

SUBJECT: Enhanced penalties for assaults on school employees

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Place, Talton, Dunnam, Farrar, Hinojosa, Keel, Nixon, A. Reyna
0 nays
1 absent — Galloway

WITNESSES: For — Patricia Hayes, Texas Classroom Teachers Association; Eric Hartman, Texas Federation of Teachers; Ray Hamilton, Edward Ramirez and Stella Kyle, Greater San Antonio Crime Prevention Commission; Majorie Wall, Texas State Teachers Association; Charles Brawner, Texas Association of School District Police and TMPA; Brock Gregg, Association of Texas Professional Educators

Against — None

BACKGROUND : Under the Penal Code, intentionally, knowingly or recklessly causing bodily injury to another is a Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine). The offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if committed against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of the person's exercise of official power.

Intentionally or knowingly threatening another with bodily injury or intentionally or knowingly causing offensive or provocative physical contact with another is a Class C misdemeanor (maximum penalty of a \$500 fine).

DIGEST: HB 2629 would enhance the penalties for assaults committed against an employee of a public or private primary or secondary school while the employee was performing job duties or in retaliation for or on account of the employee's job duties. An assault involving bodily injury would be a third-degree felony; other types of assault would be Class A misdemeanors.

It would be presumed that the actor knew the person was a school employee

if the actor was student at the school where the employee worked or was the parent or guardian of such a student. It would not be a defense to prosecution that the offense occurred off of school premises or when school was not in session.

HB 2629 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

Increasing the penalty for assault of school employees would help protect teachers, administrators and other school employees from violence inflicted because of their jobs. Schools are sometimes dangerous places, and HB 2629 could help make them safer and improve the quality of education. Students, parents and others should face stiffer penalties for assaulting school employees. In addition, HB 2629 would send a strong message of support to teachers and other school employees.

Although the 1993 Penal Code established broad categories and general provisions, in this situation the framework is inadequate because teachers and others are sometimes targets of violence because of their status as school employees. In 1995 the Legislature enacted special provisions with stiffer penalties for assault committed against public servants acting officially or in retaliation for or on account of those official duties. It is unclear whether public school teachers and school personnel fit the general description of public servants used in the statutes on assault and retaliation, so a separate provision is needed to protect them. In addition, HB 2629 would apply to private school teachers, who also deserve protection.

There is precedence for enacting special protections for teachers. Before the 1993 revisions, Penal Code provisions with enhanced penalties for assault included certain types of assault against teachers and other school personnel.

Persons would face the stiffer penalties imposed by HB 2629 only if the assault occurred while the employee was performing job duties or in retaliation of those duties.

**OPPONENTS
SAY:**

It is unwise and unnecessary to enhance the penalty for assault against a school employee. School employees have adequate protection under the general statute that protects other persons and in some cases would have special protections under the provision relating to assault of a public servant.

The assault statute already contains special provisions with stiffer penalties for assault committed against public servants acting officially or in retaliation for on on account of those duties. Public servants are defined in the Penal Code as employees of government, which includes political subdivisions. This adequately covers public school teachers and employees. In addition, currently it is a third-degree felony under obstruction and retaliation offenses to harm or threaten another by an unlawful act in retaliation for or on account of the person's service as a public servant.

When the Penal Code was revised in 1993 the Legislature decided there should not be varied treatment of victims subject to similar harm. HB 2629 proposes a major change by enhancing the penalty for assault causing bodily injury from a misdemeanor to a felony. The broad gap between felony and misdemeanor punishments should not be overcome based only on the status of the victim.

OTHER
OPPONENTS
SAY:

It is unfair to presume that because a student is enrolled in a school that both students and parents would know whether a person was employed at a school, especially when schools can easily have over a hundred employees.