

SUBJECT: Establishing reckless arson offense

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vo

0 nays

1 absent — Vaught

WITNESSES: For — Rodney Janczak, Harris County Fire Marshal’s Office; (*Registered, but did not testify*: Marc Chavez, Lubbock County District Attorney’s Office; Katrina Daniels, Bexar County District Attorney’s Office; Kevin Petroff, Harris County District Attorney’s Office)

Against — None

BACKGROUND: Under Penal Code, sec. 28.02(a), a person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion, with intent to destroy or damage any vegetation, fence, or structure on open-space land or any building, habitation, or vehicle knowing that it:

- is within the limits of an incorporated city or town;
- is insured against damage or destruction;
- is subject to a mortgage or other security interest;
- is located on property belonging to another; or
- has located within it property belonging to another.

A person also commits an offense when a person starts a fire with intent to destroy or damage or damage any building, habitation, or vehicle and the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

Under sec. 28.02(d), an arson offense is punishable as a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). An offense is punishable as a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) when it

results in bodily injury or death or if the property that the actor intended to damage or destroy is a habitation or a place of assembly or worship.

Under sec. 28.02(f), starting a fire with intent to damage any building, habitation, or vehicle with intent to damage property belonging to another or with intent to injure any person, and in so doing, recklessly causing damage to the building, habitation, or vehicle is punishable as a third-degree felony.

DIGEST:

CSHB 3224 would add sec. 28.02(a-2), to create a reckless arson offense. It would include intent to start a fire while removing the intent to cause damage. A person would commit an offense when the person intentionally started a fire or caused an explosion and:

- recklessly damaged or destroyed a building belonging to another; or
- recklessly caused another person to suffer bodily injury or death.

An offense would be punished as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

CSHB 3224 would strike the part of sec. 28.02(f) that allows for arson to be punished as a third-degree felony when the actor started a fire with intent to damage any building, habitation, or vehicle with intent to damage property belonging to another or with intent to injure any person, and in so doing, recklessly caused damage to the building, habitation, or vehicle.

CSHB 3224 also would add sec. 28.02(h) to allow the attorney general concurrent jurisdiction with that of a consenting local prosecutor to prosecute an arson offense.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

Many prosecutors find the current law on arson too difficult to prosecute because of its requirement to prove intent to cause damage. Prosecutors are required to prove that a person started a fire with the intent to destroy or damage property. As such, many prosecutors are forced to charge a defendant with criminal mischief, which punishes people according to the amount of damage done. This is not an adequate solution because it fails to address the extremely serious threat posed by fire and explosions.

CSHB 3224 would solve this problem by creating a reckless arson statute. Under CSHB 3224, prosecutors only would have to prove intent to start a

fire that recklessly resulted in property damage. CSHB 3224 would ensure that arson crimes would be punished in a way that reflects their inherent danger.

CSHB 3224 also would align Texas' arson statute with those of other states by creating an offense of reckless arson.

According to the LBB, CSHB 3224 would not result in significant costs to the state. The fiscal note assumes that many persons convicted under this statute currently are being charged with other offenses and additional convictions would not result in a significant impact on programs and workload of state agencies.

OPPONENTS
SAY:

CSHB 3224 would lower the intent standard for arson. Under CSHB 3224 many people who had no intent at all to cause damage to a person or property could be made felons. A camper whose campfire got out of hand could become a felon. A homeless person trying to stay warm could be made a felon as a result of relatively minor fire damage that would be more appropriately punished under existing criminal mischief laws.

The point of arson laws is to punish the malicious destruction of property. CSHB 3224 would punish those who had no intention to cause damage. A basic tenet of criminal law is that absent criminal intent, a person should not be punished criminally. CSHB 3224 would make people felons even when they did not intend to damage property.

Texas cannot afford to continue enhancing penalties. By making criminal activity formerly punished as criminal mischief a felony under the arson statutes, CSHB 3224 would result in longer prison sentences. This would increase the overall costs of the Texas criminal justice system. Revenue is limited for the next biennium and will be even tighter when the Legislature meets in 2011. Texas should do what it can now to keep its costs from growing.

OTHER
OPPONENTS
SAY:

CSHB 3224 unnecessarily would grant the attorney general concurrent jurisdiction to prosecute arson. The attorney general already may do so. Under current law, assistant attorneys general may be deputized as assistant district attorneys to assist or even lead local prosecutions. Granting the attorney general concurrent jurisdiction also would skew the constitutional roles created, for district attorneys as lead criminal attorneys and attorney general as the state's chief civil lawyer.

NOTES:

The substitute differs from the bill as filed through the addition of the word “recklessly” to the new arson statute requirement that a person caused another person to suffer bodily injury or death in sec. 28.02(a-2). It also added concurrent jurisdiction to allow the attorney general, with the consent of a local prosecutor, to prosecute arson.