

SUBJECT: Increasing the penalty for criminal mischief involving an ATM

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut
0 nays
2 absent — A. Johnson, Murr

SENATE VOTE: On final passage, March 31 — 30-1 (Eckhardt)

WITNESSES: No public hearing.

BACKGROUND: Penal Code sec. 28.03(b), which governs criminal mischief and other property damage or destruction, states that an offense under this section is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the amount of the pecuniary loss is \$30,000 or more but less than \$150,000.

DIGEST: SB 516 would establish a third-degree felony offense for criminal mischief if a person caused whole or partial impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after the effective date.

SUPPORTERS SAY: SB 516 would deter the recent spike observed in Texas in "smash and grab" crime targeting automated teller machines by increasing the criminal penalty for damaging or stealing an ATM or its contents from a state-jail felony for criminal mischief to a third-degree felony, regardless of the monetary loss involved.

In 2020, banks in Texas reported hundreds of smash and grab incidents involving ATMs that resulted in millions of dollars of cash losses.

Moreover, damaged ATMs cost tens of thousands of dollars to repair or replace, and present an inconvenience to customers who are unable to use them when they are out of service. Banks also face rising insurance costs against losses on ATMs. However, under current state law these crimes may be considered as simple property damage or mischief cases. The stronger penalty provided by SB 516 is needed to help law enforcement effectively combat the rise in ATM-related crime.

Organized criminals primarily are responsible for the increase in crimes against ATMs in Texas and are using increasingly sophisticated methods, including construction machinery to dislodge and haul away ATMs, and in some cases even have used explosives. The bill is intended to target serious or organized criminal activity that damages or destroys ATMs and causes thousands of dollars in damage, not low-level misbehavior that does not seriously impair or interfere with an ATM.

CRITICS
SAY:

SB 516 could subject an adult or juvenile who was intoxicated or angry and damaged an ATM to a felony charge of up to 10 years in prison for a nonviolent crime. With no distinction on the amount of money lost, it could potentially subject individuals who impair or interfere with the operation of an ATM to the same penalty as organized criminals who caused greater damage, destruction, or monetary loss.

NOTES:

The House companion bill, HB 3323 by Murr, was considered by the House Criminal Jurisprudence Committee in a public hearing on April 26 and left pending.