

SUBJECT: Codifying the rule of lenity for statutes outside of Penal Code

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Canales, Hunter, Leach, Simpson

1 nay — Moody

1 absent — Shaheen

WITNESSES: For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

DIGEST: HB 1396 would add a section to the state's Code Construction Act in Government Code, ch. 311, stating that a statute or rule that created or defined a criminal offense, outside of those in the Penal Code, would have to be strictly construed against the government and construed in favor of the other party if any part of the statute or rule was susceptible to more than one objectively reasonable interpretation, including an element of the offense or a penalty.

The bill would take effect September 1, 2015, and would apply only to criminal proceedings that began on or after that date.

SUPPORTERS SAY: HB 1396 would formally codify the "rule of lenity" to ensure that Texas courts continued to follow it when considering criminal offenses outside of the Penal Code. While the rule is a fundamental tenet applied by courts to interpret statutes, its use in Texas has eroded, and it should be codified to ensure uniform, consistent application throughout the state.

The rule of lenity says that when courts are interpreting criminal statutes, they should resolve questions about ambiguity in favor of the defendant. The U.S. Supreme Court described the rule in one of its opinions by saying that under the rule, a tie goes to the defendant. In the 2008 opinion *United States v. Santos*, the court stated, “Under a long line of our decisions, the tie must go to the defendant. The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.”

The rule of lenity has been a canon of courts for hundreds of years and is consistent with the idea that individuals must have fair notice of what is a crime. This is especially important when deciding cases that carry potential criminal sanctions. While the Penal Code generally is clear with well-defined language, and the rule of lenity is applied to Penal Code offenses, this is not always the case for other offenses. The application of the rule to the numerous crimes outside of the Penal Code, many of which are regulatory in nature, has eroded. In some cases, courts do not give the benefit to the accused if a law is ambiguous but instead give it to the government.

HB 1396 would address this issue of the erosion of the rule's use of lenity by formally codifying the rule for offenses outside of the Penal Code. This would plainly express the rule, emphasize its importance, and act as a reminder to courts and prosecutors working outside of the Penal Code that the rule should be applied.

As under current law, if application of the rule of lenity resulted in outcomes counter to the intention of the law, the Legislature could resolve the issue by revising the law so that its meaning was clear.

OPPONENTS SAY: Codifying the rule of lenity is unnecessary because, as a canon of legal interpretation, it already is used by courts. Use of the rule as an uncodified tenet should continue to be left to the judiciary as it has been for hundreds of years.

Placing the rule in statute could make it appear to be a directive to the

judiciary considering cases outside of the Penal Code, instead of having its place as one of the other principles commonly used by courts. Being in statute could appear to elevate the rule over other principles used by courts, including considering laws in the context of the Code Construction Act and looking at the language, legislative history, and structure of a law. This could confuse courts as to how it should be weighed, something that could work to the benefit of those such as white collar criminals whose crimes might fall outside of the Penal Code.