

BILL ANALYSIS

S.B. 378
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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 to retreat in the face of an impending lethal attack and reversed what had been the long-standing practice of recognizing the right of a person to stand his or her ground in the face of an attack. In 1995, the Texas 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.

Under Chapter 9, Penal Code, a person is justified in using force and, in some instances, deadly force to repel an aggressor. In deadly force situations, the person must reasonably believe that the force is immediately necessary to protect his or her person from the aggressor's use or attempted use of unlawful deadly force or to prevent the imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery. Also, a person is justified in using force if the person would be justified in using force against the aggressor under Section 9.31, Penal Code, and if a reasonable person in the actor's situation would not have retreated. These two criteria in addition to the previously stated criteria regarding reasonable belief would all have to be met in order for the justification of using deadly force to be protected under law. Current law provides an affirmative defense to a civil action brought for damages for personal injury or death resulting from the use of deadly force, but only in cases involving home invasions. As a result, a person who justifiably uses force or deadly force outside of 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.

Senate Bill 378 explicitly states in law that a person has no duty to retreat if the person is attacked in a place where he or she has a right to be present, if he or she has not provoked the attacker, and if the person using force is not engaged in criminal activity at the time the force is used. S.B. 378 also creates a civil immunity to a civil action brought to apply to any force or deadly force conduct justified by any portion of Chapter 9 of the Penal Code.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

S.B. 378 amends Section 9.01, Penal Code, by adding definitions for "habitation" and "vehicle" to the chapter.

S.B. 378 amends Sections 9.31 and 9.32 of the Penal Code to provide a presumption of reasonableness that a person believed the use of force or deadly force was immediately necessary if all of the following criteria are met:

- If the person knew or reasonably believed that the person against whom force or deadly force was used:
 - unlawfully and forcefully entered or was attempting to unlawfully and forcefully enter the occupied habitation, vehicle, or place of business or employment of the person who used the force or deadly force;

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- unlawfully and forcefully removed or was attempting to unlawfully and forcefully remove the person from any of these locations; or
- was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery;
- If the person did not provoke the person against whom the force was used; and
- If the person was not engaged in criminal activities other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time force or deadly force was used.

S.B. 378 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 by a finder of fact in determining whether he or she 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. S.B. 378 changes the heading of this section to "Civil Immunity," and deletes existing text relating to an affirmative defense to civil action arising from the use of justifiable deadly force.

S.B. 378 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 committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

S.B. 378 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. An action that accrued before the effective date of this Act is governed by law in effect at the time the action accrued, and that law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.