

SUBJECT: Purple paint to provide notice for criminal trespass

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Place, Talton, Dunnam, Farrar, Hinojosa, Keel, A. Reyna
0 nays
1 present, not voting — Nixon
1 absent — Galloway

WITNESSES: For — Ron Hufford, Texas Forestry Association; Gary Joiner, Texas Farm Bureau; Joseph B. Hiburn
Against — None
On — James B. Hull, Texas Forest Service

BACKGROUND
:
Persons commit the offense of criminal trespass if they enter or remain on the property or in a building of another without the owner's effective consent and the person had notice that the entry was forbidden or received notice to depart but failed to do so. Notice is defined as:

- oral or written communication;
- fencing or other enclosure;
- signs on the property or building entrance indicating that entry is forbidden and that are reasonably likely to come to the attention of intruders; and
- the visible presence of food crops under cultivation, being harvested or, if already harvested, marketable.

Criminal trespass is either a Class B misdemeanor or, if committed in a habitation or the person carried a deadly weapon, a Class A misdemeanor.

DIGEST: CSHB 793 would include in the definition of “notice” in the criminal trespass statute the placement of identifying purple paint marks on trees or posts on a person's property. The marks would have to be vertical lines of at least eight inches, with the bottom of the mark at least three feet but no higher than five feet from the ground, and they would have to be placed at locations that are readily visible to persons approaching the property. The marks would have to be no more than 100 feet apart on forest land or 1,000 feet apart on other lands.

CSHB 793 would take effect September 1, 1997.

SUPPORTERS SAY: CSHB 793 would give property owners another option to mark their property lines and would be effective, economical and easy. This method of marking property boundaries is used in Arkansas and Missouri.

Allowing property owners to place vertical purple marks on trees or posts would give owners an alternative to building fences or placing signs on their property. Signs and fences can be difficult and expensive to use in some areas. For example, on forest land it would be much easier and cheaper to spray or paint purple paint on a tree than to build a fence around a forest or post a sign on a tree. It would be both quick and easy to apply purple paint, and it could be more permanent than signs that can fall off or rust.

Allowing the use of purple paint would help combat the problem of trespassers who pull down signs and then claim they were not given notice that they were on private property or situations in which “No Trespassing” signs have been stolen. It would be more difficult for trespassers to remove a stroke of purple paint.

Purple paint is easily accessible, and in other states that use the paint as boundary markers the color “Posting Purple” is widely available in discount and paint stores.

CSHB 793 would establish standards for marking boundaries with purple paint. The marks would have to be vertical marks on trees or posts, placed approximately eye level and visible to persons approaching the property. The marks would have to be no more than 100 feet apart on forest land where they could be more difficult to see and no more than 1,000 feet apart

on other lands such as ranch lands. Requiring purple swatches to be placed intermittently on property would be similar to requirements that signs be posted where they are reasonable likely to come to the attention of intruders.

It would be reasonable to hold persons responsible for knowing the meaning of purple paint marks just as they are for knowing the meaning of a fence, a sign or the existence of other laws. Purple paint would provide adequate notice to trespasses just as fences, signs and crops do.

OPPONENTS
SAY:

Because it would be difficult for persons to know the meaning of strokes of purple paint on trees and posts this method of marking property boundaries could provide inadequate notice to persons that they are trespassing. This would be both unfair to persons accused of trespassing and would make prosecutions difficult. Unlike purple paint, the fences, signs and crops used now are clear, unmistakable signs of private property. In addition, a boundary marked by purple paint would be meaningless to a person who was colorblind.

OTHER
OPPONENTS
SAY:

Because CSHB 793 does not contain a definition or description of purple, property owners could use a wide variety of colors, leading to confusion about their meaning. One person's purple could be another's plum or lavender, leading to confusion about whether or not a mark designates private property.

CSHB 793 should at least include requirements for a public information campaign to let persons know that purple paint means no trespassing.

NOTES:

The original version of the bill would have required that all purple marks be placed no more than 100 feet apart. The committee substitute would require marks no more than 100 feet apart on forest land and 1,000 feet apart on other land.