

BILL ANALYSIS

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S.B. 378
By: Wentworth et al.
Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1973, the 63rd 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 longstanding practice of recognizing the right of a person to stand his or her ground in the face of an attack. In 1995, the 74th 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 applied 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 exercise of unlawful deadly force by the aggressor or to prevent the imminent commission of an aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery. Current law 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 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.

In addition, 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 a victim's actions to protect the victim and his or her family were reasonable or necessary under the circumstances.

As proposed, S.B. 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. In addition, the jury is instructed to presume that the victim's actions were reasonable if the victim brings forth evidence that he or she is entitled to the presumption, unless the state can prove otherwise beyond a reasonable doubt. Finally, the bill expands the existing affirmative defense to a civil action brought by an injured criminal attacker or his family to apply to any force or deadly force conduct authorized by Subchapter C, Chapter 9, Penal Code.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 9.01, Penal Code, by adding Subdivisions (4) and (5), to define "habitation" and "vehicle."

SECTION 2. Amends Section 9.31, Penal Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

- (a) Provides that an actor's belief that the use of force was immediately necessary is considered reasonable if the actor knew or had reason to believe that the person against

whom the force was used unlawfully entered or attempted to enter the actor's habitation, vehicle, or place of business or employment or unlawfully removed or attempted to remove the actor from the actor's habitation, vehicle, or place of business. The aforementioned use of force is also considered to be reasonable if the person against whom the force was used was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, or aggravated robbery. Makes nonsubstantive changes.

(e) Provides that a person who has a right to be present at the location where the force is used is not required to retreat before using force, provided that the person has not provoked the person against whom the force is used and is not engaged in criminal activity.

(f) Prohibits a finder of fact from considering whether the actor failed to retreat when determining whether an actor reasonably believed that the use of force was necessary.

SECTION 3. Amends Section 9.32, Penal Code, as follows:

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. Deletes existing text relating to whether a reasonable person in the actor's situation would have not retreated in determining justified use of deadly force. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 83.001, Civil Practice and Remedies Code, as follows:

Sec. 83.001. AFFIRMATIVE DEFENSE. Specifies that the use of justifiable force, in addition to deadly force, under Subchapter C, Chapter 9, rather than Section 9.32, is an affirmative defense to certain civil actions.

SECTION 5. Amends Chapter 83, Civil Practice and Remedies Code, by adding Section 83.002, as follows:

Sec. 83.002. COURT COSTS, ATTORNEY'S FEES, AND OTHER EXPENSES. Authorizes a defendant who prevails in asserting an affirmative defense to recover from the plaintiff all court costs, reasonable attorney's fees, earned income that was lost as a result of the suit, and other reasonable expenses.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2007.