

SUBJECT: Defining “traveling” for carrying weapons and standards for a presumption

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Hodge, Pena, Raymond, Reyna

0 nays

3 absent — Denny, Escobar, P. Moreno

WITNESSES: For — Scott Henson, ACLU of Texas; Sputnik, Texas Motorcycle Rights Association; Alice Tripp, Texas State Rifle Association; Fredrick S. Hochmann; Margaret P. Hochmann

Against — None

BACKGROUND: Penal Code, sec. 46.02 makes it illegal to intentionally, knowingly, or recklessly carry on one’s person a handgun, illegal knife, or club. Sec. 46.15 states that sec. 46.02 does not apply to a person who is traveling.

DIGEST: CSHB 823 would amend sec. 46.15 to add a definition for “traveling.” A person would be presumed to be traveling if he was in a private motor vehicle, not engaged in criminal activity, and not prohibited by law from possessing a firearm.

The bill also would amend Penal Code, sec. 2.05 to state the consequences of establishing a presumption in the defendant’s favor. If there was sufficient evidence of the facts that gave rise the presumption, the issue would have to be submitted to the jury unless the judge found that the evidence clearly established beyond a reasonable doubt that the fact did not exist. If the judge did submit the decision of the existence of the fact to the jury, the judge would have to instruct the jury that:

- the presumption that the fact existed would apply unless the prosecution proved beyond a reasonable doubt that the fact did not exist;
- if the prosecution failed to prove beyond a reasonable doubt that the fact did not exist, the jury would be required to find that the fact did exist;

- even if the jury found that the fact did not exist, the prosecution still would have to prove beyond a reasonable doubt each of the elements of the offense charged; and
- if the jury had a reasonable doubt as to whether the fact existed, the presumption in favor of the defendant would apply and the jury would have to assume that the fact existed.

The bill would take effect September 1, 2005, and would apply to an offense committed on or after the effective date of this act.

**SUPPORTERS
SAY:**

CSHB 823 would create a presumption in favor of the defendant to protect the rights of people who carry weapons legitimately while traveling. Under current law, it is legal for a person who is not forbidden to carry a gun (i.e., not a convicted felon) to carry a weapon in the person's vehicle while traveling. A person arrested for carrying a weapon in the person's vehicle can raise as a defense that he or she was traveling. However, traveling is not defined in the Penal Code, and police officers and courts have interpreted the word in different ways. As a result, people who legitimately are traveling and have weapons in their vehicles often are arrested for unlawfully carrying a weapon and are forced to hire an attorney to defend them against those charges. This bill clearly would define "traveling" in the Penal Code and appropriately would shift the burden to the state to prove that a traveler was carrying a weapon unlawfully.

Persons who have a concealed handgun license are authorized to carry a handgun in their vehicle, but not all Texans are eligible or can afford to become licensed. However, many people believe it necessary for their safety to carry weapons in their vehicle while traveling. CSHB 823 would make it clear that people are authorized to carry weapons in their vehicles while traveling even without a concealed handgun license.

**OPPONENTS
SAY:**

CSHB 823 would make it much more difficult to prosecute the offense of unlawfully carrying a weapon because it would define "traveling" in a very broad way. In order for a person to be "traveling" under the bill, he or she simply would have to be in a private motor vehicle, not otherwise engaged in criminal activity, and not otherwise prohibited from possessing a firearm. Thus, a known gang member in a car with a gun in a high-crime area of town who had not been convicted of a felony would be considered "traveling" under the bill, even if it were clear (but not beyond a reasonable doubt) that the person was searching for a criminal activity to

commit. Allowing such persons to carry a gun in their vehicle could seriously endanger the public.

The Legislature clearly has not intended to create a general right for a persons to carry weapons in their vehicle. Yet this bill would come dangerously close to doing just that. Under the bill, anyone simply driving from one city block to the next legally would be “traveling.” CSHB 823 would make it very difficult for a prosecutor to show that a defendant in a vehicle was not traveling, and thus was not authorized to carry a weapon.

NOTES:

The original bill would have amended sec. 46.02 to establish traveling in a privately owned vehicle while possessing a weapon as an exception to the ban on carrying a weapon on one’s person. It also would have amended sec. 46.15 to state that the ban on unlawfully carrying a weapon would not have applied to a person who was traveling in a manner other than by privately owned vehicle.

The companion bill, SB 1196 by Hinojosa, has been referred to the Senate Criminal Justice Committee.