

BILL ANALYSIS

C.S.H.B. 284
By: Driver
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under Chapter 9 of the Texas Penal Code, a person is justified in using force and, in some instances, deadly force to repel an unjust aggressor. In deadly force situations, the person must reasonably believe that the force is immediately necessary to protect himself from the exercise of unlawful deadly force by the aggressor or to prevent the imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Currently, the Texas Penal Code contains no presumption of reasonableness in defending a home, vehicle, place of business, or place of employment against unlawful intruders. Instead, Texas juries must decide after the fact whether victims' actions to protect themselves and their families were reasonable or necessary under the circumstances. Other states have adopted "presumptions of reasonableness" for the use of force or deadly force in response to unlawful invasions into these locations. In those states, if a self-defense case goes to trial, the defendant (in this case, the homeowner, driver or business owner) will have to produce evidence that he is entitled to the presumption (i.e., that an intruder entered the home or other location unlawfully) and then the state must rebut that evidence beyond a reasonable doubt. A jury should give the defendant the benefit of the presumption unless the state can prove beyond a reasonable doubt that he is not entitled to it. If the defendant has no evidence that he or she is entitled to the presumption in the first place, the judge won't instruct the jury on the presumption and it becomes a non-issue.

In 1973, the Texas Legislature imposed a duty to retreat in the face of a criminal attack, permitting the use of deadly force only if a reasonable person in the situation would not have retreated. This in effect placed the burden on the victim of retreating in the face of an impending lethal attack. This statutory change reversed what had been the long-standing practice of recognizing the right of a person to stand his ground in the face of an attack. In 1995, the Legislature created an exception to the duty to retreat before using deadly force in response to an unlawful entry into the habitation of the actor, but the duty still applies in any other location where a lethal attack might occur.

Texas law provides a defense to prosecution for conduct justified under Sections 9.31, 9.32, or 9.33 of the Penal Code. Texas law also provides an affirmative defense to a civil action brought by an attacker for damages for personal injury or death resulting from the use of force or deadly force, but only for cases involving home invasions. As a result, a person who justifiably uses force or deadly force outside the home and is not guilty of any crime may still be open to a civil action filed by the criminal or the criminal's family.

To address these issues, C.S.H.B. 284 establishes the presumption that a criminal who unlawfully and forcefully enters or intrudes into a home, vehicle, place of business, or place of employment is there to cause death or great bodily harm, and a person may therefore use any manner of force, including deadly force, against that criminal. Said use of force is presumed to be both reasonable and necessary in these cases.

C.S.H.B. 284 explicitly states in law that a person has no duty to retreat if the person is attacked in a place where he has a right to be present, if he has not provoked the attacker, and if the person using force is not engaged in criminal activity at the time the force is used.

Finally, C.S.H.B. 284 creates a civil immunity to a civil action brought by an injured or killed criminal attacker or his family to apply to any force or deadly force conduct justified by any portion of Chapter 9 of the Penal Code.

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Fifteen states have currently adopted some or all of the provisions outlined in C.S.H.B. 284 and another dozen states are currently considering similar legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 284 amends Section 9.01, Penal Code, by adding definitions for "habitation" and "vehicle" to the code.

C.S.H.B. 284 amends Sections 9.31 and 9.32 of the Penal Code to create a presumption of reasonableness that a person believed the use of force or deadly force was immediately necessary to protect him or herself against another's use or attempted use of unlawful force if the person against whom force or deadly force was used was unlawfully and forcefully entering or attempting to enter with force another's occupied habitation, vehicle, or place of business or employment; if the person against whom force or deadly force was used was unlawfully and forcefully removed or was attempting to unlawfully and forcefully remove the person from any of these locations; or if the person against whom force or deadly force was used was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery.

C.S.H.B. 284 amends Sections 9.31 and 9.32 of the Penal Code to explicitly state that a person has no duty to retreat before using force or deadly force authorized by Sections 9.31 or 9.32, Penal Code, if the person has a right to be present at the location where the force or deadly force is used, if the person has not provoked the person against whom force or deadly force is used, and the person using force or deadly force is not engaged in criminal activity at the time the force or deadly force is used. The fact that the person did or did not retreat before using force or deadly force cannot be considered in determining whether he reasonably believed the use of force or deadly force was necessary for purposes of Sections 9.31(a) or 9.32(a)(2), as applicable.

Section 83.001, Civil Practice and Remedies Code, is also amended to create an immunity from civil liability for personal injury or death if the defendant was justified in using force or deadly force under Chapter 9 of the Penal Code.

C.S.H.B. 284 provides that the changes in law made by this Act to Section 9.31 and Section 9.32, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

C.S.H.B. 284 further provides that the changes in law made by this Act to Section 83.001, Civil Practice and Remedies Code, apply only to a cause of action that accrues on or after the effective date of this Act.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from original bill in that it clarifies that in order for the presumption to apply in use of force cases, there must not only be an unlawful entry, but an unlawful entry with force. The substitute clarifies that in order for the presumption to apply in use of force cases, the home, car, or place of business or employment must be occupied at the time. The substitute strikes the “affirmative defense to a civil action” language and, instead, provides immunity from civil liability for personal injury or death that results from the lawful use of force as justified under Chapter 9 of the Penal Code. The substitute deletes the section that awarded court costs, attorneys fees and other expenses to a victim who successfully raised an affirmative defense to a civil action brought by his injured criminal attacker.