

SUBJECT: Enhancing penalty for threatening family member or public servant

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — James Sylvester, Combined Law Enforcement Associations of Texas

Against — None

BACKGROUND: Penal Code, sec. 22.07, the terroristic threat statute, 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.

Serious bodily injury is defined as bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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. Bodily injury means physical pain, illness, or any impairment of physical condition.

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 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 not legally qualified to do so.

The Family Code defines “family” as including people related by consanguinity or affinity; people who are former spouses of each other; people 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 people reside together. A “household” is a unit composed of people living together in the same dwelling, whether or not they are related to each other.

**DIGEST:**

CSHB 512 would enhance the penalty for terroristic threat to a Class A misdemeanor in cases where a person threatened to commit any offense involving violence to a family or household member or to a public servant, with intent to place that person in fear of imminent serious bodily injury. Family and household would have the meanings assigned by the Family Code, and public servant would have the meaning assigned by the Penal Code.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 512 would help protect from terroristic threat those who most often are victims of this crime. Because of their proximity to an abuser, family and household members are threatened more often with bodily harm 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 help deter would-be offenders from threatening these vulnerable groups.

The bill could aid prosecution of family violence cases. Often, terroristic threat is one of multiple charges brought against an offender. Knowing that a conviction likely will not result in jail time, victims commonly drop charges

because of threats of harm if they follow through with the prosecution. Enhancing the penalty for terroristic threat against a family or household member to a Class A misdemeanor would help ensure that perpetrators faced a stacked sentence that would result in actual jail time.

Punishing threats against family and household members, as well as public servants, as a Class A misdemeanor would not be overly harsh. Because of their proximity to the perpetrator, in the case of family or household members, or their visibility, in the case of public servants, offenders are more likely to carry out their threats against these people than against strangers. While terroristic threat does not require proof of physical harm to the victim, threats cause psychological harm, particularly when the victim knows that the perpetrator could carry out the threat.

It would not be inappropriate to punish terroristic threat as severely as assault. The offense requires proof of intent to place the victim in fear of imminent serious bodily injury, which includes broken bones and life-threatening injuries. Class A assault requires only proof of bodily injury, which includes pain of any kind.

**OPPONENTS  
SAY:**

CSHB 512 bill would create special classes of victims, contrary to the constitutional right to equal protection under the law. It would be unfair to provide special protection to family and household members and public servants but not to children, elderly people, the disabled, or other vulnerable groups 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. This bill would punish a threat at the same level as actually committing an assault. The law should punish those who carry out crimes more severely than those who simply threaten to commit them.

**NOTES:**

The committee substitute made no substantive changes to the bill as filed.

The companion bill, SB 408 by Deuell, passed the Senate by voice vote on April 8 and has been referred to the House Criminal Jurisprudence Committee.

During the 77th Legislature in 2001, an identical bill, SB 340 by Haywood, passed the Senate on the Local and Uncontested Calendar and was reported favorably by the House Criminal Jurisprudence Committee but died on the General State Calendar late in the session.

A related bill, HB 616 by Keel, passed the House on April 1 and has been referred to the Senate Criminal Justice Committee. It would enhance the penalty from a Class A misdemeanor to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for terroristic threat with intent to interrupt the occupation or use of a public place if it resulted in a pecuniary loss of \$1,500 or more to the owner.