Legally Required To Retreat?

Texas Law Provides:

NO RETREAT IS LEGALLY NECESSARY,

IF



all four of the following are met...

- ✓ Your use of deadly force is justified under the law;
- ✓ You have a legal right to be at the location where deadly force is used;
- ✓ You did not provoke the person against whom deadly force was used (you can't start the fight); and
- ✓ You were not engaged in criminal activity at the time deadly force was used.

- The law concerning “No Duty to Retreat” is contained in §9.32(c) of the Texas Penal Code.



THE CASTLE DOCTRINE

The words “Castle Doctrine” are not found in the Texas Penal Code. The “Castle Doctrine” is the popular name for a legal philosophy that every person, as the “King” or “Queen” of their own home, never has to flee the castle before using deadly force against an intruder. The Texas version of the castle doctrine can be found in Texas Penal Code §9.32.



Use of Deadly Force Under the Castle Doctrine in Texas



Important Note!

Under Texas law, a habitation is limited to a structure or vehicle that allows for overnight accommodations of persons; therefore, other structures NOT ATTACHED to the habitation (e.g., unattached sheds, barns, boat houses, etc.) are not covered under the Castle Doctrine, although they may be covered elsewhere in the law.



Not a Habitation!

CIVIL LIABILITY



You're Not Out Of The Woods Yet

Two Independent Legal Systems



The Law

If you have used legally justified force or deadly force, the law protecting you from civil liability is contained in Texas Civil Practice and Remedies Code §83.001.

“CIVIL IMMUNITY. A defendant who uses force or deadly force that is justified under Chapter 9, Penal Code, is immune from civil liability for personal injury or death that results from the defendant’s use of force or deadly force, as applicable.”

What It's Not



It is a common misconception that if you have used justified force or deadly force that §83.001 provides complete protection or “immunity” from the entire civil legal system. It does not. This statute has some serious legal limitations. It is **not** an immunity from people suing you. You can still get sued, you will still have to go through the court system and process before your affirmative defense of “immunity” will be heard. Furthermore, the statute provides no immunity at all for property damage.

In addition, if the criminal justice system has not made a determination of your justification for use of force or deadly force, the issue will have to be decided by a civil trial judge and/or jury. Thus, the necessity for this determination of justification will force you deeper into the civil law system.

Note To Texas Law Shield Members:

All of Your Attorneys' Fees Are Covered For Both The Criminal and Civil Systems.



Texas Law Shield.
“We Defend Your Right To Bear Arms”



WHERE CAN I LEGALLY TAKE A GUN?

LOCATION	NON-LTC		LTC HOLDER	
	Long gun	Handgun	Long gun	Handgun
A person's own premises or premises under their control, including in their motor vehicle or watercraft; handguns in a vehicle or watercraft must be concealed by a non-LTC holder.	Yes	Yes	Yes	Yes
Public places (not licensed to sell alcohol) which do not have posted a TPC 30.06 sign prohibiting concealed carry or a 30.07 sign prohibiting open carry.	Yes	No	Yes	Yes
A business receiving 51% or more of its income from serving alcohol.	No	No	No	No
On another person's property without consent, and where there is a TPC 30.06 or 30.07 sign prohibiting handguns or a TPC 30.05 "No Trespassing" sign posted.	No	No	No	No
Liquor Store	No	No	No	Yes
U.S. Post Office	No	No	No	No
Grocery Store or Convenience Store selling alcohol.	No	No	No	Yes
Elementary or Secondary School Premises (not including parking lots), school passenger transportation vehicle, or where school activity is being conducted, without written authorization.	No	No	No	No
Concealed carry at institution of higher learning without a valid 30.06 sign prohibiting concealed handguns.*	No	No	No	Yes
Premises of a pari-mutuel racetrack: horse or dog racing.	No	No	No	No
Polling place on election day, including during early voting.	No	No	No	No
The premises or office of a court, without permission.	No	No	No	No
Secure area of an airport inside the metal detectors.	No	No	No	No
Correctional Facility	No	No	No	No
Hospital or nursing home, amusement park, established place of religious worship, or meeting of a governmental entity where a TPC 30.06 sign for concealed carry or a 30.07 sign for open carry is not posted.	Yes	No	Yes	Yes
Employee Parking Lots	Generally YES, however, some employers are lawfully allowed to exclude all firearms. See Texas Labor Code §52.061 - .062 for details. (e.g., secured petrochemical plants, school employee parking lots, etc.)			

*As of 8/1/16 for public and private colleges and universities, and 8/1/17 for public junior colleges.

Notes:

How To Properly Use Your Booklet On Deadly Force

This booklet is a guide to when you may or may not use deadly force in the State of Texas. It demystifies the criminal process, attempts to explain some otherwise murky legal concepts, and most importantly, helps you identify when you may use deadly force to defend yourself, others, or property. Prepared by a team of lawyers and law professionals, this book is the result of extensive legal research and real world experience dealing with the system. It was written by lawyers that work in this area on a daily basis, who have extensive experience in firearms and the law related to firearms. This wealth of knowledge has been distilled into this booklet, which provides concepts and rules of law in a simple and understandable format.

With that said, this book is not a substitute for a lawyer. Many volumes of books have been written on these topics, and one could spend many lifetimes studying these complex issues of law. As such, we have attempted to condense these points into a digestible format that can be read within a reasonable timeframe, but there are complex nuances in the laws that are not all covered. This booklet is not all encompassing. This booklet is instead, an aid, a starting foundation helping you with the first steps of your journey to understand the legal system and laws pertaining to the use of deadly force.

What Is Texas Law Shield?



The Texas Law Shield Firearms Legal Defense Program is owned by Texas Law Shield, LLP. The program is dedicated to preserving 2nd Amendment Rights for all legal gun owners in Texas and ensuring legal representation for our members who ever have to use a firearm. In addition, a cornerstone of our program is education in the area of firearms law. An informed citizenry is essential to preserve our country's rich heritage and all of our rights. Our legal services company is organized under Texas Occupations Code Ch. 953 and is proudly based in Texas. Our company and the firearms program are owned and administered by lawyers dedicated to preserving the legal rights of our members when they use a firearm.

Any of the information in this manual is solely a general legal discussion of the law in Texas and should not be considered as giving legal advice, nor creating an attorney-client relationship. This manual is not a substitute for legal advice on any particular situation. Your situation may be different so contact an attorney regarding your personal circumstances. Only a licensed attorney may give you legal advice. Please call our office for more information:

(877) 448-6839

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