SUBJECT: Prosecution for illegally carrying a weapon

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 4 ayes — Driver, Garza, Hegar, Hupp

0 nays

3 absent — Burnam, Y. Davis, Keel

WITNESSES: For — Alice Tripp, Texas State Rifle Association

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Penal Code sec. 46.02 prohibits carrying a handgun, illegal knife, or club on or about one's person. Under Penal Code sec. 46.15(b) these provisions *do not apply* to persons:

- carrying a concealed handgun and a valid license to do so;
- at home or on other premises under their control;
- traveling;
- hunting, fishing or engaged in a sporting activity or en route between the activity and home;
- security officers performing their duties who meet other specified qualifications and security officers who are providing personal protection with a state authorization;
- prison guards, members of the armed forces, and state military personnel; or
- holders of an alcoholic beverage permit or license, or an employee of a licensee or permit holder, who are supervising their premises

Under sec. 46.15(c), these provisions also do not apply to noncommissioned security guards to carrying clubs at higher education institutions if they meet certain training requirements and security officers employed by the adjutant general to carry a club or firearm under specified circumstances.

DIGEST:

HB 819 would eliminate the provision that makes the prohibition on carrying weapons *not apply to* persons in under the circumstances listed in Penal Code sec. 46.15(b). Instead, it would be an *exception to the application* of the prohibition on carrying weapons for those same set of persons and circumstances.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

HB 819 would help prevent persons who legally were carrying weapons from being dragged through the criminal justice system and having to prove that they had not broken the law.

Current law uses an undefined term — *"does not apply"* — to delineate a set of persons who can carry weapons and circumstances in which they can be carried legally. Because this term is undefined, other provisions in the Penal Code state that it has the procedural and evidentiary consequences of a defense to prosecution. As a result, persons who are charged with illegally carrying a handgun bear the burden of proving that one of the defenses applies to them.

For example, persons might have to prove that they were traveling or en route to a sporting activity. To do this in most cases, persons have to hire a lawyer and invest time and money to prove that they did nothing wrong. In some cases, persons plead guilty and accept a penalty to avoid the time and expense necessary to prove their innocence.

HB 819 would address these problems by specifying that the persons and circumstances listed in sec. 46.02 constitute *"an exception to the application"* of the statute. This appropriately would place the burden on the prosecutor to prove that a person was breaking the law because under this language prosecutors would have to disprove in the formal charge the defense being raised by the person.

This could help prevent erroneous arrests of persons who legally were carrying weapons and avoid making them prove that they were not breaking the law.

HB 819 would not alter the list of those who legally could carry weapons and would make no changes in the law governing the licensed carrying of concealed handguns.

OPPONENTS SAY:

HB 819 would defeat its own purpose by making less clear the statutory language governing exemptions from the prohibition against carrying weapons and unnecessarily would complicate the procedures that prosecutors must follow in these cases. In 1997, the Legislature enacted HB 311 by Place specifically to state that the prohibition against carrying weapons *does not apply* to the set of persons and situations. The change was made to clarify the law and standardize in plain English whom the law covered. Police officers, security guards, game wardens, the public, and others are used to the term *does not apply* and understand its meaning while the term *exception to the application of* is less clear. Current language has worked in helping to prevent erroneous arrests of persons legally carrying a weapon.

Since the term *does not apply* has the effect of being a defense to prosecution, persons charged with violating the weapons statute have to raise an issue claiming their defense under one of the provisions in the code, but this is not difficult to do. The issue can be raised in numerous ways, including testimony of the person being charged, testimony of another person, or documentary evidence. After the issue is raised, the prosecutor has the burden of disproving the defense. Although persons may have to hire a lawyer to go through these legal steps, if the person is innocent the case most likely could be resolved without a trial and with minimal expense.

Placing the language *exception to the application of* in the code would force prosecutors to disprove in the formal charge that the person did not fall under each one of the situations listed in sec. 46.15. This would time consuming and inefficient since in most situations where persons legally are allowed to carry weapons police do not make an arrest, and if they do, the cases do not proceed to trial. This would require prosecutors to disprove each legal circumstance in cases where the person charged clearly was violating the law. This could lead to mistrials and acquittals in legitimate weapons violation cases because juries would be confused or because prosecutors failed to meet adequately the detailed requirements in the indictment.

HB 819 would not work to prevent or decrease erroneous arrests of persons legally carrying a weapon because the change most likely would not make any difference to an arresting officer, and even could complicate situations by exchanging a familiar term for an unfamiliar one. Police officers constantly make decisions on the spot about who is and who is not breaking the law. HB 819 would not influence these decisions because when officers are on the street deciding whether to arrest someone, they usually are not concerned about what the prosecutors or defendants would have to do at trial.