

SUBJECT: Defining capital murder during commission of a terroristic threat

COMMITTEE: Defense Affairs and State-Federal Relations — favorable, without amendment

VOTE: 7 ayes — Corte, Campbell, Mabry, Merritt, P. Moreno, Noriega, Seaman
0 nays
2 absent — Berman, Delisi

WITNESSES: For — None
Against — (*Registered but did not testify:*) Katharine Walters, Texas Civil Rights Project

BACKGROUND: Under Penal Code, sec. 19.03, a person commits capital murder if the person murders a peace officer or fireman on duty, commits murder for pay, commits murder while escaping from a penal institution, murders a person under six years of age, or murders more than one person during the same scheme or course of conduct. A person also commits capital murder if the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction, or retaliation.

Under Penal Code, sec. 22.07, a person commits a terroristic threat if the person threatens to commit any offense involving violence with intent to cause a reaction of any type by an official or volunteer agency designed to deal with emergencies, or with intent to place another person in fear of imminent serious bodily injury. These offenses are Class B misdemeanors, punishable by up to 180 days in jail and/or a maximum fine of \$2,000. The Penal Code defines serious bodily injury as injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of use or impairment of any part of the body.

A person also commits a terroristic threat if the person threatens to commit any offense involving violence with the intent to prevent or interrupt the

occupation or use of a building, place of employment, automobile or other means of transportation, or other public place. This type of terroristic threat is a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

A person who threatens to commit any offense involving violence with intent to impair or interrupt public communications, transportation, water, gas, or power supply commits a terroristic threat punishable as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

DIGEST:

HB 11 would make it a capital offense for a person to commit murder in the course of committing or attempting to commit a terroristic threat, unless the terroristic threat involved only the intent to place another person in fear of imminent serious bodily injury.

The bill also would specify two additional offenses constituting terroristic threat. A person would commit a terroristic threat if the person threatened to commit any offense involving violence with intent to place the public in fear of serious bodily injury or to influence the conduct or activities of a branch or agency of government. These offenses would be punishable as second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 11 would correct a deficiency in Texas' capital murder statute to address the recent rise in acts of domestic terrorism. Although the current statute would cover a case in which a terrorist committed multiple murders, it would not necessarily cover a situation in which a terrorist murdered only one victim with the intent to intimidate citizens or to paralyze commerce, transportation, or governmental operations. For example, if sniper attacks occurred in Texas and the perpetrator wounded several victims but killed only one, the perpetrator could not be prosecuted for capital murder. Also, if a sniper murdered several people but committed the murders in different jurisdictions and not pursuant to the same scheme of conduct, that perpetrator likewise could not be prosecuted for capital murder in Texas.

HB 11 would follow the actions of many other states and the federal government, which have amended statutes to include acts of terrorism in the

wake of September 11, 2001. At least 33 states have enacted legislation that amends criminal laws relating to acts of terrorism. For example, New York added murder committed in furtherance of a terrorist act to its list of capital crimes. HB 11 is modeled on statutes enacted in other states, as well as on federal law, and no court has found the terroristic threat language to be vague or overly broad.

Recent acts of terrorism have made it clear that communities throughout the United States are vulnerable to these kinds of crime. HB 11 would adjust the law appropriately to deal with changing circumstances.

**OPPONENTS
SAY:**

HB 11 is unnecessary. Sniper suspects already would be eligible for capital murder for murdering more than one person during the same scheme or course of conduct. Furthermore, a suspect could be prosecuted under federal law for terroristic acts.

HB 11 would expand the crime of terroristic threat by adding two overly broad types of intent — intent to place the public in fear of serious bodily injury and intent to influence the conduct or activities of a branch or agency of government. These additions to an already vague statute would confuse members of the public as to when they might be subject to criminal prosecution and would give prosecutors too much leeway.

The bill inappropriately would expand the offenses that are eligible for the death penalty at a time when the fairness of the death penalty process is in serious doubt. Because of the intense public feelings surrounding acts of terrorism and the desire to hold someone accountable, defendants tried under HB 11 would have even less chance of a fair trial, and the risk of putting the innocent to death would increase.

NOTES:

A related bill, HB 616 by Keel, also on today's General State Calendar, would increase the penalty for a terroristic threat under Penal Code, sec. 22.07(a)(3), preventing or interrupting the occupation or use of certain structures or conveyances, from a Class A misdemeanor to a state jail felony if the offender caused a pecuniary loss of \$1,500 or more to the owner.