

BILL ANALYSIS

C.S.H.B. 3884
By: Dutton
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the current definition of an illegal knife in the law is vague, which could leave a person in possession of a simple pocketknife facing a fine and a jail sentence. The parties further contend that certain knives identified as illegal are no more suited to criminal enterprise than the knives that can legally be carried under current law. C.S.H.B. 3884 seeks to remedy this situation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3884 amends the Penal Code to redesignate the term "illegal knife" as "location-restricted knife" and to replace references to an illegal knife with references to a location-restricted knife, for purposes of certain weapons offenses. The bill makes the Class A misdemeanor offense of intentionally, knowingly, or recklessly carrying an illegal knife on or about the actor's person when the person is not on the person's own premises or premises under the person's control or inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control applicable instead to such carry of a location-restricted knife but restricts the application of the offense to a person younger than 18 years. The bill decreases from a third degree felony to a Class C misdemeanor the penalty for an offense involving possessing or going with certain weapons in a prohibited place if the weapon that is the subject of the offense is a location-restricted knife, unless the offense occurs on the physical premises of a public or private primary or secondary school, any grounds or building on which an activity sponsored by a public or private primary or secondary school is being conducted, or a passenger transportation vehicle of a public or private primary or secondary school, in which event the offense remains a third degree felony.

C.S.H.B. 3884 amends the Education Code and Family Code to make conforming changes.

C.S.H.B. 3884 repeals Section 46.15(e), Penal Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3884 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections ~~46.01(6)~~ and 46.15(e), Penal Code, are repealed.

~~No equivalent provision.~~

SECTION 2. Section 46.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun [~~illegal knife,~~] or club if the person is not:

- (1) on the person's own premises or premises under the person's control; or
- (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

SECTION 3. Section 46.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, [~~illegal knife,~~] club, or prohibited weapon

HOUSE COMMITTEE SUBSTITUTE

SECTION 6. Section 46.15(e), Penal Code, is repealed.

SECTION 1. Section 46.01(6), Penal Code, is amended to read as follows:

(6) [~~"Illegal knife"~~] "Location-restricted knife" means a:

- (A) knife with a blade over five and one-half inches;
- (B) hand instrument designed to cut or stab another by being thrown;
- (C) dagger, including but not limited to a dirk, stiletto, and poniard;
- (D) bowie knife;
- (E) sword; or
- (F) spear.

SECTION 2. Section 46.02, Penal Code, is amended by amending Subsection (a) and adding Subsection (a-4) to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun [~~illegal knife,~~] or club if the person is not:

- (1) on the person's own premises or premises under the person's control; or
- (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

(a-4) A person younger than 18 years commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife if the person is not:

- (1) on the person's own premises or premises under the person's control; or
- (2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

SECTION 3. Section 46.03(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, [~~illegal~~] location-restricted knife, club, or

listed in Section 46.05(a):

- (1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;
- (2) on the premises of a polling place on the day of an election or while early voting is in progress;
- (3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;
- (4) on the premises of a racetrack;
- (5) in or into a secured area of an airport; or
- (6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:
 - (A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or
 - (B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

No equivalent provision.

prohibited weapon listed in Section 46.05(a):

- (1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;
- (2) on the premises of a polling place on the day of an election or while early voting is in progress;
- (3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;
- (4) on the premises of a racetrack;
- (5) in or into a secured area of an airport; or
- (6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:
 - (A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or
 - (B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

SECTION 4. Section 46.03, Penal Code, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) Except as provided by subsection (g-1), an [A~~n~~] offense under this section is a third degree felony.

(g-1) If the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, unless the offense occurred on the physical premises of a public or private primary or secondary school, any grounds or building on which an activity sponsored by a public or private primary or secondary school is being conducted, or a passenger transportation vehicle of a public or private primary or secondary school, in which event the offense is a third degree felony.

SECTION 4. Section 46.06(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm [,] or club; [~~or illegal knife;~~]

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

SECTION 5. Section 37.007(a), Education Code, is amended to read as follows:

(a) Except as provided by Subsection (k), a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) ~~[an illegal knife as defined by Section 46.01(6), Penal Code, or by local policy;]~~ any of the following:

(i) a knife with a blade over five and one-half inches;

(ii) a hand instrument designed to cut or stab another by being thrown;

SECTION 5. Section 46.06(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or ~~[illegal]~~ location-restricted knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

SECTION 7. Section 37.007(a), Education Code, is amended to read as follows:

(a) Except as provided by Subsection (k), a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity on or off of school property:

(1) uses, exhibits, or possesses:

(A) a firearm as defined by Section 46.01(3), Penal Code;

(B) ~~[an illegal]~~ a location-restricted knife as defined by Section 46.01(6), Penal Code, or by local policy;

(iii) a dagger, including but not limited to a dirk, stiletto, and poniard;

(iv) a bowie knife;

(v) a sword; or

(vi) a spear.

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code;

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

SECTION 6. Section 52.031(a), Family Code, is amended to read as follows:

(a) A juvenile board may establish a first offender program under this section for the referral and disposition of children taken into custody, or accused prior to the filing of a criminal charge, of:

(1) conduct indicating a need for supervision;

(2) a Class C misdemeanor, other than a traffic offense; or

(3) delinquent conduct other than conduct that constitutes:

(A) a felony of the first, second, or third degree, an aggravated controlled substance felony, or a capital felony; or

(B) a state jail felony or misdemeanor

(C) a club as defined by Section 46.01(1), Penal Code; or

(D) a weapon listed as a prohibited weapon under Section 46.05, Penal Code;

(2) engages in conduct that contains the elements of the offense of:

(A) aggravated assault under Section 22.02, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) arson under Section 28.02, Penal Code;

(C) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or criminal attempt, under Section 15.01, Penal Code, to commit murder or capital murder;

(D) indecency with a child under Section 21.11, Penal Code;

(E) aggravated kidnapping under Section 20.04, Penal Code;

(F) aggravated robbery under Section 29.03, Penal Code;

(G) manslaughter under Section 19.04, Penal Code;

(H) criminally negligent homicide under Section 19.05, Penal Code; or

(I) continuous sexual abuse of young child or children under Section 21.02, Penal Code; or

(3) engages in conduct specified by Section 37.006(a)(2)(C) or (D), if the conduct is punishable as a felony.

SECTION 8. Section 52.031(a), Family Code, is amended to read as follows:

(a) A juvenile board may establish a first offender program under this section for the referral and disposition of children taken into custody, or accused prior to the filing of a criminal charge, of:

(1) conduct indicating a need for supervision;

(2) a Class C misdemeanor, other than a traffic offense; or

(3) delinquent conduct other than conduct that constitutes:

(A) a felony of the first, second, or third degree, an aggravated controlled substance felony, or a capital felony; or

(B) a state jail felony or misdemeanor

involving violence to a person or the use or possession of a firearm [~~, illegal knife,~~] or club, as those terms are defined by Section 46.01, Penal Code, or a prohibited weapon, as described by Section 46.05, Penal Code.

SECTION 7. Section 53.01(d), Family Code, is amended to read as follows:

(d) Unless the juvenile board approves a written procedure proposed by the office of prosecuting attorney and chief juvenile probation officer which provides otherwise, if it is determined that the person is a child and, regardless of a finding of probable cause, or a lack thereof, there is an allegation that the child engaged in delinquent conduct of the grade of felony, or conduct constituting a misdemeanor offense involving violence to a person or the use or possession of a firearm [~~, illegal knife,~~] or club, as those terms are defined by Section 46.01, Penal Code, or prohibited weapon, as described by Section 46.05, Penal Code, the case shall be promptly forwarded to the office of the prosecuting attorney, accompanied by:

- (1) all documents that accompanied the current referral; and
- (2) a summary of all prior referrals of the child to the juvenile court, juvenile probation department, or a detention facility.

SECTION 8. This Act applies 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 governed by the law in effect on the date 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 occurred before that date.

SECTION 9. This Act takes effect September 1, 2015.

involving violence to a person or the use or possession of a firearm, [~~illegal~~] location-restricted knife, or club, as those terms are defined by Section 46.01, Penal Code, or a prohibited weapon, as described by Section 46.05, Penal Code.

SECTION 9. Section 53.01(d), Family Code, is amended to read as follows:

(d) Unless the juvenile board approves a written procedure proposed by the office of prosecuting attorney and chief juvenile probation officer which provides otherwise, if it is determined that the person is a child and, regardless of a finding of probable cause, or a lack thereof, there is an allegation that the child engaged in delinquent conduct of the grade of felony, or conduct constituting a misdemeanor offense involving violence to a person or the use or possession of a firearm, [~~illegal~~] location-restricted knife, or club, as those terms are defined by Section 46.01, Penal Code, or prohibited weapon, as described by Section 46.05, Penal Code, the case shall be promptly forwarded to the office of the prosecuting attorney, accompanied by:

- (1) all documents that accompanied the current referral; and
- (2) a summary of all prior referrals of the child to the juvenile court, juvenile probation department, or a detention facility.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.