

SUBJECT: Increased punishment for certain crimes against peace officers

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: *After recommitted:*
7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang,
Wilson

0 nays

WITNESSES: *April 3 public hearing:*
For — James Babb, TMPA; Ray Hunt, Houston Police Officers Union;
Chris Jones, Combined Law Enforcement Associations of Texas; Carlos
Lopez, Justices of the Peace and Constables Association of Texas; AJ
Louderback, Sheriffs' Association of Texas; Ed Lujan, Dallas Police
Department; Kris Mayo, Round Rock Police Officers Association;
Alexander Monroe, Kerr County Sheriff's Office; Sheldon Smith, Black
Police Association of Greater Dallas; *(Registered, but did not testify:*
Jessica Anderson; Houston Police Department; Ky Ash, Department of
Public Safety Officers Association; Paul Bogan, Williamson County
Deputies Association; David Cook, Todd Harrison, Arianna Smith, and
Charley Wilkison Combined Law Enforcement Associations of Texas;
Bill Gravell, Bobby Gutierrez, and Jama Pantel, Justices of the Peace and
Constables Association of Texas; Micah Harmon, Ricky Scaman, and
Henry Trochesset, Sheriff's Association of Texas; Deborah Ingersoll,
Texas State Troopers Association; Noel Johnson, Texas Municipal Police
Association; James Jones, San Antonio Police Department; Scott Peal,
Chambers County Attorney's Office; Jimmy Rodriguez, San Antonio
Police Officers Association; David Sinclair, Game Warden Peace Officers
Association; Stacy Suits, Travis County Constable Pct 3; Robert Sunley,
Texas Attorney General Peace Officer Association, Tom Tagliabue, City
of Corpus Christi; Chris Orton

Against — Cassandra Champion, Texas Civil Rights Project; Chas
Moore, Austin Justice Coalition; Alexandra Peek, Austin Justice
Coalition; *(Registered, but did not testify:* Emily Gerrick, Texas Fair

Defense Project; Shea Place, Texas Criminal Defense Lawyers Association; Kathleen Bokros; Darwin Hamilton)

On — (*Registered, but did not testify*: John Helenberg, Texas Commission on Law Enforcement)

BACKGROUND: Texas law currently allows for the punishments for some crimes to be more severe if a judge determines the crimes were committed because of bias or prejudice, sometimes called the "hate crimes laws." Several statutes work together to enhance punishments in these cases.

Code of Criminal Procedure, art. 42.014 requires courts in certain circumstances to make a finding of bias or prejudice during the guilt and innocence phase of a trial. This provision limits the findings to the crimes of arson, criminal mischief, graffiti and the offenses against people listed in Penal Code Title 5, which includes homicide, kidnapping, human trafficking, sex offenses, and assault offenses.

Judges are required to make an affirmative finding if at a trial's guilt or innocence phase, the court determined beyond a reasonable doubt that the defendant intentionally chose the victim or the property because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference. As part of a punishment, judges can require attendance at an educational program to further tolerance and acceptance of others.

Penal Code, sec. 12.47 increases punishments, generally to the next highest category, if an affirmative finding of a hate crime is made during a trial.

Penal Code, sec. 20.02 makes unlawful restraint a crime punishable as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person restrained was a public servant discharging an official duty or if the restraint was done in retaliation or on account of an official duty.

Penal Code, sec. 22.07 establishes the crime of making terroristic threats. It is an offense to threaten to commit any violent offense with intent to

place a person in fear of imminent serious bodily injury. The crime is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if committed against a public servant.

Assault is a crime under Penal Code, sec. 22.01. Offenses committed against public servants are third-degree felonies.

Penal Code, sec. 49.09(b-1) makes intoxication assault committed against peace officers, fire fighters, and emergency medical service personnel a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST:

CSHB 2908 would add peace officers to the Texas hate crime statute which would make certain crimes committed because of bias or prejudice against someone's status as a peace officer qualify for enhanced penalties. This would apply to crimes of arson, criminal mischief, graffiti and the offenses against people listed in Penal Code Title 5. The bill also would raise penalties for four individual crimes when the crimes were committed against peace officers.

The bill would raise the penalty for unlawful restraint of a peace officer to a second-degree felony, from the third-degree felony currently applied to offenses against public servants. The offense would qualify for the second-degree felony if the person restrained an individual that the person knew was a peace officer while the officer was lawfully discharging official duties or in retaliation or on account of the officer's official duties.

The penalty for assault would be raised to a second-degree felony from the third-degree felony currently applied to offenses against public servants. The offense would qualify for the second-degree felony if the person assaulted someone that the person knew was a peace officer while the officer was lawfully discharging official duties or in retaliation or on account of the duties.

The bill would raise the penalty for making terroristic threats against peace officers from a class A misdemeanor applied to offenses against public servants to a state-jail felony (180 days to two years in a state jail

and an optional fine of up to \$10,000).

The bill would raise the penalty for intoxication assault against a peace officer from a second-degree felony to a first-degree felony if serious bodily injury was caused to a peace officer in the discharge of official duties.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2908 would help protect Texas peace officers from being harmed because of their service to the community and would help create a culture of respect for law enforcement officers. Peace officers risk their lives to serve and protect the community and in turn deserve the protections in the bill. Texas law regularly provides enhanced penalties for crimes committed against certain victims and no one is more deserving of this than peace officers, who put themselves in harm's way to protect the public and are sometimes targeted because of the uniform they wear.

Law enforcement officers are increasingly being targeted because of their role as public servants. Last summer's murder of police officers in Dallas was yet another one of these tragedies. The bill would address this issue by making sure the bias or prejudice behind a crime against an officer was appropriately considered.

The bill would be consistent with Texas hate crimes laws and other laws that enhance penalties when certain crimes are committed against victims or groups that need and deserve special protection. Crimes against peace officers, just like other hate crimes, affect all of society. Peace officers hold a unique place in society, making the enhanced penalties in the bill appropriate.

**OPPONENTS
SAY:**

Texas already has an enhanced penalty for murder of a peace officer and higher penalties when certain crimes are committed against public servants. Victims should be given equal protection, and expanding Texas' hate crime statute to one group of public servants could lead to abuse and

open the door to calls to do the same for other groups. In general, hate crime laws are reserved for things that are innate parts of an individual's identity and not for occupations.

NOTES:

A companion bill, SB 1808 by Huffman, was referred to the Senate Criminal Justice Committee on March 23.