

SUBJECT: Disallowing use of self-defense claim by those with illegal weapons

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Farrar, Nixon, Pitts, Solis
0 nays
3 absent — Greenberg, Hudson, Pickett

WITNESSES: For — Barry Macha
Against — None
On — Donald A. Loucks and Paul Velte IV, Peaceable Texans for Firearm Rights.

BACKGROUND: Penal Code sec. 9.31 allows use of force in self defense except in specified circumstances. These include force used in response to verbal provocation only; to resist an unlawful arrest by a peace officer, unless the officer is using greater force than necessary; following consent by the other person to the exact force used or attempted; when a person had provoked and continued to provoke another's use of force; or force used by a person carrying a weapon in violation of Penal Code sec. 46.02 (handgun, illegal knife, or club) while seeking an explanation from or in discussion with another person about their differences.

Penal Code sec. 46.05 prohibits possession of explosive weapons, machine guns, short-barrel firearms, firearm silencers, switchblade knives, knuckles, armor-piercing ammunition, chemical dispensing devices or zip guns.

DIGEST: HB 981 would add to the list of unjustified uses of force in self defense the use of force by a person carrying a weapon prohibited in Penal Code sec. 46.05 while seeking an explanation from or in discussion about differences with another person. The bill would take effect September 1, 1995 and apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

In 1993 the Legislature changed the Penal Code (in HB 1121 by Hirschi) to exclude from self defense force used by a person carrying certain weapons while seeking an explanation from or discussion with another person concerning differences. HB 981 would simply clarify the law to make it also apply to possessing or transporting certain weapons that are illegal to possess. The law applies only to carrying the weapons listed in Penal Code provisions on carrying handguns, illegal knives and clubs. HB 981 would prohibit a person who is armed with a machine gun or firearm silencer during an incident arising from a discussion or argument from claiming they shot in self-defense. These weapons were inadvertently left out of HB 1121 last session.

If a defendant is charged with murder following a discussion with another person and had a switchblade knife, brass knuckles or other illegal weapon, under current law that defendant could avoid conviction on a technicality. When a person possesses a machine gun or sawed-off shotgun while confronting another person, the elements of intent and premeditation are present such that any subsequent violence should not be justified on the ground of self defense. The fact that the perpetrator could be prosecuted for the lesser offense of possessing a dangerous weapon is irrelevant.

**OPPONENTS
SAY:**

The bill would perpetuate confusion in current law between self defense and carrying an illegal weapon. When persons under attack cannot retreat, they should have the right to use any means at hand, even illegal weapons, to defend their lives. They may be prosecuted for possessing illegal weapons, but should still be allowed to justify their use of force for self defense, regardless of whether they possessed the weapon during a discussion of differences with the other party.