

- SUBJECT:** Revising compulsion for affirmative defense relating to duress
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Collier, Cason, Cook, Crockett, Hinojosa, A. Johnson
- 2 nays — Murr, Vasut
- 1 absent — K. Bell
- WITNESSES:** For —Stephanie Trevino, Lone Star Justice Alliance; Joseph Scaramucci, McLennan County Sheriff's Office; Allison Franklin, Safe Alliance; Danika Lopez, SMU Dedman School of Law; Bekah Charleston; (*Registered, but did not testify*: Nick Hudson, American Civil Liberties Union of Texas; Chara McMichael, BCFS Health and Human Services Human Trafficking Interdiction; Charles Reed, Dallas County Public Defender; Kathy Mitchell, Just Liberty; Elizabeth Henneke, Lone Star Justice Alliance; Laura Nodolf, Midland County Distract Attorney's Office; Natalie Nanasi, SMU Dedman School of Law; Chris Harris, Texas Appleseed; Katherine Strandberg, Texas Association Against Sexual Assault; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Madison Huerta; Thomas Parkinson)
- Against — (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Jimmy Rodriguez, San Antonio Police Officers Association; John Wilkerson, Texas Municipal Police Association)
- BACKGROUND:** Penal Code sec. 8.05 defines duress as it applies to a defense for criminal responsibility. The section establishes that is an affirmative defense to prosecution that an individual engaged in the proscribed conduct because the individual was compelled to do so by threat of imminent death or serious bodily injury to himself or another. In the case of a non-felony offense, it is an affirmative defense to prosecution that the individual engaged in the proscribed conduct because the individual was compelled

to do so by force or threat of force.

Compulsion, for the purposes of these provisions, exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure. The defense is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

Concerns have been raised that the current standard used in the statutory definition of compulsion would exclude individuals who became susceptible to coercion after a traumatic event.

**DIGEST:**

HB 2290 would revise the definition of compulsion as it exists in the Penal Code provisions that create an affirmative defense for duress.

Under the bill, compulsion would be defined as existing only if the force or threat of force would render a reasonable person in the defendant's situation incapable of resisting the pressure, rather than being defined as existing only if a person of reasonable firmness was incapable of resisting the pressure.

The bill would take effect September 1, 2021, and would apply only to offenses committed on or after that date.