

- SUBJECT:** Class C misdemeanor for residential criminal trespass
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo
0 nays
3 absent — Christian, Hodge, Vaught
- WITNESSES:** For — Joe Vargas, City of New Braunfels; (*Registered, but did not testify:* Jessica Cassidy, American Civil Liberties Union of Texas; June Deadrick, CenterPoint Energy; Ron Everett, City of New Braunfels, David Mintz, Texas Apartment Association)
Against — None
- BACKGROUND:** Under Penal Code, sec. 30.05(a), a person commits an offense by entering or remaining on or in property, including an aircraft or other vehicle, of another without effective consent or by entering or remaining in a building of another without effective consent and:
- had notice that the entry was forbidden; or
 - received notice to depart but failed to do so.
- An offense is punishable as class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), except that the offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the offense is committed:
- in a habitation or a shelter center;
 - on a Superfund site; or
 - on or in a critical infrastructure facility.
- An offense also is punishable as a class A misdemeanor if the actor carries a deadly weapon during commission of the offense.

t is a defense to prosecution if the actor was a firefighter or emergency medical services personnel acting in the lawful discharge of an official duty under exigent circumstances.

DIGEST:

Criminal trespass generally. CSHB 2609 would amend sec. 30.05(a) to add to the criminal trespass statute. A person would commit an offense if the person entered or remained on or in property of another, including residential land, agricultural land, a recreational vehicle park, or a building without effective consent and the person:

- had notice that the entry was forbidden; or
- received notice to depart but failed to do so.

An offense would be punishable as a class C misdemeanor. If the defendant had been previously convicted of trespass, the offense would be punishable as a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Criminal trespass of residential property. CSHB 2609 would add sec. 30.05(k) to make trespass of a residential property a separate offense. A person would commit an offense if without express consent or if without authorization provided by any law, whether in writing or other form, the person:

- entered or remained on residential land of another; and
- had notice that the entry was forbidden or received notice to depart but failed to do so.

An offense would be a class C misdemeanor. If the actor trespassed in a building or habitation or carried a deadly weapon during the trespass, the crime would be punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Affirmative defenses. CSHB 2609 would amend sec. 30.05(c) by allowing a person who was an agent of an electric or gas utility to claim an affirmative defense to a charge of trespass. CSHB 2609 also would allow a person who was an agent of an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property. These agents would have to have been performing an action within the scope of their duties.

Definitions. CSHB 2609 would amend sec. 30.05(b) and would define “recreational vehicle park” to mean a tract of land that had rental spaces

for two or more recreational vehicles. "Residential land" would mean real property that had a dwelling and was zoned for or otherwise authorized for single-family or multifamily use.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

By establishing a class C misdemeanor for criminal trespass of residential land, CSHB 2609 would allow more effective enforcement of the law. 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 can take officers off the street and prevents them from patrolling and responding to and preventing other crimes. 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 these rivers and then 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, 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 2609 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.

**OPPONENTS
SAY:**

CSHB 2609 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 2609.

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. If the defendant's actions meet the elements of the offense, that person should be punished seriously for a serious disregard for the law and private property.

NOTES:

The substitute differs from the bill as filed by amending sec. 30.05(a) to define trespass generally and by defining "recreational vehicle park."

The identical companion bill, SB 1391 by Wentworth, passed the Senate by 31-0 on May 5 on the Local and Uncontested Calendar.