

SUBJECT: Revising Penal Code definitions of escape and custody

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel, Nixon, A. Reyna
0 nays
1 absent — Farrar

WITNESSES: For — None
Against — None
On — Carl Reynolds, Texas Board of Criminal Justice

BACKGROUND : Penal Code sec. 9.52 outlines when correctional facility guards and peace officer can use deadly force to prevent an escape from custody. Guards and officers can use deadly force if they reasonably believe it to be immediately necessary to prevent an escape from a correctional facility.

Penal Code sec. 9.01 defines “custody” as being under arrest by a peace officer or under restraint by a public servant pursuant to a court order. In the same section, “escape” is defined as unauthorized departure from custody or failure to return to custody after an authorized leave. The code specifies that escape does not include a violation of a condition of community supervision (probation) or parole or leave that is part of an intermittent sentence.

Another section of the Penal Code, sec. 38.01, has the same definition of custody as sec. 9.01 and a similar but not identical definition of escape. Under 38.01, escape specifically includes unauthorized departures from a secure facility that an offender was sentenced to as a condition of community supervision or parole.

DIGEST: CSHB 975 would add to the definition of custody in Penal Code sec. 38.01 that persons in custody would have to be under arrest by a peace officer or restraint by a public servant pursuant to a court order issued *by Texas or*

another state. The definition would be expanded to include persons convicted of criminal offenses who are under restraint by an agent or employee of a correctional facility operated by or under contract with the United States. CSHB 975 would eliminate definitions of custody and escape found in Penal Code sec. 9.01 and refer solely to the definitions found in sec. 38.01.

CSHB 975 would apply to offenses committed on or after September 1, 1997, the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 975 is needed to harmonize Penal Code definitions of custody and escape, to ensure that correctional officers have authority to use deadly force to stop probationers and parolees from escaping from correctional facilities and to ensure that criminals from other states and in federal correctional facilities fall under the definitions of custody and escape.

The Penal Code contains two slightly different definitions of escape and custody. CSHB 975 would eliminate the definitions in Penal Code sec. 9.01 and simply refer to the remaining definition in sec. 38.01. This would simplify the Penal Code and ensure that anyone looking up these definitions would have to look in only one place and that any changes made to the definitions would only have to be made to one section of the code.

By eliminating the definition of escape in Penal Code sec. 9.01 and referring to the definition in sec. 38.01, CSHB 975 would clear up confusion over the authority of correctional officers to use deadly force. The definition of escape in sec. 9.01 does not include a provision in sec. 38.01 that includes as escape the unauthorized departure by someone sentenced to a secure correctional facility as a part of probation or parole. Because of this, there has been confusion over whether guards can use deadly force to stop an escape by a parolee or probationer who has been sentenced to a secure correctional facility. By eliminating one definition of escape and leaving only the one that includes probationers and parolees who have been sentenced to a secure correctional facility, CSHB 975 would make it clear that deadly force can be used if one of these offenders tries to escape.

CSHB 975 would not change the tests that must be met before a correctional officer can legally use deadly force. It would simply ensure that the same

tests would apply to probationers and parolees sentenced to secure correctional facilities. These offenders have been sentenced to a correctional facility and should be treated like other prisoners.

CSHB 975 would ensure that criminals being housed in Texas who have been convicted in other states and those in federal facilities also fall under definitions of custody and escape.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The original version of the bill would have only eliminated the definitions found in Penal Code sec. 9.01 and referred to the ones found in sec. 38.01. The committee substitute would also change the definition of custody found in sec. 38.01.

A similar bill, SB 1010 by Whitmire, has been referred to the Senate Criminal Justice Committee.