

SUBJECT: Offense for reckless fires caused by manufacturing a controlled substance

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Keel, Riddle, Denny, Escobar, Hodge, P. Moreno, Pena,
Raymond, Reyna

0 nays

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association; Mike
Montgomery, Harris County Fire and Emergency Services; Randy Willis,
Grand Prairie Fire Department.

Against — None

BACKGROUND: Under the Penal Code, sec. 28.02, a person commits arson if the person starts a fire, whether or not the fire continues after ignition, or causes an explosion with the intent to (1) destroy or damage any vegetation, fence, or structure on open-space land, unless the fire or explosion was a part of the controlled burning of open-space land; or (2) destroy or damage any building, habitation, or vehicle.

Under (2) above, an offense is committed only if the fire is started when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another, or knowing that the building, habitation, or vehicle is:

- within the limits of an incorporated city or town;
- insured against damage or destruction;
- subject to a mortgage or other security interest;
- located on property belonging to another; or
- located near property belonging to another.

It is a defense to the prosecution for a fire started within a city or a town that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance.

This offense is a second-degree felony, punishable by two to 20 years in prison and a maximum fine of \$10,000. It is a first-degree felony, punishable by five to 99 years in prison and a maximum fine of \$10,000, if it is shown that the offense caused bodily injury or death, or the property intended to be damaged or destroyed was a habitation or a place of assembly or worship.

Under the Government Code, sec. 352.021, a witness in an arson investigation who refuses to be sworn or to appear and testify, or fails and refuses to produce before the county fire marshal any book, paper, or other document relating to any matter under investigation may be punished with a misdemeanor with a maximum fine of \$2,000.

DIGEST:

CSHB 1634 would amend the Penal Code, sec. 28.02, to make it a third-degree felony, punishable by two to 10 years in prison and a maximum fine of \$10,000, if a person recklessly started a fire or caused an explosion while manufacturing or trying to manufacture a controlled substance and the fire or explosion damaged any building, habitation, or vehicle.

The bill also would amend Local Government Code, sec. 352.021, to make it applicable to an owner of the property subject to investigation.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

Recently, there has been a massive upsurge in the illegal production of methamphetamine. These "meth labs" are set up in apartments or hotels so that the producers of meth can maintain mobility and avoid detection. Dangerous chemicals that can cause fire and explosions are involved in the production of meth. This presents a grave danger to innocent people who live in housing adjacent to these labs.

The current arson statute is inadequate for this offense because it requires proof of intent to cause damage or destruction. When a meth producer starts a fire, it is usually due to individual recklessness. As a result, the worst offense the meth producer can be charged with usually is criminal mischief, which can be a state jail felony punishable by up to two years in jail and a maximum fine of \$10,000. In many cases, the meth producer cannot be charged with manufacturing a controlled substance because the evidence is destroyed in the fire.

CSHB 1634 would give law enforcement the tools they need adequately to prosecute these offenses. Because the production of methamphetamines is a lucrative business, a more serious penalty is necessary to deter this activity and to protect innocent people from harm. By punishing this activity with a third-degree penalty, the bill would create a strong deterrent for potential offenders. It also would punish with stiff penalties those who recklessly start fires while making any controlled substance.

Fears that this bill would exacerbate overcrowding problems are exaggerated. The fiscal note indicates that this bill would have no significant impact on the state correctional facilities.

OPPONENTS
SAY:

This bill is unnecessary because this offense already is adequately punished under the current law. As it is, offenders may receive two years in a state jail and a stiff fine of \$10,000. Moreover, these offenders may be charged with manufacturing a controlled substance, which is punishable by up to a first-degree felony, depending on the amount of substance produced.

Increasing the penalty for this offense would increase demands on an already overcrowded prison system. Texas correctional facilities already are pressed to their limit, and the combined impact of penalty enhancements for crimes already sufficiently punished under current law would aggravate these problems.

NOTES:

The substitute changed the penalty for the offense from a state jail felony, or a first-degree felony if the offense resulted in bodily injury or death, to a third-degree felony.