

- SUBJECT:** Use of deadly force against an intruder in a person's home
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Place, Talton, Farrar, Greenberg, Hudson, Nixon, Pickett, Pitts, Solis
0 nays
- WITNESSES:** For — M.D. Boyer
Against — None
- BACKGROUND:** The Texas Penal Code defines the permissible use of deadly force for self-defense and lists the circumstances that might justify such force. Deadly force may be justified if used to protect oneself from deadly force or prevent the imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery. Another of the qualifiers is that deadly force is considered justified only if a reasonable person in the same situation would not have *retreated*.
- DIGEST:** HB 94 would create a justification for a person to use deadly force against another who is unlawfully attempting to enter the person's home, without meeting the statutory standard for retreat by a reasonable person.

The bill also would provide an affirmative defense in a civil suit for personal injury or wrongful death, if the defendant was justified in using deadly force in the incident that gave rise to the suit. The bill would take effect September 1, 1995.
- SUPPORTERS SAY:** A peculiarity of Texas law has created several situations in which persons who have defended themselves against intruders in their homes have been found guilty of homicide, faced civil liability or both. This clearly is unjust and requires a change in the laws related to self-defense. HB 94 would remedy the problem.

Under current law a person who is at home and uses force to defend his or her life against an intruder is considered justified in the use of deadly force only upon a finding that a "reasonable person" in the same situation would have retreated. People should not be expected to retreat from intruders in their own homes. For a person who is at home, the possibilities of where to retreat *to* may be extremely limited.

Current law also allows a person who acts in self-defense to be sued for damages by the intruder or the intruder's family. The absurdity of having to pay money damages for protecting self, family and home from an unlawful intrusion should be obvious.

Eliminating the retreat requirement would still leave ample safeguards in the law against unwarranted use of force. The justification for the use of deadly force would incorporate the other existing requirements for self-defense: that the actor reasonably believed that the use of force was immediately necessary to protect himself or others and that the actor did provoke the other person. These requirements should be sufficient to prevent the unreasonable use of deadly force in a person's own home. The bill would not broaden the no-retreat provision beyond a person's immediate residence. Thus, it would not cover areas outside the habitation, such as a garage.

The bill would not eliminate the right to sue for personal injury or prevent a survivor of a person allegedly killed by the justified use of deadly force from bringing a wrongful death action. It would merely provide an affirmative defense — that the use of deadly force was justified — to avoid civil liability. A court could still find that the person's use of deadly force was not justified and impose liability.

The bill would limit the justified use of deadly force to situations in which an intruder is attempting to *unlawfully* enter a person's *home*. The bill would not allow a person to use deadly force in parking lots, restaurants or other areas. In these instances the retreat requirement would still apply in cases of self defense.

Changing the law will not have any practical effect except to make it reflect reality. Grand juries rarely, if ever, indict people who are simply

protecting themselves and who do not retreat prior to shooting an armed intruder. Prosecutors would still review each episode on a case-by-case basis.

**OPPONENTS
SAY:**

It is not necessary to take a human life if there is a reasonable way to avoid a confrontation, and that is what the retreat requirement does. HB 94 would encourage people to shoot first and ask questions later, encouraging a "Gunsmoke" kind of frontier justice.

Most defendants in homicide cases claim they were acting in self defense. The retreat requirement is an easy way to separate the defendants who really had no choice but to use deadly force from those who could have reasonably retreated. A reasonable person surely would retreat first, not shoot first, upon seeing someone entering their home if only to avoid harming someone who might not be an unlawful intruder.

This bill would make it more difficult to prosecute false claims of the justified use of deadly force. The retreat requirement is a clear and easy way for prosecutors to defeat a false claim that the use of deadly force was justified.

NOTES:

A related bill, HB 107 by Yarbrough, currently in a House Criminal Jurisprudence subcommittee, would allow deadly force both inside a home and in the area just outside a home.

During 73rd regular session in 1993 the House passed a bill identical to HB 94, CSHB 148 by Kamel, et al.. The Senate Criminal Justice Committee reported the bill favorably, but the Senate took no action.

During the 72nd regular session in 1991 the House passed a similar bill, HB 330 by Repp. The Senate Jurisprudence Committee eliminated provisions related to the retreat requirement and reported favorably a substitute dealing with civil liability immunity, but the Senate did not consider the bill.