

SUBJECT: Expanded offense for impersonating a peace officer or other public servant

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Denny, Escobar, Hodge, Raymond, Reyna

0 nays

2 absent — Pena, P. Moreno

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association; Chris Kirk, Sheriff's Association of Texas; Mike White, Orange County Sheriff's Office.

Against — None

BACKGROUND: Penal Code sec. 37.11 prohibits impersonating a public servant with the intent to induce another to rely on or submit to pretended authority. This section also prohibits someone knowingly from purporting to exercise any function of a public office that does not exist. This offense is a third-degree felony, punishable by two to 10 years in prison and a maximum fine of \$10,000.

Under Penal Code, sec. 37.12, it is a class B misdemeanor intentionally or knowingly to misrepresent an object as belonging to a law enforcement agent. It also is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to make, provide to another person, or possess a document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer knowing that the person identified by the item is not a peace officer or law enforcement officer.

The law provides three defenses to prosecution:

- the item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of the junior posse;

- the person identified by the insignia was a law enforcement officer at the time the item was made; or
- the item is to be used for decorative purposes or in an artistic or dramatic presentation.

DIGEST:

HB 1371 would prohibit making or possessing a uniform that would identify a person as a peace officer or a reserve law enforcement officer knowing that the person identified by the uniform was not a peace officer or law enforcement officer. The bill would also prohibit the intentional or knowing misrepresentation of a uniform as property belonging to a law enforcement agent.

HB 1371 also would increase the penalty of an offense committed under Section 37.11 – impersonating a public servant to induce someone to rely on pretended authority – to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the offense were committed with the intent to commit another crime.

The defenses available in the current law would apply to this crime.

The bill would take effect on September 1, 2005. The former law would apply to any offense that took place before the effective date of the bill. An offense would take place before the effective date if any element of the offense were committed before that date.

SUPPORTERS
SAY:

HB 1371 is needed because impersonating a police officer makes individuals more susceptible to harm and hurts communities. Public trust in law enforcement is crucial to public safety and a society's overall sense of well-being. When an individual impersonates a police officer to commit a crime, it jeopardizes the public trust that law enforcement needs to operate effectively.

Because people are naturally trusting of police officers, those who impersonate police officers can trick people into opening themselves up to physical or financial harm. Children are especially vulnerable. In Harris County, a man impersonated a police officer and raped a 14-year-old girl.

Since 9/11, public security has been an especially serious concern. A terrorist could use a police uniform to circumvent safeguards and gain access to restricted areas to commit terrorist activities.

While the law already provides penalties for crimes like sexual assault, it is the use of the uniform to commit the crime that is especially harmful. It undermines public confidence in law enforcement and damages their ability to safeguard the public. The community-wide damage caused by this crime demands an appropriately severe deterrent.

Use of a police officer's uniform may not be covered under existing law because it is not specified in the code. Amending the law to include a uniform would make it clear that it is prohibited.

According to the criminal justice impact statement, the increased demand on correctional resources that would result from this bill would not be substantial. While some people in prison would be better served on probation, the serious consequences of violating this particular law call for a prison sentence.

OPPONENTS
SAY:

HB 1371 is unnecessary because current law already prohibits the behavior addressed by the bill. This bill ultimately would increase costs to taxpayers and exacerbate prison overcrowding.

Current law says it is illegal to make, provide, or possess any “item bearing the insignia of law enforcement that identifies someone as a peace officer.” A law enforcement officer’s uniform likely would fall under this broad category of items.

The penalty enhancement in the bill also is unnecessary. Someone who commits a serious crime under the guise of a law enforcement officer already can be punished harshly for the crime itself. In the Harris County case of a 14-year-old raped by an offender wearing a police uniform, the prosecutor already could charge the offender with a second-degree felony, the current punishment for sexual assault, without the changes proposed by this bill.

Texas has more than 1,900 separate felonies covering a broad range of crimes, including the activities targeted by this bill. The less costly, more efficient solution would be to use laws already on the books to punish those who violate sec. 37 of the penal code to commit a serious crime.

Where the offense itself is not harshly punished already, this bill could create hefty sentences for non-violent crimes. If an individual were to impersonate a police officer to steal a car stereo out of a car, the

punishment, now a class A misdemeanor, would be increased to a second-degree felony. Texas is struggling to find enough jail space for those already in prison. If the Legislature continues to create new felonies, taxpayers will bear the burden. It costs about \$500,000 per biennium to add 10 people to the prison system. Moreover, branding a non-violent offender a felon would create life-long barriers to becoming a productive member of society.