

SUBJECT: Defining criminal trespass to include entering a vehicle

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — Dan Zientek

Against — None

BACKGROUND: A person commits criminal trespass if the person enters or remains on the property, including an aircraft, of another without effective consent or enters or remains in a building of another without effective consent, and if the person had notice that the entry was forbidden or received notice to depart but failed to do so. Entry is defined as intrusion of the entire body.

Criminal trespass is a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000, unless the offense is committed in a habitation, shelter center, or on a Superfund site, or unless the actor carries a deadly weapon during the commission of the offense, in which case it is a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

A person commits burglary of a vehicle if, without the effective consent of the owner, the person breaks into or enters a vehicle or any part of a vehicle with intent to commit a felony or theft. This offense is a Class A misdemeanor unless the vehicle is a rail car, in which case the offense is a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

A person commits criminal mischief if he or she intentionally or knowingly damages or destroys tangible property without the owner's effective consent. The offense level depends on the amount of the owner's pecuniary loss.

DIGEST: HB 1872 would amend the criminal trespass statute to provide that a person commits an offense if he or she enters or remains on or in another's property, including an aircraft or other vehicle, without effective consent.

This bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 1872 would add vehicles to the list of places where a person can commit criminal trespass. There is an increasing problem of people breaking into vehicles to sleep there, which can alarm the vehicle's owner and invade his or her privacy rights. This bill would deter would-be offenders from entering other person's automobile without permission.

Current law ties law enforcement officers' hands, because trespassing in someone else's car is not a criminal offense. A police officer can arrest a person for burglary of a vehicle only if the person entered the vehicle with intent to steal or commit a felony, which can be difficult to prove when the offender does not succeed in stealing anything or changes his or her mind after breaking into the car. Likewise, an officer can arrest a person for criminal mischief only if the person caused a pecuniary loss. A person who enters a vehicle through an unlocked door to sleep there cannot be prosecuted under any existing law, but such an act threatens the security of the car's owner and infringes on the owner's property rights.

For many people, a car is no different from a home or an apartment in that they keep personal items there and have a reasonable expectation of privacy. HB 1872 would bring consistency to the law by adding vehicles to the list of places where a person can commit criminal trespass.

Concerns about the costs to counties of incarcerating more offenders are misplaced. The Legislative Budget Board has determined that this bill would create no significant fiscal impact to the state.

OPPONENTS SAY: HB 1872 is unnecessary. Criminal mischief and burglary statutes already address situations in which a person enters a vehicle without the consent of the owner. Absent any property damage or intent to steal from the owner, there is no reason to criminalize this behavior. A vehicle owner easily can protect himself or herself from having a homeless person sleep in a car by locking the car doors. If the doors were locked, a violator would cause

property damage in attempting to enter the car, and police and prosecutors could proceed with criminal mischief charges.

HB 1872 would do nothing to deter the behavior it addresses. Homeless people sleep in cars because they have nowhere else to go, not because they are criminals. Incarcerating homeless people for sleeping in cars would not address the root causes of homelessness. Also, counties and the state would find it needlessly costly to incarcerate people for this offense.