

By: Keel, et al. (Senate Sponsor - Hinojosa) H.B. No. 823
(In the Senate - Received from the House April 21, 2005;
April 22, 2005, read first time and referred to Committee on
Criminal Justice; May 20, 2005, reported adversely, with favorable
Committee Substitute by the following vote: Yeas 4, Nays 1;
May 20, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 823 By: Williams

A BILL TO BE ENTITLED
AN ACT

relating to the applicability of the offense of unlawful carrying
of weapons to certain persons and to the consequence of certain
presumptions in the prosecution of a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 46.15, Penal Code, is amended by adding
Subsection (i) to read as follows:

(i) For purposes of Subsection (b)(3), a person is presumed
to be traveling if the person is:

(1) in a private motor vehicle;

(2) not otherwise engaged in criminal activity, other
than a Class C misdemeanor that is a violation of a law or ordinance
regulating traffic;

(3) not otherwise prohibited by law from possessing a
firearm; and

(4) not a member of a criminal street gang, as defined
by Section 71.01.

SECTION 2. Section 2.05, Penal Code, is amended to read as
follows:

Sec. 2.05. PRESUMPTION. (a) Except as provided by
Subsection (b), when [When] this code or another penal law
establishes a presumption with respect to any fact, it has the
following consequences:

(1) if there is sufficient evidence of the facts that
give rise to the presumption, the issue of the existence of the
presumed fact must be submitted to the jury, unless the court is
satisfied that the evidence as a whole clearly precludes a finding
beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted
to the jury, the court shall charge the jury, in terms of the
presumption and the specific element to which it applies, as
follows:

(A) that the facts giving rise to the presumption
must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a
reasonable doubt the jury may find that the element of the offense
sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the
existence of such element, the state must prove beyond a reasonable
doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the
existence of a fact or facts giving rise to the presumption, the
presumption fails and the jury shall not consider the presumption
for any purpose.

(b) When this code or another penal law establishes a
presumption in favor of the defendant with respect to any fact, it
has the following consequences:

(1) if there is sufficient evidence of the facts that
give rise to the presumption, the issue of the existence of the
presumed fact must be submitted to the jury unless the court is
satisfied that the evidence as a whole clearly precludes a finding
beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted
to the jury, the court shall charge the jury, in terms of the
presumption, that:

(A) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;

(B) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;

(C) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and

(D) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

SECTION 3. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 4. This Act takes effect September 1, 2005.

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