

**SUBJECT:** Criminal offense for taking a weapon from a parole or probation officer

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 6 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Wise  
0 nays  
3 absent — Green, Smith, Talton

**WITNESSES:** For — Veronica Ballard, Texas Department of Criminal Justice, Parole Division; Alice Tripp, Texas State Rifle Association  
Against — None

**BACKGROUND:** Penal Code, sec. 38.14 makes it a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000, to use force to take or attempt to take a weapon from a peace officer with intent to harm the officer or a third person. Weapons are defined as firearms, nightsticks, or chemical-dispensing devices used for personal protection.  
  
A person is presumed to know the status of peace officers if the officers are wearing distinctive uniforms or badges indicating their employment or if the officers identify themselves as a peace officers. It is a defense to prosecution if the person took or attempted to take the weapon from a peace officer who was using illegal excessive force against the person or against a third person.

**DIGEST:** HB 635 would make it a state jail felony to use force to take or attempt to take a weapon from a parole or community supervision and corrections (probation) officer with intent to harm the officer or a third person.  
  
A person would be presumed to know that parole and probation officers were officers if they were wearing distinctive uniforms or badges indicating their employment or if they identified themselves. It would be a defense to prosecution if the person took or attempted to take the weapon from an officer who was using illegal excessive force against the person or against a third person.

HB 635 would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

HB 635 would include parole and probation officers in the statute covering taking weapons from peace officers. In 1997, the Legislature gave parole officers authority to carry weapons while engaged in their official duties and if in compliance with Texas Department of Criminal Justice policies. Probation officers were authorized to carry weapons if engaged in their official duties and if they have a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education and authorization from their supervisors.

Currently, if someone takes a weapon from a parole or probation officer, theft of the weapon may be the only criminal offense committed. This is clearly inadequate protection for parole and probation officers, who work closely with criminal offenders as official public servants and who deserve the same protections as peace officers. HB 635 would not open the door to requests for inclusion in the statute from others who might carry weapons, because those others are not public servants working one-on-one with offenders.

HB 635 would extend all the requirements now applied to taking weapons from peace officers. A person would have to know the status of the parole or probation officer. Taking a weapon would have to be done with intent to harm the officer or a third person, and it would be a defense to prosecution if the officer were using illegal excessive force.

**OPPONENTS  
SAY:**

HB 635 could open the door for other people, such as persons with concealed handgun licenses, to ask for inclusion in the statute making it a crime to take a weapon from a peace officer.