

SUBJECT: Subjecting vehicles used in human smuggling to forfeiture laws

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Escobar, Hodge, Raymond
0 nays
2 absent — P. Moreno, Reyna

WITNESSES: For — Kelly Rushing, Gray County Sheriffs Office
Against — None

BACKGROUND: Code of Criminal Procedure, ch. 59, defines the types of property that when used to commit certain offenses can be forfeited as contraband. The chapter also establishes the procedures that must be followed when forfeiting the property.

Penal Code, sec. 20.05, makes it a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to transport for monetary benefits an individual in a way that is designed to conceal the individual from local, state, or federal law enforcement authorities and that creates a substantial likelihood that the individual will suffer serious bodily injury or death.

DIGEST: HB 1048 would include property used in the commission of unlawful transport of individuals in the list of property that could be considered contraband and subject to forfeiture under Code of Criminal Procedure, ch. 59.

The bill would take effect September 1, 2005, and would apply only to the forfeiture of contraband used in the commission of an offense committed on or after that date.

SUPPORTERS SAY: HB 1048 is necessary to combat the growing and serious crime of human smuggling. Currently, when a smuggler is found guilty, the vehicle used to transport the individuals cannot be taken away under the forfeiture laws.

This allows the vehicle to be used to commit other crimes even if the smuggler is caught.

HB 1048 would help deter human smuggling by subjecting these vehicles to the state's law on contraband. If a vehicle were forfeited it could not be used again to smuggle human beings illegally. The need to protect those who are smuggled in often dangerous and life-threatening situations warrants the addition of this crime to the contraband law. HB 1048 would not institute any new state policy but simply would treat the vehicles of smugglers like those of drug dealers or persons who evade arrest, which are currently subject to the forfeiture law.

Innocent owners of the vehicles could use the well-established procedures in Code of Criminal Procedure, ch. 59 to challenge a forfeiture. These procedures allow innocent persons, such as family members who may need a car for school or work, to regain possession of a car subject to forfeiture. These procedures are not burdensome and could be as simple as signing an affidavit for the prosecutor.

HB 1048 would not be used unfairly to target minorities or any other group for the forfeiture of their vehicles. For a vehicle to be subject to forfeiture under HB 1048, it would have to have been used to commit human smuggling, not simply stopped for a traffic violation.

**OPPONENTS
SAY:**

HB 1048 would continue an unfair policy of taking away automobiles used in the commission of crimes. The bill could result in innocent family members of offenders being punished. The spouse of someone whose car was seized and forfeited could have difficulty getting to work, taking children to school, or buying family necessities. Under the forfeiture procedures in chapter 59 of the Code of Criminal Procedure, family members of offenders would have to jump through procedural hoops to keep the vehicle from being forfeited.

The policy embodied in HB 1048 also would be unproductive. The potential to have a vehicle seized and forfeited most likely is little deterrent for persons who are involved in human smuggling.

HB 1048 could possibly disproportionately harm minorities who may be unfairly targeted for traffic stops.

NOTES: The companion bill, SB 397 by Seliger, is pending in the Senate Criminal Justice Committee.