

- SUBJECT:** Revising the criminal trespass offense
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Keel, Riddle, Denny, Escobar, Hodge, Pena  
0 nays  
3 absent — P. Moreno, Raymond, Reyna
- WITNESSES:** For — David Mintz, Texas Apartment Association; Ken Valentine, City of New Braunfels; (on committee substitute) Scott Norman, Texas Association of Builders.  
Against — None
- BACKGROUND:** Under current law, criminal trespass occurs when a person enters or remains on a property or in a building of another without effective consent. The offender must have notice that the entry was forbidden or have received notice to depart but fail to do so.  
  
This offense is a class B misdemeanor, punishable by up to 180 days in jail and/or a \$2,000 fine. The offense is enhanced to a class A misdemeanor, punishable by up to one year in jail and/or a \$4,000 fine, if the it is committed in a habitation, shelter center, or superfund site, or the offender carries a deadly weapon during the commission of the offense.  
  
It is a defense to prosecution that the defendant is a fire fighter or emergency medical services personnel acting in the lawful discharge of an official duty.
- DIGEST:** CSHB 489 would create a new criminal trespass offense. The bill would make it a class C misdemeanor, punishable by up to a \$500 fine, for an individual to enter or remain on the residential land of another without express consent or legal authorization, if the individual had notice that entry was forbidden or receive d notice to depart but failed to do so.

The offense would be a class A misdemeanor if it were committed in a building or habitation, or if the offender had a deadly weapon at the time of the offense.

It would be a defense to the prosecution if the defendant was an electric utility or gas utility employee and performing duties within the scope of the defendant's employment.

CSHB 489 defines "residential land" to mean real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

Trespassers harm private property by leaving trash, damaging property, and creating loud disturbances. Trespassing also may be the first indicator of more serious criminal activity such as theft or burglary. Moreover, the offense can be harmful to the offender. For instance, teenagers commonly loiter at construction sites that contain dangerous equipment.

Law enforcement sometimes is hesitant to enforce current criminal trespass laws because the offense requires arresting the offender. By creating a class C misdemeanor offense, this bill would allow officers simply to fine offenders. HB 489 would create a more efficient, effective deterrent to trespassing. It would make the offense easier to enforce and therefore enforced more aggressively, potentially deterring serious harm.

The bill would create a class C trespassing offense. It would not eliminate the existing class B offense. Law enforcement still would have the discretion to charge someone with a class B misdemeanor if they felt it would be more appropriate.

**OPPONENTS  
SAY:**

This bill is unnecessary. Trespassing already is a Class B misdemeanor under the existing law, which may be punished with a fine only or jail time. A class B misdemeanor is more appropriate given the possible serious consequences of trespassing. It also gives law enforcement the flexibility to charge an offender with a heftier fine of up to \$2,000 and/or jail time, depending on the seriousness of the offense. Certain offenders will not be deterred by a mere \$500 fine.

NOTES:                   The committee substitute added a defense for utility employees acting within the scope of their employment.