

**SUBJECT:** Exceptions to the prosecution of unlawfully carrying a weapon

**COMMITTEE:** Law Enforcement — committee substitute recommended

**VOTE:** 5 ayes — Driver, Jackson, Hegar, Frost, Veasey  
0 nays  
2 absent — Burnam, Hupp

**WITNESSES:** For — Tara Mica, National Rifle Association  
  
Against — John Rolater, for Dallas County Criminal District Attorney Bill Hill

**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 certain people including, but not limited to, peace officers and parole officers, members of the armed forces in the actual discharge of their duties, or people on their own property.

**DIGEST:** CSHB 1037 would replace the language in Penal Code, sec. 46.15 that the sec. 46.02 offense for carrying a weapon "does not apply to" certain people and replace it with language stating that "it is an exception to the application" of the offense that a person falls in one of the listed categories in sec. 46.15.

The bill also would create an exception to sec. 46.02 for a person carrying a weapon in a privately owned vehicle for a handgun that was not in plain view if the person displayed a state issued identification and informed the magistrate or peace officer that the person had a handgun in the vehicle and was not otherwise prohibited from possessing a weapon.

The bill would take effect September 1, 2005, and would apply only to an offense committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1037 would make it clear that the nonapplicability of sec. 46.02 to people listed in sec. 46.15 is an exception from prosecution rather than an affirmative defense to prosecution. An affirmative defense does not assume that a person is innocent. Instead, it allows the person to raise the affirmative defense at trial after the person has been arrested and prosecuted. A person who falls into one of the protected categories should be presumed innocent. The clarification of law contained in CSHB 1037 could help prevent erroneous arrests of persons who legally carried weapons and avoid making them prove that they were not breaking the law.

**OPPONENTS  
SAY:**

Exceptions in criminal law are very rare. Exceptions do not have to be raised by defendants — the prosecution must raise the exception and prove beyond a reasonable doubt that an exception did not apply in the case. CSHB 1037 would require the prosecution to raise and disprove the exceptions established by the bill in every prosecution under sec. 46.02. The bill would not affect wrongful arrests, but would only affect prosecutions and create an undue burden on prosecutors.

**NOTES:**

The bill as introduced only would have established exceptions in sec. 46.15. The committee substitute added the exception to sec. 46.02 for carrying a handgun in a vehicle.