

SUBJECT: Class C misdemeanor penalty for first offense criminal trespass

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway,  
Talton

0 nays

2 absent — Moreno, Pierson

SENATE VOTE: On final passage, April 12 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 3294 by Noriega)*  
For — Hans Marticiuc, Houston Police Officers Union; David Mintz, Texas Apartment Association; *(Registered, but did not testify: David Gonzalez, Texas Criminal Defense Lawyers Association; Chris Jones, Combined Law Enforcement Associations of Texas; James Jones, for Houston Police Department Chief Harold Hurtt; Susan Rocha, City of New Braunfels; Brett Spicer, Travis County Sheriff's Law Enforcement Association; Jim Sylvester, Travis County Sheriff's Office; Rick A. Watson, for Dallas Police Department Chief David Kunkle)*

Against — None

BACKGROUND: Penal Code, sec. 30.05(a) defines criminal trespass as when a person enters or remains on or in property, including an aircraft or other vehicle, without effective consent or if a person enters or remains in a building without effective consent and:

- had notice that entry was forbidden; and
- received notice to depart, but failed to do so.

Penal Code, sec. 30.05(d) makes criminal trespass a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) and increases the penalty to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the criminal trespass is committed:

- in a habitation or shelter center;
- on a Superfund site;
- on or in a critical infrastructure facility; or
- when the actor carried a deadly weapon on about his or her person in the commission of the offense.

**DIGEST:** SB 1097 would amend Penal Code, sec. 30.05(d) to reduce the penalty for criminal trespass to a class C misdemeanor (maximum fine of \$500). A subsequent offense would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), if the prosecution showed during the trial that the person had been convicted of the offense previously. The first offense class A misdemeanor punishment would remain unchanged.

The bill would apply to any offenses occurring on or after the bill's September 1, 2007, effective date.

**SUPPORTERS SAY:** SB 1097 would allow police officers to write a ticket and issue a summons for a person accused of criminal trespass rather than require them to take the person into custody and prepare additional paperwork for prosecution. Currently, property owners and managers of apartment communities have difficulty in persuading law enforcement officers to respond to criminal trespass calls. The bill would provide for more efficient and effective use of law enforcement resources.

Lowering penalties for first-time offenders would allow for these offenses to be handled by justice and municipal courts, where they would not be competing for attention with more serious crimes. SB 1097 would likely result in more prosecutions of these offenses without adding to overcrowding of county jails.

Several precedents exist for the Legislature to reduce penalties for first-time offenses to encourage prosecution of these crimes. For example, the 76th Legislature in 1999 enacted HB 1876 by Hinojosa, which reduced the penalty for theft of cable television services from a Class B to a Class C misdemeanor. The revision was supported by the cable television industry to enhance enforcement against the offense.

**OPPONENTS SAY:** No apparent opposition