

- SUBJECT:** Class C misdemeanor for residential criminal trespass
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Pena, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton
- 0 nays
- 1 absent — Moreno
- WITNESSES:** For — Bruce Boyer, City of New Braunfels; Scott Norman, Texas Association of Builders; John Villarreal, City of New Braunfels Police Department; (*Registered, but did not testify:* Rina Hartline, CenterPoint Energy; David Mintz, Texas Apartment Association)
- Against — None
- BACKGROUND:** Under Penal Code, sec. 30.05, a criminal trespass occurs when a person enters or remains on property or in a building of another without effective consent. The offender must have had notice that the entry was forbidden or have received notice to depart but failed to do so. The offense is a class class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). It is a class C misdemeanor (maximum fine of \$500) if the trespass occurred on agricultural land.
- Criminal trespass is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the trespass occurred in a habitation, a Superfund clean-up site, or certain critical infrastructure facilities necessary for transportation, energy, or communications, or if the trespasser was carrying a deadly weapon.
- It is a defense to prosecution that the actor at the time of the trespass was a fire fighter or EMS worker acting in the scope of official duties.
- DIGEST:** CSHB 1129 would establish a Class C misdemeanor penalty for a person entering or remaining on the residential land of another without express consent or legal authorization if that person had notice that the entry was forbidden or received notice to depart but failed to do so.

The offense would be a class A misdemeanor if it occurred in a habitation or was committed by a person carrying a deadly weapon.

CSHB 1129 would establish an affirmative defense to criminal trespass if the person entering the land was employed by or acting as an agent for an entity that had, or that the person reasonably believed had, the authority to enter the property and if the person was acting within the scope of official duties.

Residential land would mean real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

The 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, 2007.

**SUPPORTERS
SAY:**

By establishing a class C misdemeanor for criminal trespass of residential land, CSHB 1129 would allow more effective enforcement against this offense. Current law requires police to enforce the law by arresting criminal trespassers who have committed either a class A or a class B misdemeanor, a process that can take several hours. This takes officers off the street and prevents them from patrolling and preventing crime. If police officers could issue class C misdemeanor citations on the spot, they could continue their patrols without losing several hours to the booking process.

Police officers need to be able to remain on patrol in areas where trespass is likely to occur with some frequency. One such area is on the banks of waterways that are private property. The property owners complain about people who tube down the rivers and enter their property, where they sun bathe, discard trash, or relieve themselves. In these areas, local police would prefer to respond to trespass complaints as they happened, rather than arrest the first suspect and leave the neighborhoods relatively unprotected while they booked the arrested suspect at the station. Wider and more consistent enforcement would lead to greater deterrence and more efficient use of police resources.

Police still could arrest a person who trespassed on residential land for a class C misdemeanor, which would allow police to remove offenders who posed a threat to themselves or others in the case of a dispute on the property.

CSHB 1129 also would clarify the law by specifying that those authorized to enter residential property, such as gas or electric meter readers, would have a defense against prosecution for criminal trespass. The bill would not affect the current criminal trespass law for agricultural land.

**OPPONENTS
SAY:**

CSHB 1129 would reduce the deterrent to criminal trespass on residential land because it would lower the penalty. While the current penalty for criminal trespass is up to 180 days in jail and/or a maximum fine of \$2,000, this bill would lower the penalty for trespass to residential land to a maximum fine of \$500. Unarmed trespassers to residential property would not even face jail time under CSHB 1129.

Criminal trespass is not innocent wandering but a serious crime that deserves the penalties available under current law. To commit criminal trespass, a person must have gone on the land of another without consent, knowing that it was forbidden or disregarding instructions by the owner to leave the property.

NOTES:

The bill as filed would have extended the defense to prosecution to electric and gas utility workers. The committee substitute would extend the defense to anyone acting as the agent for any entity that had, or that the person reasonably believed had, the authority to enter the property and was acting within the scope of their official duties.