

SUBJECT: Criminal mischief concerning transportation signs, signals, or devices

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway, Pierson

0 nays

3 absent — Hodge, Moreno, Talton

WITNESSES: For — Suzanne Jaroch, BNSF Railway; Michael McGinty, Houston Police Department; (*Registered, but did not testify*: Laura Matz, Texas Railroad Association; Ron Olson, Texas Pacific Railroad & Texas Railroad Association; Joe Bill Watkins, Kansas City Southern Railroad)

Against — None

BACKGROUND: Under Penal Code, sec. 28.03, a person commits the crime of criminal mischief if, without the consent of the owner, the person intentionally or knowingly:

- damages or destroys the tangible property of another;
- tampers with the tangible property of another and causes an actual loss or substantial inconvenience to the owner or a third person; or
- makes markings — including inscriptions, slogans, drawings, or paintings — on the tangible property of the owner.

The criminal mischief statute has a value ladder that determines penalties based on the value of the damage. Damage that results in a pecuniary loss of \$20,000 or more but less than \$100,000 is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The value ladder also allows for enhancements for lower-value damage done to certain types of property. For example, while damage that results in pecuniary loss of \$1,500 or more but less than \$20,000 is a state-jail felony, the same penalty applies to less than \$1,500 in damage done to a fence used to contain certain livestock and game animals.

DIGEST:

HB 1767 would set the penalty for criminal mischief as a third-degree felony if the property damaged, destroyed, or tampered with was:

- transportation communications equipment or a transportation communications device; and
- the amount of loss to tangible property was less than \$100,000.

HB 1767 would define “transportation communications equipment” to include an official traffic-control sign, signal, or device erected by a public body, public officer, or railroad to direct the movement of road or rail traffic, as defined in the Transportation Code.

The bill would define “transportation communications device” to mean any item attached to transportation communications equipment, including insulated or non-insulated wire or cable that was at least 50 percent aluminum, bronze, or copper and any tubing or conduit attached to the wire or cable.

The bill would take effect September 1, 2007, and apply only to an offense committed on or after that date.

SUPPORTERS
SAY:

HB 1767 is necessary to address the growing problem of metals theft that results in damage to certain types of wire. As the value of aluminum, bronze, and copper have increased, these thefts are on the rise, harming public safety, commerce, and consumers in Texas. Additionally, railroads face common criminal mischief done without any intent to harvest metals. Enhancements to the criminal mischief statute are necessary to adequately address the damage caused by these serious crimes.

Railroads are particularly hard hit by the growing number of metal wire thefts. For example, 22,000 feet of railroad wire recently was stolen in West Texas. When thieves cut the wires, they disrupt signals to trains and cars crossing train tracks. This involves stopping trains, deploying repair crews, and using dispatchers to manage the trains. At best, this causes trains to back up, which blocks road traffic and slows commerce. At worst it could lead to a fatal train accident.

HB 1767 would address and help deter this crime by assigning an appropriately strict punishment to it, because even low-value damage can have serious repercussions. Punishing these offenses according to the value ladder in the Penal Code does not take into account the costs to

public safety and of repairing damaged wires and other property. Mischief that results in less than \$1,500 in damage generally is a misdemeanor, a punishment that does not seem to deter some of these metal thieves. The criminal mischief statute already makes many exceptions to the value ladder for property and circumstances that do not fit within its framework. For example, punishments for damage done to game and livestock fences vary from the penalty ladder.

Cities and counties already are targeting buyers of illegally obtained metals through sting operations and have asked for help in tackling suppliers who are involved in harvesting the metals. HB 1767 would deliver this help by raising the penalty for criminal mischief that results from the theft of these metals. The bill would not enhance penalties against buyers, which could damage the metal recycling industry that provides valuable services to the commodities market and the environment.

The Legislative Budget Board estimates that HB 1767 would have no significant fiscal implication to the state, and the criminal justice impact statement says the bill would not significantly affect the Texas Department of Criminal Justice (TDCJ) or other state agencies.

**OPPONENTS
SAY:**

HB 1767 is unnecessary because the Penal Code adequately and appropriately punishes criminal mischief according to the value of the damage done. The value ladder in the Penal Code is designed to minimize special punishments for certain classes of property so that different instances of criminal mischief are treated equitably. Current law appropriately applies this ladder to punish criminal mischief for the theft of wire according to the value of the property, and there is no compelling reason to vary from the value ladder for these crimes.

If the value of the damage done is at least \$20,000, then criminal mischief already is treated as third-degree felony. It would be inappropriate to punish criminal mischief that results in less damage as a felony. Under current law, low-level repeat offenders can have their punishments increased, and this would be more appropriate than increasing punishments across the board.

The Legislature should not enhance penalty punishments, especially by raising some property crimes from misdemeanors to felonies. Enhancing punishments generally does not deter crimes such as criminal mischief

when offenders believe there is a low probability of being caught. This is especially true of criminal mischief in the form of theft to support a drug habit. Enhancing the punishment for low-value criminal mischief would shift responsibility for confining these offenders from counties to TDCJ, which could burden state resources. It especially would be unwise to confine more petty thieves in state facilities when those facilities are operating at capacity now.

**OTHER
OPPONENTS
SAY:**

HB 1767 would not adequately tackle demand for copper, aluminum, and bronze wire. Law enforcement should receive additional powers to go after the groups that buy these stolen goods. If the state really wants to address this problem, it should enact laws to penalize buyers and dry up the market on the demand side.

NOTES:

A related bill, HB 1766 by Peña, would increase penalties for the theft of insulated or noninsulated wire or cable that was least 50 percent aluminum, bronze, or copper and worth up to \$1,500. Penalties would increase from misdemeanors to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). HB 1766 passed the House by 145-0 on April 4 and has been referred to the Senate Criminal Justice Committee.