

SUBJECT: Recklessly discharging a firearm inside a city of 100,000 or more

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis

0 nays

1 absent — Greenberg

SENATE VOTE: On final passage, March 21 — voice vote

WITNESSES: None

BACKGROUND: Discharging or displaying a firearm becomes a criminal offense under various circumstances detailed in the Penal Code. Discharge of a firearm in a public place, other than a public road or shooting gallery, and display of a firearm in public place in a manner calculated to alarm, constitute Class B misdemeanors, maximum penalty of 180 days in jail and a \$2,000 fine, under disorderly conduct (Penal Code sec. 42.01). It is a Class C misdemeanor, maximum penalty of a \$500 fine, to discharge a firearm on or across a public road. Deadly conduct (Penal Code 22.05) includes the offense of knowingly discharging a firearm at or in the direction of one or more individuals or a habitation, building or vehicle, if the offender is reckless about whether the habitation is occupied. The offense is a third-degree felony, punishable by a prison term of two to 10 years and a maximum \$10,000 fine. It is a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine, under deadly conduct to engage in conduct that places another in imminent danger of serious bodily injury.

DIGEST: CSSB 68 would make it a Class A misdemeanor to recklessly discharge a firearm inside the corporate limits of a city with a population of 100,000 or more. CSSB 68 would not affect city's authority to enact ordinances to prohibit the discharge of a firearm.

Discharge of firearm in a public place and reckless discharge of a firearm would be added to the list of acts that can define a common nuisance and a

public nuisance and that can be abated and enjoined through suits under the Civil Practices and Remedies Code.

CSSB 68 would eliminate references to "criminal street gangs" in references to organized criminal activity.

CSSB 68 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSSB 68 would restore to state law a prohibition against the dangerous conduct of recklessly firing a gun inside a city. A statewide law is necessary to establish minimum standards in the state's largest cities (about 19 would be included) and to provide a stiffer penalty, including possible jail time, than city ordinances can impose. Such a prohibition was enacted in 1991, and again in 1993, but it was not made part of the Penal Code revisions that took effect September 1, 1994.

The provision is needed because the current Penal Code offenses of discharge of a firearm in a public place and deadly conduct do not always cover the firing of guns in *private* places.

Every year there are numerous cases of people being struck by indiscriminate gunfire. Even a bullet fired straight up in the air on private property can cause severe injury when it lands. People are being shot by randomly fired bullets as they stroll down a street or watch television in their living rooms. CSSB 68 would decrease the likelihood of such senseless shootings and give prosecutors a precise charge to use when they occur.

CSSB 68 would only affect large metropolitan areas where recklessly fired guns can cause the most damage. Recklessness, defined in Penal Code sec. 6.03 as being aware of, but disregarding, a substantial and unjustifiable risk, would be a required element of the offense.

By adding discharge of a firearm and reckless discharge of a firearm to the lists of common and public nuisances that can be ordered abated through a civil suit, this bill would create a tool to have dangerous behavior stopped in the same way as gambling or prostitution. To be considered a common

or public nuisance acts must be habitual; a one-time offender would not be subject to a civil suit.

The elimination of references to "criminal street gangs" regarding organized criminal activity would simply make the Civil Practices and Remedies Code conform to Penal Code language adopted in 1993.

OPPONENTS
SAY:

The conduct CSSB 68 describes is already prohibited by the deadly conduct laws that make it an offense to recklessly engage in conduct that places another in imminent danger of serious bodily injury. Furthermore, cities already have authority to enact ordinances otherwise regulating the firing of weapons.

The bill is too broad and could infringe on the rights of persons to fire their guns. For example, persons who fire guns in a city for self defense or the defense of others could be charged with reckless discharge of a firearm. The "recklessness" standard that would be used would make it easier for prosecutors to prove an offense, even if no harm was intended or done. Also, the precise location of the city limits in large cities is often unknown to a person shooting a gun in an isolated area.

OTHER
OPPONENTS
SAY:

The reckless discharge of firearms is a problem in all cities, not just large ones. CSSB 68 should apply in all cities, not just those with populations over 100,000.

NOTES:

The committee substitute added the Penal Code offense of discharge of a firearm in a public place (disorderly conduct) to the common and public nuisance provisions, specified that the bill would not affect a city's authority to enact ordinances and eliminated a provision that would have added the commission of felonies to the acts that can be considered when a place is determined to be a common or public nuisance.

The companion bill, HB 112 by Hochberg, Bailey et al., was reported favorably from the Criminal Jurisprudence Committee on March 6. HB 112 does not include the Penal Code offense of discharge a firearm in a public place (disorderly conduct) as part of the common and public nuisance provisions and does not include the provision stating that the bill would not affect city's authority to enact ordinances.

A similar bill, SB 145 by West, was enacted by the 73rd Legislature but was not part of the 1993 Penal Code revisions, so it was law only until the new Penal Code took effect, September 1, 1994. SB 145 did not include the Penal Code offense of discharge of a firearm in a public place (disorderly conduct) as part of the common and public nuisance provisions and did not include the provision stating that the bill would not affect a city's authority to enact ordinances.