

SUBJECT: Separating provisions of obstruction and retaliation statute

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel, Nixon, A.
Reyna

0 nays

1 present, not voting — Farrar

WITNESSES: *(On original version):*

For — Mike Sheffield and Michael Lummus, Austin Police Association;
Jack Means, Texas Conference of Police and Sheriffs; Carvel McNeil, Jr.,
Houston Police Patrolmen's Union; Ron DeLord, Combined Law
Enforcement Association of Texas; Alex B. Perez; James O. Self; Carl E.
King; Harold and Sherry Goeble

Against — Keith Hampton, Texas Criminal Defense Lawyers Association

On — Rob Kepple, Texas District and County Attorneys Association

BACKGROUND : Penal Code sec. 36.07 makes it an offense under obstruction or retaliation to harm someone by an unlawful act in retaliation for or on account of service as a public servant, witness, prospective witness, informant, or a person who has reported a crime or who intends to report a crime. It is also an offense to prevent or delay the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or who intends to report a crime.

Penal Code sec. 19.03 makes a murder (as defined by sec. 19.02) eligible to be prosecuted as capital murder if the person intentionally commits the murder in the course committing or attempting to commit obstruction or retaliation.

DIGEST: CSHB 806 would separate the circumstances that define obstruction or retaliation into separate, lettered sections. The sections would be divided into: retaliation for or on account of service of another as a (A) public

servant, witness, prospective witness or informant; or (B) person who has reported or who intend to report a crime; and to prevent or delay the service of another as a (A) public servant, witness, prospective witness or informant; or (B) person who has reported or who intends to report a crime.

CSHB 806 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSHB 806 would make the Penal Code statute on obstruction and retaliation more clear and easier to use, which would help ensure that it could be used properly for cases of capital murder.

The current obstruction and retaliation section can be confusing because it lumps together the circumstances that define the offense. For example, the statute could be interpreted as meaning that a public servant had to also be reporting a crime for an unlawful act to fall under the offense. CSHB 806 would lay out each situation that defines obstruction and retaliation clearly so that everyone involved — prosecutors, defense attorneys, law enforcement officers, law-abiding citizens and potential offenders — could plainly see what the statute would cover. The bill would not change the circumstances that define obstruction or retaliation.

Because murder in the course of committing obstruction or retaliation can qualify as capital murder, the bill would clear up confusion in this area as well. Confusion has arisen over whether the capital murder statute could be used if a police officer were killed while in uniform but off duty such as during a dinner break. CSHB 806 would make it clear that murder of a public servant while committing obstruction or retaliation could qualify as capital murder, whether the public servant was on or off duty. There is no need to add additional language to current law, only to clarify that existing law applies to these situations.

CSHB 806 would not broaden the capital murder statute or change the elements that must be proved for a murder involving obstruction or retaliation to be capital murder. For example, a murder would have to be committed in retaliation for or on account of a police officer's service.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The original version of the bill would have amended the Penal Code section on capital murder, which applies to persons who murder a peace officer acting in lawful discharge of an official duty. The bill would have added that the offense occurs *regardless of the whether the officer is on duty at the time the offense was committed*. The original version also would have specified that the offense of capital murder of a fireman would apply if the fireman is acting in the lawful discharge of an official duty and the murderer knew the person was a fireman.

The companion bill, SB 971 by Wentworth, has been referred to the Senate Criminal Justice Committee.