

SUBJECT: Allowing active and retired judges to carry weapons

COMMITTEE: Public Safety — favorable, without amendment

VOTE: 7 ayes — Oakley, Driver, Keel, Keffer, Madden, Olivo, E. Reyna
0 nays
2 absent — Carter, McClendon

WITNESSES: For — Donald W. Jackson
Against — None
On — Wayne Green, Texas Commission on Law Enforcement and Officer Standards Education

BACKGROUND : The Penal Code allows peace officers to carry weapons, including handguns, knives or clubs, whether on duty or off.

DIGEST: HB 57 would allow active and retired judicial officers to carry weapons, regardless of whether they were actually discharging duties while carrying the weapon. The bill would define an active judicial officer as a person serving as a judge or justice of the Supreme Court, the Court of Criminal Appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court. A retired judicial officer would be defined as a special or senior judge as defined under the Government Code.
The bill would take effect September 1, 1997.

SUPPORTERS SAY: HB 57 would clarify that active and retired judicial officers have a right to the same defense for carrying an illegal weapon as is offered to peace officers under the Penal Code. Although the Penal Code does not include judges under its definition of peace officers, the Texas Constitution provides that all Texas judges are conservators of the peace throughout the state, and the Court of Criminal Appeals has concluded that a conservator of the peace is a peace officer for purposes of being exempted from the prohibition

against carrying handguns. However, the attorney general opinions have concluded that a judge or magistrate is not a peace officer under the Penal Code section allowing a defense to peace officers who carry a weapon on the premises of a school, polling place, government court or office, racetrack or airport.

HB 57 would clarify this confusion in current statutory and case law and provide that, like peace officers, judicial officers are also exempted from the prohibitions against carrying a handgun, illegal knife or club on certain premises. Judges have a difficult and oftentimes dangerous job, rendering unpopular decisions and convicting and sentencing dangerous criminals. Judges have been shot in front of their homes and attacked in their courtrooms and should be able to protect themselves. It is not difficult for criminals to find out where judges live as this is a matter of public record.

Judges can dictate whether or not an officer can come into their courtroom with a gun, but in many cases they themselves cannot carry a gun from the parking garage to the courthouse. Although judges could apply for a permit to carry a concealed weapon, they could still be subject to prosecution if they carried the weapon in a prohibited place, such as a courthouse or government building.

OPPONENTS
SAY:

HB 57 is unnecessary because judges can apply for a permit to carry a concealed weapon under the law enacted last session. Furthermore, the handgun permit law relieves active and retired judicial officers of many of the permitting requirements that other citizens must meet.

OTHER
OPPONENTS
SAY:

HB 57 should also require handgun safety and proficiency courses for judges carrying handguns. Anyone carrying a handgun should have to meet proficiency requirements. Peace officers learn these skills in their training; judges do not have the same kind of on-the-job instruction.

NOTES:

During the 74th regular session, HB 243 by Yarbrough, which would have allowed active and retired judicial officers to carry concealed handguns, was reported favorably as substituted by the House Public Safety Committee but was not set for second reading.

Two related bills, HB 329 and HB 142 by Kamel et al., would allow community supervision and parole officers, respectively, to carry weapons.