

- SUBJECT:** Creating a gang activity exception to the consent defense to assault
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Pena, Vaught, Escobar, Hodge, Mallory Caraway, Pierson
0 nays
3 absent — Riddle, Moreno, Talton
- WITNESSES:** For — Paul Doyle, Harris County District Attorney’s Office
Against — None
- BACKGROUND:** Under the Penal Code, sec. 22.06, it is a defense to the crimes of assault (sec. 22.01), aggravated assault (sec. 22.02), or deadly conduct (sec. 22.05) that the victim consented or the actor reasonably believed the victim consented and:
- the conduct did not threaten or inflict serious bodily injury, or
 - the victim knew the conduct was a risk of his occupation, a recognized medical treatment, or a scientific experiment conducted by recognized methods.
- Penal Code, sec. 71.01 defines a criminal street gang as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.
- DIGEST:** CSHB 184 would amend Penal Code, sec. 22.06 to remove consent as a defense to charges of assault, aggravated assault, or deadly conduct that took place as a condition of the defendant’s or the victim’s initiation or continued membership in a criminal street gang.
- The bill would take effect on September 1, 2007, and would apply only to an offense committed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 184 would address a problem stemming from gang culture. In their efforts to stamp out gang activity, prosecutors report trouble in convicting gang members for beating recruits as part of the initiation process. This is because gang members often can claim or show that the initiates consented to the beating, and under current law, consent is considered a defense to assaultive conduct. CSHB 184 would help alleviate this problem by removing consent as a defense to a gang beating that was part of the gang initiation process.

Society already has removed consent as a defense in other carefully selected areas. In the Education Code, consent as a defense expressly has been removed for hazing activity (sec. 37.154), including at the college level (sec. 51.936). CSHB 184 would take a similar approach to addressing activity that is at least as undesirable as what is usually thought of as hazing. The bill would be tailored specifically to protect individuals from exploitive gang-related beatings.

Currently, prosecutors cannot always adequately address the problem of gang initiation beatings because they are not always able to show that a beating went beyond that to which the victim consented. Even when the victims have consented, society is harmed when street gang culture is strengthened by this activity.

Also, according to the fiscal note, CSHB 184 would not present a significant cost to the state.

**OPPONENTS
SAY:**

Although street gangs are abhorrent, CSHB 184 would criminalize a situation with no victim. If initiates have consented, they are not victimized, and legal tradition has required a lack of consent to charge someone with assaultive crimes. Also, initiates are protected by existing law because consent must be shown to be valid in that victims knew the extent of that to which they were consenting. When prosecutors can show that a beating went beyond that to which the initiate consented, the defense of consent does not apply.

Texas cannot afford to continue to over-criminalize conduct. With an already strained criminal justice system, the state does not have the resources to properly incarcerate the prisoners it has under current law.

OTHER
OPPONENTS
SAY:

CSHB 184 would not go far enough. The bill would remove consent as a defense only in this one narrow situation, rather than in other areas where society should regulate assaultive conduct.

NOTES:

The committee substitute made no substantive changes to the bill as filed.