

SUBJECT: Enhancing the penalty for terroristic threat causing pecuniary loss

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Ellis, Dunnam, Hodge, Pena, Talton
0 nays
2 absent — Denny, P. Moreno

WITNESSES: For — Chuck Courtney, Texas Retailers Association
Against — None

BACKGROUND: Penal Code, sec. 22.07 defines the offense of terroristic threat, and sets penalties according to the following categories of severity:

- A violent threat designed to place any person in fear of imminent serious bodily injury, or to provoke a reaction by an emergency response agency, is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).
- A violent threat designed to prevent or interrupt the occupation or use of a building, place of employment, automobile or other means of transportation, or other public place, is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).
- A violent threat designed to impair or interrupt public communications, public transportation, public utilities, or other public services, is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

DIGEST: HB 616 would amend Penal Code, sec. 22.07, to enhance the penalty for committing a terroristic threat 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, to a state-jail felony (180 days

to two years in state jail and an optional fine of up to \$10,000) if the act caused the owner of the threatened place or conveyance a pecuniary loss of \$1,500 or more. Pecuniary loss would be defined as economic losses suffered by the owner as a result of the prevention or interruption of the occupation or use of the building, place, or means of transportation.

The bill would take effect on September 1, 2003, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

By increasing the penalty for terroristic threat involving a loss of \$1,500 or more, HB 616 would set a fitting punishment for a serious crime and would serve as a strong deterrent to would-be offenders. After the September 11, 2001, attacks, there was a dramatic increase in the number of terroristic threats aimed at retail stores, including bomb threats and threats involving biological agents such as anthrax. When such threats are credible, stores must close and evacuate customers in order to investigate, resulting in tens of thousands of dollars in economic losses. Although judges may order offenders to pay restitution to owners under current law, punishing this offense as a misdemeanor lets offenders off too lightly. By prescribing tougher penalties, HB 616 would help deter many such crimes from ever taking place.

This bill would bring the terroristic threat statute in line with other statutes that link criminal penalties to monetary losses. For example, criminal mischief under Penal Code, sec. 28.03, carries a felony if it results in pecuniary loss of \$1,500 or more, while it is a misdemeanor for amounts less than \$1,500. Similarly, under Penal Code, sec. 31.03, the penalty for theft increases to a felony if the value of the stolen property is \$1,500 or more.

Terroristic threat is no different from other crimes where the punishment is linked to the outcome rather than the intent of the perpetrator. For example, if a thief steals a wallet, the offender's punishment depends on how much money the wallet contained, regardless of how much the person intended to steal. HB 616 correctly would apply this logic to terroristic threats that result in pecuniary losses.

**OPPONENTS
SAY:**

This bill is not necessary because current law deals adequately with this crime. A court may order a defendant convicted of terroristic threat to pay restitution regardless of whether it is prosecuted as a misdemeanor or a felony. Restitution is a more appropriate means of addressing store owners' concerns than increasing the penalty level for terroristic threat.

Furthermore, terroristic threat is an intent crime, meaning that the crime is committed regardless of whether the person carried out the threat. It is the offender's intent, not the response to the threat by the owner, that should determine punishment.

NOTES:

A related bill, HB 11 by Keel, et al., also on today's General State Calendar, would make murder in the course making a certain terroristic threats a capital offense and would add new second-degree felony offenses for terroristic threats under Penal Code, sec. 22.07.