

- SUBJECT:** Punishing the offense of aggravated assault
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Keel, Riddle, Denny, Raymond, Reyna
2 nays — Escobar, Hodge
2 absent — Pena, P. Moreno
- WITNESSES:** For — Katherine Cabaniss, District Attorney of Harris County; John Rolater, Dallas County Criminal District Attorney; David P. Weeks.
Against — Ann del Llano, ACLU of Texas.
- BACKGROUND:** Under Penal Code, secs. 22.02(a)(1) and (a)(2), a person commits aggravated assault if the person causes serious bodily injury to another, including the person's spouse, or uses or exhibits a deadly weapon during the commission of the assault. Aggravated assault is a second degree felony, punishable by two to 20 years in prison and/or a maximum fine of \$10,000.
- The punishment for aggravated assault is enhanced to a first-degree felony, punishable by five to 99 years in prison and/or a maximum fine of \$10,000, if the offense is committed:
- by a public servant acting under the color of office or employment;
 - against a person the offender knows to be a public servant while the public servant is discharging an official duty, or in retaliation for the performance of an official duty;
 - in retaliation against a person who reports a crime or serves as a witness to a crime; or
 - against a person the offender knows to be a security officer while the officer is performing a duty as a security officer.
- A "deadly weapon" is defined by sec. 1.07 of the Penal Code as (1) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or (2) anything that in the

manner of its use or intended use is capable of causing death or serious bodily injury.

"Serious bodily injury" means 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.

DIGEST:

HB 360 would make it a first-degree felony, to use a deadly weapon in committing an assault that caused serious bodily injury to another, including the person's spouse.

The bill would take effect on September 1, 2005. The former law applies to any offense committed before the effective date of this bill. An offense was committed before the effective date of the bill if any element of the offense was committed before that date.

**SUPPORTERS
SAY:**

Aggravated assault with a deadly weapon can cause permanent and severe physical and psychological damage. Under the existing law, an offender who shoots someone in the head, causing permanent brain damage, may face a maximum of 20 years in prison. This punishment is plainly inadequate for someone who causes long-term, debilitating harm. HB 360 would help ensure that those who committed heinous crimes were punished appropriately and would send a message to victims that they were supported and protected by the state.

Because of improvements in technology and medical treatment, victims increasingly are surviving violent crimes. This bill would adjust the law to keep pace with advancing technology. It would enable a court adequately to punish offenders who committed heinous crimes even if the victim survived. Attempted capital murder, also a first-degree felony, would be inadequate because it would not apply to many of these cases. An individual could be charged with attempted capital murder only if the offender attempted to commit a capital crime.

The bill would not result in harsh sentences for criminal acts that did not cause severe injury. The term "serious bodily injury" is narrowly defined in the code to apply to substantial, life-threatening or permanent injuries.

HB 360 would not eliminate the deterrent value of the Penal Code. The code allows wide discretion in the sentencing for a first-degree felony—

from five to 99 years in prison. Courts still would have discretion to determine an appropriate sentence depending upon the nature of the crime. This bill simply would ensure that those who committed heinous crimes received just punishment.

The fiscal note prepared by the Legislative Budget Board indicates that no significant fiscal implications to the state are anticipated due to this bill. Therefore, concerns that this bill may aggravate prison overcrowding problems are exaggerated.

OPPONENTS
SAY:

It would be costly and inefficient to enhance this penalty when effective tools with which to prosecute this offense already exist. Attempted capital murder, for instance, is a first-degree felony and could be used in many of these cases.

In cases where offenders could not be charged with a first-degree felony for causing serious bodily injury, this enhancement could create hefty sentences for crimes that the state otherwise would not punish as severely. The definition of "deadly weapon" is broad enough to encompass most crimes in which serious bodily injury results. Under this bill, an individual who caused serious bodily injury in a fistfight could be imprisoned for 99 years.

While the fiscal note indicates no immediate anticipated fiscal impact, it does say that the impact on adult corrections agencies beyond five years could be significant. This enhancement would increase costs to taxpayers and exacerbate an already serious prison overcrowding problem. Texas correctional facilities are pressed to their limit, and Texas is struggling to find enough space for those already imprisoned. If the Legislature continues to enhance penalties, taxpayers will bear the burden. It costs about \$500,000 per biennium to add 10 people to our prison system. Because aggravated assault is a relatively common crime, the costs of this bill would be especially high.

Finally, this bill would defeat some of the deterrent value of the graduated punishment system. Murder is punished more severely than other crimes, in part, as a deterrent. By punishing serious bodily injury just as seriously as murder, the law would not deter an offender who caused serious bodily injury from killing the victim.

NOTES: The companion bill, SB 661 by Ellis, has been referred to the Senate Criminal Justice Committee.