

SUBJECT: Expanding authority of judges and prosecutors to carry weapons

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 6 ayes — Driver, Latham, Allen, Frost, Ortiz, Vo

0 nays

1 absent — West

WITNESSES: For — (*Registered, but did not testify*: Lon Craft, Baytown Police Association; Tom Gaylor, Texas Municipal Police Association; Trae Morris, Pasadena ISD Police Officers Association; David Russell, Frisco Police Officers Association; Heath Wester, Grand Prairie Police Association)

Against — None

On — (*Registered, but did not testify*: Jan Coffey, Texas Department of Public Safety; Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Under Government Code, 411.201, active or retired judicial officers — including judges or justices of the supreme court, court of criminal appeals, court of appeals, district court, criminal district court, constitutional district court, statutory county court, justice court, or municipal court — are eligible to carry concealed handguns, as long as they meet other requirements of Government Code, 411, subch. H. The Department of Public Safety (DPS) administers the issuance of concealed handgun licenses.

Penal Code, sec. 46.02 forbids the unlawful carrying of weapons, including handguns. Sec. 46.03 lists places where weapons are prohibited, including courthouses, schools, polling places, airports, and other locations.

Penal Code, sec. 46.15(a) exempts peace officers, parole officers, corrections officers, judges, honorably retired peace officers or federal criminal investigators, and district and county attorneys from the gun

carrying restrictions of secs. 46.02 and 46.03.

**DIGEST:**

CSHB 2300 would amend Penal Code, sec. 46.15(a) to include assistant district attorneys, assistant criminal district attorneys, and assistant county attorneys in the exemption from the provisions of Penal Code, secs. 46.02 and 46.03, which prohibit the carrying of weapons under certain circumstances.

The bill also would amend Penal Code, sec. 46.035 to provide a defense against prosecution for a concealed weapon permit holder carrying a handgun in a premises that serves alcohol, at a sporting event, in a hospital, at an amusement park, in a place of worship, or at a meeting of a governmental entity if the permit holder was:

- a judge or justice of a federal court;
- an active judicial officer;
- a district, criminal or county attorney; or
- an assistant district, criminal, or county attorney.

The bill also would amend Government Code, sec. 411.179 to require DPS to establish a procedure to issue concealed handgun licenses indicating that the licensee was a judge, justice, prosecuting attorney, or assistant prosecuting attorney. Other provisions would require these concealed handgun license holders to notify DPS within 30 days should they no longer qualify as a judge or prosecuting attorney. Such people would be allowed to apply for a duplicate license reflecting the change of their employment status.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 2300 would clarify the authority for judges and prosecutors to carry weapons for their personal protection. While current law allows them to apply for concealed weapon permits, the bill would treat their status the same as peace officers. Judges and prosecutors would be permitted to carry their weapons in places where peace offenders can and concealed handgun license holders cannot. Obviously, judges and prosecutors should have the right to carry their weapons in the courthouse, and CSHB 2300 would allow them greater latitude as to where they could carry their

concealed weapons.

Unfortunately, even assistant prosecuting attorneys face increasing threats and dangers, and CSHB 2300 would give them the opportunity to carry a concealed weapon for their own personal safety. Most courthouses have expanded security programs, but courthouse security personnel leave at 5 p.m. in some counties. Assistant prosecuting attorneys often work late and need protection when they leave the courthouse and when they return to their homes and neighborhoods.

CSHB 2300 also would provide additional procedural safeguards to require that all judicial officers and prosecutors report changes in their status to DPS and subsequently apply for regular concealed handgun licenses, if they wish. Such people still would have the right to provide for their own defense, but they should not qualify for the special status provided judges and prosecutors.

OPPONENTS  
SAY:

Judges and prosecutors may lack the firearm proficiency training that peace officers must have to carry weapons and should be limited in where they could carry their weapons.

While assistant prosecuting attorneys may have legitimate concerns about their well being, it is uncertain that lengthening the list of those eligible to carry weapons actually would improve public safety.

NOTES:

The author is expected to offer a floor amendment to correct a drafting error that would have allowed a defense to prosecution for a judge or prosecuting attorney who violated Penal Code, sec. 46.035(d), which prohibits a concealed handgun license holder from carrying a weapon while intoxicated.

On April 19, the House Law Enforcement Committee favorably reported HB 1503 by Lucio et. al, which would allow assistant district and county attorneys to carry weapons. Provisions of that bill have been incorporated into the CSHB 2300.

The House Law Enforcement Committee on April 30 favorably reported a related bill, SB 835 by Whitmire, which would exempt federal judges from some of the requirements of concealed handgun licenses, and recommended that bill for the House Local and Consent Calendars Committee.

According to the Legislative Budget Board, the bill would create no significant costs to the state. It is estimated that DPS would incur a one-time expense of \$117,000 for programming changes to the concealed handgun license system.