

**SUBJECT:** Felony for displaying weapon in plain view of official proceeding

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 5 ayes — Hinojosa, Dunnam, Talton, Kitchen, Martinez Fischer  
0 nays  
4 absent — Keel, Garcia, Green, Shields

**WITNESSES:** None

**BACKGROUND:** Penal Code, sec. 1.07 defines “official proceeding” as any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant. “Deadly weapon” is defined as a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

Under Penal Code, sec. 6.03, a person acts with intent when it is the person’s conscious objective or desire to engage in the conduct or cause the result. A person acts recklessly when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

Penal Code, sec. 38.13 makes it a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for a person to intentionally or recklessly hinder an official proceeding by noise or violent or tumultuous behavior or disturbance and to continue doing so after an explicit official request to stop.

**DIGEST:** CSHB 258 would amend Penal Code, sec. 38.13 to make it a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) to intentionally hinder an official proceeding by

displaying a deadly weapon in plain view or to recklessly hinder an official proceeding by continuing to display a deadly weapon after receiving an explicit official request to stop.

If a person participated in, attended, or appeared at or in the immediate vicinity of an official proceeding while displaying a deadly weapon in plain view, the individual with authority over the proceeding or the premises could order that person to leave the immediate vicinity and not return. A person who received that order and refused to leave or who returned with the weapon would be presumed to intend to hinder the official proceeding.

If the conduct constituted an offense under another section of the Penal Code, the person could be prosecuted under either or both sections. The attorney representing the state could establish intent by direct evidence.

It would be a defense to prosecution if the person were a public servant lawfully discharging an official duty or reasonably believed that he or she were acting with the express permission of a public servant discharging an official duty.

CSHB 258 would amend Penal Code, sec. 42.05 in the same way as sec. 38.13, except that it would apply to a meeting, procession, or gathering instead of an official proceeding.

The bill would take effect on September 1, 2001, and would apply only to an offense committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 258 would help local law enforcement authorities deal with groups that displayed weapons in public to disrupt official proceedings or a lawful meeting, procession, or gathering. For example, during the trials of the men who murdered James Byrd, Jr., groups like the Ku Klux Klan and the New Black Panthers marched with loaded shotguns and rifles, frightening the public and forcing business owners to close their shops for days. Law enforcement was unable to intervene and stop these groups from demonstrating with their weapons because they did not break existing law. Fortunately, no shots were fired. This bill would prevent such a future threat of violence.

CSHB 258 would not hinder Texans' constitutional rights. The rights to bear arms and to assemble peaceably would not be infringed. Nothing in the bill would affect the possession or ownership of firearms or other weapons. The bill is intended to help ensure that protests remain peaceable by making sure that participants do not display deadly weapons in a manner that would hinder official proceedings.

CSHB 258 would protect Texans who unintentionally displayed a weapon in violation of the law. It would require law enforcement officials to warn persons in potential violation and allow them to desist before they could be charged with a state jail felony, a sufficiently severe penalty that would serve to deter anyone who might contemplate ignoring the warning.

The bill would allow local law enforcement officers the discretion to determine based on the particular circumstances what would constitute illegal display of a deadly weapon in plain view in the immediate vicinity of a official proceeding. After issuing the required warning, they would have sufficient latitude to decide when a person's actions fit the definitions constituting the offense, with the purpose of keeping a potentially violent situation from getting out of control.

OPPONENTS  
SAY:

CSHB 258 would infringe upon protesters' constitutional rights. If they were displaying legal weapons in a way not calculated to alarm, persons should not have their rights to possess those weapons taken away. Although many Texans disagree with the political beliefs of the Ku Klux Klan and the New Black Panthers, those groups have a right to demonstrate peaceably to express their views and should not be arrested when they have not made threats or tried to alarm others.

CSHB 258 would provide too harsh a penalty. Creation of an additional felony offense would produce more work for already overburdened prosecutors. In addition, juries would be hesitant to sentence someone to up to two years in a state jail for expressing their political views. Penal Code, sec. 42.01(10) already provides a class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) for a person who displays a firearm or other deadly weapon in a public place in a manner calculated to alarm. If the Legislature believed that six months of jail time was an insufficient punishment for this offense, then it should raise the punishment to

a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000). A class A misdemeanor would align this law with the penalty for illegally carrying a handgun (Penal Code, sec. 46.02) – another offense that has no specific victim and makes no personal threat.

CSHB 258 would provide definitions that could be interpreted too broadly. For example, “display” is not easily defined. It could mean that a person was holding a weapon in plain sight or that a person had a hunting rifle in the gun rack of a pickup truck while driving by a protest and was shouting opinions out of the window. “Immediate vicinity” also is vague. It could mean the hallway outside a city council meeting, the front steps of the city hall, the street in front of the building, or even the private residence across the street. “Deadly weapon” is a broad category that includes not only guns, but knives, clubs, brass knuckles, and anything else that could be used to cause serious bodily injury or death. A protester who carries a baseball bat while disrupting a demonstration in a public park could be charged with a state jail felony under this bill.

NOTES:

HB 258 as filed did not include a defense to prosecution for an offense committed under the bill.