During the summer of 1870, Madison County was wracked by violence against freedmen. Tensions reached their peak on July 21, 1870, when a band of disguised men staged a jailbreak on the Madison County jail, releasing two murderers. In response, State Police Private John H. Patrick, a Republican with ambitions for higher office, assembled a group of black militia and began confiscating guns from any person carrying them, under color of the 1870 Act.[58] Patrick's confiscation order, along with the fact that blacks were enforcing laws against whites, led to widespread public outrage. A local deputy sheriff formed a posse with the ostensible purpose of arresting Patrick, but an actual intent to foment violence against politically active blacks and Republicans, based on the claim that blacks had joined Patrick's militia unit with the intention of murdering whites.[59] The posse sought Patrick at his home, but he was in Austin where a disciplinary hearing had been convened to look into his actions. The group instead killed two militia leaders.[60] In response to this incident and other chaos in the county—including militia members being killed, shot, and attacked, and freedmen being whipped by whites—Governor Davis ordered forty state police and three-hundred state guards into Madison County to restore order. Many of his opponents viewed these actions as tyrannical, and the event damaged the reputation of the state police and the Davis administration statewide.

In response to concerns about the effectiveness of the 1870 Act, and likely partially as a result of the confusion in Madison County, the Texas Legislature drafted a bill in 1871 that prohibited the carrying of any "pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife . . . [without] reasonable grounds for fearing an unlawful attack on his person . . . ."[61] The bill punished first offenses with confiscation of the weapon and a fine between $25 and $100 (approximately $500–$2,000 with inflation)[62] and up to sixty days in prison for a second offense.[63] The law's exception allowing publicly carrying a firearm when in fear of unlawful attack was further narrowed by requiring the defendant to show that the

58. CROUCH & BRICE, *supra* note 9, at 39–40 (Patrick would be fired in December 1870). Confusion does not seem to have been limited to Patrick. In one instance a district court judge, F.P. Wood, ordered anyone who carried a gun in town, not just those at public assemblies, to be arrested. *Id.* at 62.

59. *Id.* at 40.

60. *Id.*

61. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 1, 1871 Tex. Gen. Laws 25, 25, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 927 (1898).

62. Calculated using inflation calculator at http://www.westegg.com/inflation/, which is based on consumer price index statistics going back to 1800 (last visited July 12, 2016).

63. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 1, 1871 Tex. Gen. Laws 25, 25, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 927 (1898).

danger was "immediate and pressing," and "of such a nature as to alarm a person of ordinary courage," that "the weapon was borne openly and not concealed beneath the clothing," and that the claimed danger did not have "origin in a difficulty first commenced by the accused."[64] This clarified that the exception did not apply when a person had carried a firearm due to a generalized fear of crime, but rather only when a specific threat existed. The penalties for the 1870 Act were also amended to provide for confiscation of the weapon and imprisonment for up to 90 days for subsequent offenses.[65] The law granted the governor the power to exempt counties from the carry prohibition if they were dubbed a frontier county "liable to incursions of hostile Indians."[66] The law also included exceptions for people carrying weapons on their own property or in their place of business, members of the militia in active service, law enforcement officers, and the transportation of arms in the baggage of travelers.[67]

The bill titled "An Act to Regulate the Keeping and Bearing of Deadly Weapons," was introduced by Republican Representative Frederick Grothaus on January 24, 1871.[68] The bill passed out of the Judiciary Committee 5–3, receiving primarily Republican support.[69] On March 9, 1871, the House passed the bill by a margin of 60–12, with all twelve black representatives voting in favor of the bill.[70] On March 29, 1871, the Senate passed the bill by a 20–4 margin with support of both of the State's black Senators.[71] In both chambers opposition to the law consisted primarily of Democrats, and conservative

64. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 2, 1871 Tex. Gen. Laws 25, 25, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 927 (1898).

65. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 3, 1871 Tex. Gen. Laws 25, 25–26, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 927–28 (1898).

66. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 4, 1871 Tex. Gen. Laws 25, 26, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 928 (1898).

67. Act approved Apr. 12, 1871, 12th Leg., R.S., ch. 34, § 1, 1871 Tex. Gen. Laws 25, 25, *reprinted in* 6 H.P.N. Gammel, *The Laws of Texas* 1822–1897, at 927, 927 (1898).

68. H.J. of Tex., 12th Leg., R.S. 95 (1871); Britney Jeffery, *Frederick Edward Grothaus*, TEX. ST. HIST. ASS'N, http://bit.ly/1Llq64O [https://perma.cc/HY5L-X6JD] (last visited July 24, 2016).

69. H.J. of Tex., 12th Leg., R.S. 443–44 (1871) (Judiciary Committee Report dated February 28, 1871).

70. The black representatives who supported the measure were Richard Allen, D.W. Burley, Silas Cotton, Goldstein Dupree, Jeremiah J. Hamilton, Mitchell Kendall, David Medlock, John Mitchell, Henry Moore, Sheppard Mullens, Benjamin Franklin Williams, and Richard Williams. *See* H.J. of Tex., 12th Leg., R.S. 523–32 (1871).

71. G.T. Ruby and freedman Matthew Gaines were the two black senators who