

SUBJECT: Felony for retaliating against an honorably retired peace officer

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Garza, Hupp, Burnam, Y. Davis, Hegar, Keel
0 nays

WITNESSES: For — W.M. “Bill” Elkin, Houston Police Retired Officers Association;
Charley Wilkison, Combined Law Enforcement Associations of Texas

Against — None

BACKGROUND: Penal Code, sec. 36.06 establishes a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for intentionally harming or threatening to harm someone in retaliation for, or to prevent, his or her service as a public servant.

DIGEST: HB 1458 would amend Penal Code, sec. 36.06. to include an honorably retired peace officer under the definition of “public servant.” An honorably retired peace officer would mean an officer who:

- did not retire in lieu of any disciplinary action;
- had been eligible to retire from a law enforcement agency or had been ineligible only because of an injury received in the course of employment; and
- was entitled to receive a pension or annuity for service or was not entitled to receive one only because it was not offered by the law enforcement agency.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 1458 would make retaliating or threatening retaliation against a retired peace officer a third-degree felony. Some retired officers and their families have endured threats from dangerous offenders arrested by the officer in the past. Retired officers who have served dozens of years in law enforcement and put away hundreds of criminals are especially vulnerable to retaliation. In

one case, a retired police officer and his family have suffered numerous threats of harm from an ex-convict living within sight of the officer's home in retaliation for the retired officer's service in law enforcement. Unfortunately, under current law the only offense the ex-convict could be charged with is terroristic threat, a misdemeanor, instead of the third-degree felony charge of retaliation. The bill would make clear that retired peace officers were protected under the state's obstruction and retaliation statute to deter criminals from threatening or causing harm in retaliation for a retired officer's service.

The bill would not add an unnecessary exception to the Penal Code. The code is filled with offenses that warrant more severe punishments. In fact, the Legislature has recognized that crimes against public servants deserve special consideration. For example, assault is a felony, instead of a misdemeanor, only if committed against an active public servant.

Making retaliatory threats against a retired peace officer should warrant a felony charge, even if no injury was caused. Peace officers have arrested and sent to jail or prison dangerous criminals who might be more willing than most people to carry out their threats. Such a criminal might have accumulated years of pent-up hostility against the arresting officer while serving the prison sentence. Because of the dangerous nature of their work, retired peace officers deserve special protection under the law.

**OPPONENTS
SAY:**

Although protecting retired peace officers from retaliation is a worthy goal, the bill unnecessarily would add another special exception to the Penal Code. The Penal Code was designed to eliminate special-case offenses by using broad offense categories.

This bill is unnecessary. Other offenses in current law, such as assault or aggravated assault, could be used to prosecute anyone causing actual harm to a retired police officer. A misdemeanor charge of terroristic threat is appropriate in cases where only a threat is made and no actual injury is caused, even if the threat was made against a retired officer. Current law includes more severe penalties for threats against active peace officers as public servants because it deters criminals who might try to use threats to

discourage an officer from doing his or her job. After an officer retires, however, there is no need for this deterrent.