

SUBJECT: Penalty for criminal mischief under \$20,000 from shooting at a habitation

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon,
A. Reyna

0 nays

1 absent — Place

WITNESSES: For — Sherri Wallace, Dallas County District Attorney's Office

Against — None

BACKGROUND : The Penal Code definition of the crime of criminal mischief includes
intentionally or knowingly damaging or destroying the property of another.

Punishment for criminal mischief is determined by the amount of pecuniary loss caused by the action. The crime is classified as:

- a Class C misdemeanor, if the loss is less than \$20 or if it caused substantial inconvenience to others;
- a Class B misdemeanor, if the loss is \$20 or more but less than \$500;
- a Class A misdemeanor, if the loss is \$500 or more but less than \$1,500, or less than \$1,500 and it caused an interruption or diversion of a public service or utility;
- a state jail felony, if the loss is \$1,500 or more but less than \$20,000, or if the damage is inflicted on a place of worship, human burial, public monument or community center providing medical, social or educational programs and the loss is less than \$20,000;
- a third-degree felony, if the loss is \$20,000 or more but less than \$100,000;
- a second-degree felony, if the loss is \$100,000 or more but less than \$200,000; and
- a first-degree felony, if the loss is \$200,000 or more.

DIGEST: HB 1370, as amended, would make criminal mischief involving less than \$20,000 a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the property damaged or destroyed was a habitation and if the damage or destruction was caused by a firearm or explosive weapon.

HB 1370 would take effect September 1, 1997.

SUPPORTERS SAY: HB 1370, as amended, would make the punishment for criminal mischief involving shootings at homes fit the crime. Shooting at a home, especially drive-by shootings, is a serious crime that endangers the lives of innocent persons and should be punished more harshly than the current criminal mischief law allows. By increasing the penalty to a felony in all cases, HB 1370 could help deter the increasing number of drive-by shootings.

Although the 1993 Penal Code established broad categories and general provisions, the seriousness of this type of crime warrants an exception. Currently, the punishment for criminal mischief caused by shooting at someone's home is punished based on the value ladder used for punishments of all criminal mischief. Only if the damage was \$20,000 or more would the crime carry a felony punishment with possible prison time. Endangering persons' lives by shooting indiscriminately at houses should carry a stiff penalty, including prison time, no matter what the value of the property damage.

The penalty established by HB 1370 would be in line with the punishment for deadly conduct, which is also used to prosecute drive-by shootings. Deadly conduct is a third-degree felony if a person knowingly discharges a firearm at or in the direction of a home and is reckless about whether the home is occupied. However, shooters can easily claim that they thought no one was at home, making the element of recklessness about whether the home is occupied difficult to prove. HB 1370 would allow the criminal mischief statute to be used instead of the deadly conduct law in these situations. Decisions about whether to use the deadly conduct statute or the criminal mischief statute would depend on the circumstances and be up to prosecutors. Deadly conduct allows for prosecution if a person discharges a firearm "in the direction of" a habitation, and criminal mischief deals with causing property damage.

OPPONENTS
SAY:

HB 1370 is unnecessary because there are already ample and appropriate laws on the books to combat drive-by shootings. For example, under deadly conduct it is a third-degree felony for persons to knowingly discharge a firearm at or in the direction of a habitation if they are reckless about whether the home is occupied. Prosecutors should use the deadly conduct statute if the element of recklessness about whether or not the home was occupied is present. If not, the action of shooting at a home should be classified as criminal mischief, with the amount of damage determining the penalty. If HB 1370 were enacted, prosecutors might avoid using the deadly conduct statute because they must prove the additional element of recklessness and instead use the criminal mischief statute simply because it is easier to prove.

The 1993 Penal Code was carefully crafted to encompass broad, consistent categories and eliminate special provisions and should not be distorted with exceptions for special circumstances. The code establishes punishments for many property crimes according to a “value ladder” that takes into account the value of the property damage. Punishing all criminal mischief that met the circumstances described by HB 1370 as a third-degree felony — without regard to the amount of damage to the home — would be an inappropriate exception to that value ladder.

NOTES:

The committee amended the bill to remove damage to building or vehicle under \$20,000 from the situations in which the criminal mischief penalty would be a third-degree felony.