

- SUBJECT:** Increasing penalty for taking an officer's weapon to third-degree felony
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Hinojosa, Keel, Talton, Garcia, Kitchen, Martinez Fischer, Shields
0 nays
2 absent — Dunnam, Green
- WITNESSES:** For — Cris Andersen, San Antonio Police Officer's Association; *Registered but did not testify:* Susan Reed, Michael Bernard, Bexar County District Attorney's Office; Felix Rendon; Charley Wilkison, Combined Law Enforcement Associations of Texas; Shanna Igo, Texas Municipal League; Edward Ames; Lt. Ray Ybarbo, San Antonio Police Department; Sgt. Rick A. Watson, Dallas Police Department; Tom Mann, Lubbock Police Department; Claude Jones, Texas Police Chiefs Association; Kevin F. Lawrence, Texas Municipal Police Association
Against — None
- BACKGROUND:** Penal Code, sec. 38.14 makes it a state jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) to knowingly and with force take a weapon from a peace, parole, or probation officer with the intention of harming that officer or another person. This provision specifically covers firearms, nightsticks, and chemical sprays.

The 71st Legislature in 1989 first made it an offense to take an officer's firearm, setting the punishment at a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). The 73rd Legislature in 1993 enacted SB 1067 by Whitmire, creating the state jail felony as a new category of punishment, amending the Penal Code to add nightsticks and chemical sprays to the list of covered weapons, and reducing the punishment for taking an officer's weapon to a state jail felony.
- DIGEST:** HB 1600 would amend the Penal Code to make the offense of taking an officer's weapon a third-degree felony.

This bill would take effect on September 1, 2001.

SUPPORTERS
SAY:

HB 1600 would demonstrate to law officers in Texas that the state cares about them and is working to protect them. Enacting this bill would honor the memory of San Antonio police officer John Anthony “Rocky” Riojas, who was shot fatally with his own gun by a suspect he was attempting to apprehend on February 3, 2001. According to the *Dallas Morning News*, Texas led the nation in 2000 with 15 police deaths.

This bill also would send a message to criminals that taking an officer’s weapon will not be tolerated. Law enforcement officials in San Antonio say that after the punishment for this crime was reduced to a state jail felony in 1993 and word about this change got out on the streets, it has become more common for criminals to struggle with police officers for their weapons. Raising the penalty to a third-degree felony would make criminals aware of the severe consequences of attempting to disable an officer.

HB 1600 also would help protect innocent third parties and criminals themselves by deterring criminals from attempting to take an officer’s weapon. Police are trained to treat a struggle for their firearms as deadly-force confrontations. These types of confrontations often result in serious injury or death to those involved or to third parties.

OPPONENTS
SAY:

HB 1600 is unnecessary because current law already provides severe penalties for threatening officers. The Penal Code makes it a third-degree felony to threaten a public servant with bodily harm, an offense that could be proved when a criminal takes an officer’s gun, nightstick, or pepper spray. The code also makes it a first-degree felony (punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) to threaten a public servant with a deadly weapon.

This bill might not deter criminals, many of whom already know that it is illegal to disarm an officer and that they will be punished severely for doing so. The shooting death of Officer Riojas is a tragedy, but it is impossible to say whether this bill would have stopped the criminal who shot him had the enhanced penalty been in effect at the time of the crime. The suspect will not escape justice. He has been charged with capital murder and could receive the death penalty if convicted.

OTHER
OPPONENTS
SAY:

It would be appropriate to charge criminals who take an officer's gun with a third-degree felony, but it would be excessive to charge those who take a non-deadly weapon like pepper spray with anything greater than a state jail felony if they do not assault the officer. When the Legislature enacted this section of the Penal Code, it intended to make it a third-degree felony only to take an officer's firearm. Only after the punishment was reduced to a state jail felony were the offenses of taking a nightstick or chemical spray added.

NOTES:

The companion bill, SB 727 by Van de Putte, has been referred to the Senate Criminal Justice Committee.