

SUBJECT: Trespass by people licensed to carry a concealed handgun

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton
0 nays
3 absent — Denny, Dunnam, P. Moreno

SENATE VOTE: On final passage, April 3 — voice vote

WITNESSES: For — (*On original bill:*) Alice Tripp, Texas State Rifle Association; Ann del Llano, American Civil Liberties Union of Texas; Susan Horton, Texas Municipal League (*On committee substitute:*) Tara Reilly Mica, National Rifle Association

Against — None

BACKGROUND: Under Penal Code, sec. 30.05, a person commits criminal trespass if the person enters or remains on the property or in a building of another without effective consent, if the person had notice that entry was forbidden or received notice to depart and failed to do so. In general, the offense is a Class C misdemeanor, punishable by a maximum fine of \$500.

Penal Code, sec. 30.06 makes it a Class A misdemeanor, punishable by a maximum of one year in jail and a \$4,000 fine, for a concealed handgun licensee to carry a concealed handgun on another's property without effective consent if the licensee failed to depart after receiving notice that entry on the property by a licensee with a concealed handgun was prohibited, or that remaining on the property with a concealed handgun was prohibited and the licensee failed to leave. Notice can be provided orally or in writing. Written notice can be by a card, document, or sign using language specified in the Penal Code, stating that a licensee may not enter the property with a concealed handgun.

Penal Code, sec. 46.03 lists places where all firearms, including handguns,

and other weapons are prohibited. It is not a defense to prosecution that the person was licensed to carry a concealed handgun. The prohibited places include:

- schools and educational institutions, grounds where school activities are taking place, and school transportation vehicles;
- polling places on election day or during early voting;
- a government court or offices used by a court, unless authorized by written regulations or in writing by the court;
- racetrack premises;
- the secured area of an airport; and
- within 1,000 feet of a Texas Department of Criminal Justice facility that is holding an execution that day, if the person received notice that the weapon was prohibited.

Penal Code, sec. 46.035 prohibits licensees from carrying concealed handguns in bars, in correctional facilities, and at high school, college, or professional sporting events. It also bans concealed handguns from hospitals and nursing homes, amusement parks, places of worship, and government meetings if the license holder was given verbal notice or written notice that complied with standardized language or a standardized sign specified in the statutes.

In January 2001, Attorney General John Cornyn concluded in Opinion JC-0325 that a unit of government has statutory authority to bar concealed-handgun licensees from entering its property, either by giving verbal notice to the licensee or by erecting a sign or other written communication that complies with Penal Code, sec. 30.06, and that notifies licensees that they cannot enter while carrying concealed handguns. The determination was based in part on the definitions of “person,” “association,” and “government” in Penal Code, sec. 1.07, and on reasoning in a previous attorney general’s letter opinion (95-058) that Penal Code, sec. 30.05, dealing with criminal trespass, applies to a governmental body. The opinion also said that units of government cannot bar concealed-handgun licensees from carrying weapons onto public property merely through rules, regulations, or policies.

DIGEST:

CSHB 501 would create an exception to the application of the offense of trespass by a holder of a concealed handgun license if the property on which the license holder carried a handgun was owned or leased by a governmental

entity and was not a premise or other place on which the license holder was prohibited from carrying the handgun by Penal Code, sec. 46.03 or 46.035.

The bill would create a defense to prosecution for criminal trespass if the basis on which entry on the property, land, or building was forbidden was that entry with a handgun was forbidden and that the person was carrying a concealed handgun and was licensed to do so.

The bill also would make the prohibition against weapons apply to the premises of government courts and court offices, instead of only to the courts and court offices themselves.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 501 would address problems that have arisen since the 1997 enactment of the criminal offense of trespassing by a holder of a concealed handgun license. Some cities, counties, and transit authorities have misinterpreted this law and the attorney general's opinion as giving them authority to ban concealed handguns from public places. For example, local governments have posted signs prohibiting concealed handguns in parks, libraries, recreation centers, and other public buildings.

CSSB 501 would address this misinterpretation of the law by instituting an exception to the application of the offense of trespassing by a handgun licensee if the property was owned or leased a governmental entity and was not a place in which the license holder specifically was prohibited from carrying a weapon by another statute. The bill would give concealed handgun licensees a specific defense to prosecution for the offense of criminal trespass if the basis for the charge was that the person was trespassing with a concealed handgun. These provisions would make it clear that local governments or entities could not prohibit licensees from carrying concealed handguns on certain properties.

The bill would not broaden or weaken the concealed-carry law but would clarify it so that it would adhere to the Texas Constitution and the original intent of the statutes. Cities and counties ignore the Constitution and the concealed-carry law's original intent and overstep their authority when they interpret the law as allowing them to ban weapons in any location other than

the specific places listed in the statutes. Only the Legislature or a federal authority can regulate where licensees may carry concealed handguns.

Texas Constitution, Art. 1, sec. 23, part of the state's bill of rights, gives the Legislature the exclusive right to regulate the wearing of arms. Art. 1, sec. 29 states that everything in the bill of rights is excepted out of the general powers of government and shall remain inviolate, and that all laws contrary to the provisions of the bill of rights shall be void. Even if it wanted to, the Legislature could not delegate the authority to regulate the wearing of arms to a political subdivision of the state through a statute. The attorney general's opinion errs in failing to consider these constitutional issues.

Local control, although an important concept in Texas, does not extend to constitutional rights. For example, a local government cannot ban the constitutionally protected right to free speech. Even under these proposed changes, local governments could retain the ability to ban concealed handguns from nonpublic areas of public buildings. Allowing local governments to implement piecemeal bans on concealed weapons would result in a hodgepodge of regulations that would be difficult to follow.

Local governments are going against legislative intent by prohibiting concealed handguns from public places. The Legislature considered and rejected bans on concealed handguns in many of the places where local governments now say they are off limits. For example, both the House and the Senate rejected amendments that would have banned concealed handguns from public buses. Also, although some localities have tried to ban concealed handguns in city or county parks, Local Government Code, sec. 229.001 specifically prohibits cities from banning concealed handguns in public parks, and the Legislature rejected attempts to ban concealed handguns in parks, so counties should not be able to impose such bans either.

Prohibiting weapons in public places violates the rights of license holders and is similar to a local government refusing to recognize another state license, such as a driver's or medical license. A city's ban on concealed handguns in public buildings could make it needlessly difficult for a person lawfully carrying a concealed handgun to perform necessary tasks such as paying a utility bill or renewing a car registration. Also, the trespass law cannot be used

to enforce a ban on concealed handguns on buses, because buses are not real property and, by definition, trespassing can occur only on real property.

The bill also would give the premises of a court, such as the courthouse itself, the same protections as the court room and court offices by prohibiting weapons from these places.

**OPPONENTS
SAY:**

Rescinding the authority of local governments to ban concealed weapons on public property by changing current law would erode local control and would result in local governments being treated differently from other property owners. Current law rightfully gives local governments the same rights as private property owners to regulate property under their control and to prohibit concealed handguns on their property. Local governments have the same rights as private property owners to require users of the property to comply with certain criteria or to leave. For example, cities can ban smoking on public property and can ban trespassing at city-owned utilities. This right should continue to apply to concealed handgun licensees.

Local governments, not the state, should make decisions about the use of local public property. They are in the best position to evaluate local circumstances and decide if it is appropriate to allow concealed handguns at specific public properties. People are used to following regulations that vary from city to city or county to county. For example, some but not all cities have open-container laws prohibiting the possession of open alcoholic beverages in certain areas.

Local government entities are not overstepping their authority or violating the Texas Constitution but are using authority granted to them by the Legislature. Whatever the Legislature's intent when it enacted the original concealed-handgun law in 1995, the 75th Legislature in 1997 enacted additional legislation authorizing property owners, including local governments, to ban concealed handguns.

Local governments are not violating anyone's rights by prohibiting handguns on certain public properties, because the law authorizes the governments to take such action. License holders are not being barred from conducting any necessary public business; they simply are prohibited from bringing their concealed weapons onto certain properties.

NOTES:

The committee substitute removed a provision from the original bill that would have allowed cities, counties, and the state to prohibit a license holder from carrying a concealed handgun in buildings owned or leased by the city, county, or state if they gave proper notice.

The companion bill, HB 878 by Hupp, et al., was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on February 27.