

By: Cain

H.B. No. 5283

A BILL TO BE ENTITLED

1 AN ACT

2 relating to requiring a pretrial hearing in a criminal case to  
3 determine whether a defendant's conduct was justified.

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

5 SECTION 1. This Act may be cited as the Pretrial  
6 Justification Act.

7 SECTION 2. Section 1, Article 28.01, Code of Criminal  
8 Procedure, is amended to read as follows:

9 Sec. 1. The court may set any criminal case for a pre-trial  
10 hearing before it is set for trial upon its merits, and direct the  
11 defendant and the defendant's ~~his~~ attorney, if any of record, and  
12 the State's attorney, to appear before the court at the time and  
13 place stated in the court's order for a conference and hearing. The  
14 defendant must be present at the arraignment, and the defendant's  
15 ~~his~~ presence is required during any pre-trial proceeding. The  
16 pre-trial hearing shall be to determine any of the following  
17 matters:

18 (1) Arraignment of the defendant, if ~~such be~~  
19 necessary; and appointment of counsel to represent the defendant,  
20 if ~~such be~~ necessary;

21 (2) Pleadings of the defendant;

22 (3) Special pleas, if any;

23 (4) Exceptions to the form or substance of the  
24 indictment or information;

1           (5) Motions for continuance either by the State or  
2 defendant; provided that grounds for continuance not existing or  
3 not known at the time may be presented and considered at any time  
4 before the defendant announces ready for trial;

5           (6) Motions to suppress evidence, and when [~~When~~] a  
6 hearing on the motion to suppress evidence is granted, the court may  
7 determine the merits of the [~~said~~] motion on the motions  
8 themselves, or upon opposing affidavits, or upon oral testimony,  
9 subject to the discretion of the court;

10           (7) Motions for change of venue by the State or the  
11 defendant; provided, however, that a motion [~~such motions~~] for  
12 change of venue, if overruled at the pre-trial hearing, may be  
13 renewed by the State or the defendant during the voir dire  
14 examination of the jury;

15           (8) Discovery;

16           (9) Entrapment; [~~and~~]

17           (10) Motion for appointment of interpreter; and

18           (11) Motion to determine justification as a defense.

19           SECTION 3. Chapter 28, Code of Criminal Procedure, is  
20 amended by adding Article 28.15 to read as follows:

21           Art. 28.15. PRETRIAL HEARING ON JUSTIFICATION. (a) On the  
22 written motion of a defendant requesting a determination of  
23 justification as a defense to prosecution under Chapter 9, Penal  
24 Code, the court, at a pretrial hearing described by Article 28.01,  
25 shall:

26           (1) determine whether the defendant's conduct was  
27 justified under Chapter 9; and

1           (2) issue written findings of fact and conclusions of  
2 law supporting the determination.

3           (b) At a hearing under this article, after the defendant  
4 provides prima facie evidence that the defendant's conduct was  
5 justified under Chapter 9, Penal Code, the attorney representing  
6 the state has the burden of proving by clear and convincing evidence  
7 that the defendant's conduct was not justified.

8           (c) The court shall dismiss the criminal charge with  
9 prejudice if the attorney representing the state does not meet the  
10 attorney's burden under Subsection (b).

11           (d) If the attorney representing the state does meet the  
12 attorney's burden under Subsection (b):

13           (1) the criminal charge may proceed to trial and, at  
14 trial, the defendant may raise, as a defense to prosecution in the  
15 case, a justification of the defendant's conduct under Chapter 9,  
16 Penal Code;

17           (2) if the issue is raised at trial, the attorney  
18 representing the state has the burden of proving beyond a  
19 reasonable doubt that the defendant's conduct was not justified  
20 under Chapter 9, Penal Code;

21           (3) the fact that the attorney representing the state  
22 met the attorney's burden under Subsection (b) is not admissible at  
23 the trial; and

24           (4) the fact that a hearing was held under this article  
25 is not admissible at the trial.

26           SECTION 4. The change in law made by this Act applies only  
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is  
2 governed by the law in effect on the date the offense was committed,  
3 and the former law is continued in effect for that purpose. For  
4 purposes of this section, an offense was committed before the  
5 effective date of this Act if any element of the offense occurred  
6 before that date.

7 SECTION 5. This Act takes effect September 1, 2023.