

**SUBJECT:** Increasing penalties for defacing, vandalizing caves, selling speleothems

**COMMITTEE:** Culture, Recreation, and Tourism — committee substitute recommended

**VOTE:** 6 ayes — Hilderbran, Kuempel, Dukes, Homer, Howard, O'Day  
0 nays  
1 absent — Phillips

**WITNESSES:** For — Stanley Mayfield, Caverns of Sonora; Tom Summers, Cave Without a Name; Dib Waldrip, Comal County District Attorney; Brad Wuest, National Caves Association; Travis Wuest; (*Registered, but did not testify*: Lance Clawson; Michael S. Devaney; Michelle Devaney; and David Teel, Texas Travel Industry Association)  
  
Against — None

**BACKGROUND:** Natural Resource Code, sec. 201.011 prohibits persons from excavating, removing, destroying, injuring, altering, or defacing caves owned by the state of Texas unless the person has a permit. Violations are class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000).  
  
Natural Resources Code, sec. 201.012 allows the General Land Office to issue a permit to someone seeking to excavate, remove, or alter a state-owned cave if they provide ample reasoning, data and results, willingness to carry a permit, and written permission to engage in the activity. Violations of this section are class C misdemeanors (maximum fine of \$500) and result in the revocation of the permit.  
  
Under sec. 201.041, it is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to vandalize a cave. Second and subsequent offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).  
  
Sec. 201.042 prohibits the sale of speleothems (cave formations) in this state or for export outside the state, without written permission from the owner of the cave from which the speleothems were removed. Violations are class B misdemeanors.

**DIGEST:** CSHB 3502 would increase the punishment for defacing any part of a cave owned by the state of Texas from a class B misdemeanor to a class A misdemeanor. Second and subsequent offenses would be a state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000).

CSHB 3502 would increase the penalty for vandalizing any part of a cave owned by the state of Texas from a class A misdemeanor to a state-jail felony. The bill also would remove a requirement that these offenses be committed willfully, but would keep the requirement that they be committed knowingly.

The bill would increase the punishment for selling speleothems from a class B misdemeanor to a class A misdemeanor. If the person had a previous conviction, this offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The bill would take effect September 1, 2007, and apply to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 3502 would increase the penalties for defacement, vandalism, and the sale of speleothems from protected caves in order to deter unlawful behavior and encourage local law enforcement to pursue these criminals.

The bill would ensure that vandals were held responsible for destroying protected natural resources. Caves and caverns in the state are natural wonders that took thousands of years to be created. They serve as desirable tourist destinations and provide economic development opportunities to communities across the state. When a thief or vandal destroys a cave, the damage is irreparable for both the formation and the community at large. State caverns and caves have experienced an increase in break-ins in recent years, but local authorities have been slow to respond.

According to the fiscal note, CSHB 3502 would not have a significant impact on criminal justice populations or any fiscal implication to the state.

**OPPONENTS  
SAY:**

This bill would not reduce the incidence of cave violations because the law is punitive and not preventative. Instead, this bill should require

cavern and cave owners to provide additional security and install anti-theft and anti-vandalism surveillance equipment. While the bill would aim to raise the priority of these offenses with local law enforcement by increasing penalties, without video surveillance the authorities may not be able to track down violators, leaving them shielded from prosecution.

This bill could increase the demands on correctional resources of counties and the state. The prison system is already operating near capacity and should not be further taxed by requiring jail time for less violent offenders. While property crimes can be seriously inconvenient, they should not be classified as felonies since they are not as serious as crimes committed against persons.

**NOTES:**

The companion bill, SB 1524 by Wentworth, was reported favorably by the Senate Natural Resources Committee on April 26 and was placed on the intent calendar on May 2.