

SUBJECT: Increasing penalty for criminal mischief that disrupts a public service

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Riddle, Vaught, Vo

0 nays

2 absent — Hodge, Pierson

WITNESSES: For — Richard Dwyer, Dallas Police Department; (*Registered, but did not testify*: Laura Anderson, San Antonio Police Department; John Chancellor, Texas Police Chiefs Association; Katrina Daniels, Bexar County District Attorney Susan D. Reed; Michael Peterson, AT&T Texas)

Against — (*Registered, but did not testify*: Samuel England, ACLU of Texas)

BACKGROUND: Under the Penal Code, sec. 28.03(b), criminal mischief is punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the mischief results in direct damage of more than \$500 and less than \$1,500 or if the loss is less than \$1,500 and the actor:

- causes the impairment or interruption of public communications, public transportation, public gas or power supply, or other public service; or
- diverts any public communications or public gas or power supply.

DIGEST: HB 1614 would increase the penalty for criminal mischief that interrupts or diverts a public service to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). HB 1614 also would increase the threshold for direct damage to be any amount less than \$20,000 rather than between \$500 and \$1,500.

The bill would take effect on September 1, 2009.

**SUPPORTERS  
SAY:**

HB 1614 would help protect critical public infrastructure by increasing the penalty for criminal mischief crimes that are increasingly disrupting electrical, communication, and other systems across the state. Parts of Texas have seen an 800 percent increase in incidences of theft of metal, such as copper, since 2002. While many attempts to steal metal are unsuccessful at actually removing it, they often result in substantial damage to the metal or the system of which it is a part and as such are prosecuted as criminal mischief instead of theft. Sometimes the damage to copper wire or other infrastructure can cause power outages or interfere with communications and other systems. A loss of street lights or traffic signals can result in an increase in traffic accidents. Loss of phone service can mean a person in need cannot reach emergency services. An attempt to steal a single length of wire can result in power or phone service disruptions that can take days to repair.

Increasing the penalty for criminal mischief in these circumstances would be justified because of the serious nature of this crime. Disrupting a public service puts lives at risk and is costly and inconvenient to business and home owners. Those who attempt to steal live wires also risk electrocution. HB 1614 would help to deter this crime by recognizing its severity and appropriately increasing its penalty.

**OPPONENTS  
SAY:**

Increasing the penalty for criminal mischief would not deter people from attempting to steal metal. People often steal metal out of need; it is not a crime of opportunity as most metal infrastructure is well secured or difficult to access. A better approach would be to crack down on those who buy stolen metal. Law enforcement efforts should attempt to dry up the market. If thieves cannot sell the metal, they will stop stealing it.

The state cannot afford to increase criminal penalties that would mean people will serve longer sentences, resulting in a higher costs to taxpayers. The state would earn a better return by investing in programs that reduce recidivism and stamp out demand for stolen metal.