

SUBJECT: Enhanced penalty for threatening family member or public servant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer
0 nays
2 absent — Dunnam, Shields

SENATE VOTE: On final passage, March 15 — 30-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Penal Code, sec. 22.07, making a terroristic threat, makes it a class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to threaten to commit any offense involving violence against a person or property with the intent of:

- ! causing a reaction to the threat by an official or volunteer agency organized to deal with emergencies, or
- ! placing any person in fear of imminent serious bodily injury.

Under Penal Code, sec. 22.01, a person commits a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for intentionally, knowingly, or recklessly causing bodily injury to another, including the person's spouse.

Penal Code, sec. 1.07 defines "public servant" as a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed his or her duties:

- ! an officer, employee, or agent of government;
- ! a juror or grand juror;
- ! an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

- ! an attorney at law or notary public when participating in the performance of a governmental function;
- ! a candidate for nomination or election to public office; or
- ! a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

The Family Code defines “family” as including individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

“Household” means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

DIGEST: SB 340 would enhance the penalty for terroristic threat in Penal Code sec. 22.07 to a class A misdemeanor in cases where a person threatened a member of his or her family or household or a public servant. Family and household would have the meanings assigned by the Family Code, and public servant would have the meaning assigned by the Penal Code.

This bill would take effect on September 1, 2001, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: SB 340 would help protect from terroristic threat those who often are threatened. Because of their proximity to an abuser, family and household members are threatened more often with bodily harm or commission of a felony than others outside the home. Also, because of their higher level of visibility, public officials are subject to more frequent terroristic threats than the general population. By enhancing the punishment from a class B to a class A misdemeanor, this bill would deter those who choose to threaten these groups.

SB 340 could help with prosecution of family violence cases. Often, terroristic threat is just one of multiple charges brought against an offender. Battered women commonly drop charges against their batterers because of threats of harm if they follow through on the prosecution. They know that a conviction likely will not result in jail time, so rather than face an angry,

convicted batterer, they refuse to assist in prosecution. By enhancing the penalty for terroristic threat against a family or household member to a class A misdemeanor, this bill could ensure that batterers faced a stacked sentence that would result in actual jail time.

**OPPONENTS
SAY:**

Victims deserve to be treated equally. This bill would create special classes of victims, however, counter to our constitutional right to equal protection under the law. It seems unfair to provide special protection to family and household members and public servants, but not to children, elderly people, the disabled, or other vulnerable populations who could be threatened outside of the home. If the idea is to enhance punishment of terroristic threat, it should cover all classes of victims.

Enhancement of the punishment for terroristic threat to a class A misdemeanor when no other crime occurs would be extreme. Under Penal Code, sec. 22.01, intentionally, knowingly, or recklessly causing bodily injury to another, including the person's spouse, is a class A misdemeanor assault. This bill would punish a threat to commit assault at the same level as actually committing assault. There would be no delineation between the two crimes. The law should punish those who carry out crimes more severely than those who just threaten to commit them.