

SUBJECT: Vehicle-theft checkpoints near the Texas-Mexico border

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes — Oakley, Bailey, Allen, Carter, Driver, Luna, McCoulskey
0 nays
2 absent — Edwards, Madden

WITNESSES: None

DIGEST: CSHB 523 would amend the Government Code to permit a stolen vehicle checkpoint to be located within 250 yards north of a federally designated crossing at the Mexican border, rather than within 250 feet of the Mexican border.

The bill would also clarify in the Code of Criminal Procedure that a judge, county court judge, statutory county court judge, justice of the peace, or municipal judge having jurisdiction as a magistrate could hold a hearing to determine right to possession of a stolen vehicle unless a criminal action were pending. Jurisdiction under this section could not be determined using civil court rules.

The bill would take effect immediately if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: CSHB 523 would correct a miscalculation that makes this state's stolen vehicle checkpoint law unworkable. The Legislature enacted HB 116, now Government Code sec. 411.0095, in 1993. The law currently allows a stolen vehicle checkpoint for Mexico-bound traffic to be located within 250 feet of the Mexican border on a street or highway leading to an international crossing. The Attorney General's Office has interpreted the statute literally to require that the checkpoint be 250 feet from the actual border. At most of the approximately 23 border crossings, this means the checkpoint would be on a bridge where an officer could not pull a car over for inspection or have the car turn around.

Because the state law is unworkable, all of the stolen vehicle checkpoints in the state must be operated by federal customs officers under similar federal law. If a federal officer is not available, Texas peace officers cannot operate a checkpoint. CSHB 523 would allow Texas peace officers to

operate checkpoints 250 *yards* north of federally designated crossings to protect Texas vehicles. Criteria for how the checkpoints would be operated should be established administratively rather than inflexibly specifying all the details in statute.

Making this law workable is especially important since, according to DPS, thieves stole 4,726 vehicles in the last six months of 1994 in the four most populous counties along the checkpoints near international crossings. Insurance premiums rise as a result of the high theft rates, and some car rental offices in the Rio Grande Valley even advise customers not to stay over night in cities near the border.

In addition, CSHB 523 would clarify that a court's jurisdiction over stolen vehicle hearings is based on whether it has jurisdiction as a criminal magistrate and not by any civil court jurisdictional parameters. A few zealous defense attorneys have claimed that if the value of the vehicle exceeds the civil jurisdictional limitations of the justice of the peace, then the hearing must be conducted in district court.

This happens most often when the vehicle is a farm tractor or other expensive farm machinery worth up to and sometimes exceeding \$80,000. Because district court may be backed up a year, this thwarts the purpose of the hearing, which is to quickly determine who should rightfully possess the vehicle. The victim should not be punished again by having to wait a year to repossess the vehicle or tractor. CSHB 523 would prevent this unjust result by making clear that only criminal magistrate jurisdictional requirements are relevant, thereby clarifying that a justice of the peace can determine rightful possession within weeks even for expensive motor and farm vehicles.

OPPONENTS
SAY:

The checkpoints that would be implemented as a result of CSHB 523 by making the original law workable could give state law enforcement officers unnecessarily broad discretion to stop and question individual citizens at checkpoints. Although the U.S. Supreme Court has allowed some checkpoints or roadblocks, these must operate under specific criteria — which are missing from the Texas law. Officers should be authorized to stop vehicles only when they use some specific criteria to back up a suspicion that a vehicle is stolen — dangling wires, broken windows and the like.

NOTES: The committee substitute eliminated a section in the original version that would have required inclusion of more specific information about a car on a certificate of title.