

SUBJECT: State jail felony for three or more offenses of burglary of a vehicle

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Pena, Hodge, Raymond, Reyna
0 nays
3 absent — Denny, Escobar, P. Moreno

WITNESSES: For — None
Against — Ann del Llano, ACLU of Texas; Charles Kiker, Friends of Justice

BACKGROUND: Under Penal Code sec. 30.04(d), it is a Class A misdemeanor (maximum penalty of up to one year in jail and/or a maximum fine of \$4,000) to burglarize a vehicle.

DIGEST: HB 1324 would increase the penalty for third and subsequent offenses of burglarizing a vehicle from a class A misdemeanor to a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The bill would take effect September 1, 2005.

SUPPORTERS SAY: Since 1994, when the penalty for burglary of a vehicle was reduced to a misdemeanor, burglaries of vehicles have increased dramatically in Texas. According to the Texas Crime Report compiled by the Department of Public Safety, nearly 198,000 vehicular burglaries were reported in 2003, resulting in stolen property in the amount of \$161.7 million. This represents a 47 percent increase in the number of offenses and a 148 percent increase in the value of property stolen during this nine-year period.

Many of the offenders arrested for vehicular burglary are repeat offenders, indicating that the current punishment is not an effective deterrent. Many offenders, especially the repeat offenders, deliberately choose to

burglarize vehicles over committing other crimes because they are aware of the minimal punishment for vehicular burglary.

Many repeat offenders burglarize vehicles in order to support their drug habits. The drug treatment programs in state jails often are more effective than those in county jails and misdemeanor probation programs, and thus addicted repeat offenders would receive the treatment they need to rehabilitate themselves. Even if such offenders are not rehabilitated in state jail, it would be better to keep them safely behind bars while they struggle with their drug problems than to release them into society, where their record shows they almost certainly would commit more criminal offenses.

Enhancing the penalty for three or more repeat offenses would give more leverage to prosecutors, who frequently accept plea bargains for vehicular burglary charges in order to move cases more quickly through the overcrowded misdemeanor docket. The current maximum penalty for this offense is one year in jail, but prosecutors are not able to plea bargain for the maximum because offenders will accept only reduced penalties for pleas of guilty. If the maximum punishment for repeat offenders were two years as a state jail felony, then prosecutors would be able to bargain for jail time of more than one year, which would be half of the new maximum.

Finally, HB 1324 would increase the penalty only for offenders convicted a third or subsequent time for vehicular burglary. This would have a deterrent effect of reducing the number of repeat offenders, keeping more people out of the criminal system. Those offenders who became felons on their third offense would be deserving of any social ill-effects associated with being labeled a felon.

**OPPONENTS
SAY:**

The statistics indicating that vehicular burglaries have increased over the past decade neglect the fact that poverty and drug use—two key reasons why people burglarize vehicles — also have increased during this time. Increasing the penalty would not affect the cause of the increase, so vehicular burglary rates would continue to rise.

Many repeat offenders burglarize vehicles in order to steal money to support their drug addictions. Statistics have shown that imprisoning drug addicts does not cure their drug addiction. During the nine-year period from 1994, when the penalty for vehicular burglary was decreased, until

2003, the most recent year for which crime statistics are available, DPS reported a 36 percent increase in the number of arrests for drug abuse. When these offenders reenter society, they inevitably will return to crime to support their habits. Substance abuse programs in state jail would offer no solution because funding for these programs has decreased in the past few years, reducing their effectiveness. The answer to reducing the rate of vehicular burglaries lies in drug addiction treatment, not in increased penalties.

A 30-year study by the U.S. Department of Justice, National Institute of Corrections, indicates that prison time does not decrease criminal behavior and might slightly increase it. One in 11 Texans already is a convicted felon, facing the many lifelong problems that being labeled a felon brings with it. Increasing punishment of vehicular burglary to a felony, even for repeat offenders, would stigmatize more Texans, making it more difficult for them to find employment and safe housing, while not addressing the increasing crime rate in this area.

Finally, the Penal Code was carefully drafted to assign penalties to specific crimes. Felonies should be reserved for crimes against the person, not crimes against property.

OTHER
OPPONENTS
SAY:

Individual victims now bear the financial burden of vehicular burglary. Increasing the penalty for this crime to a felony would in large part shift that burden to the state because the state would be forced to pay for prison space for potentially thousands more felons each year. The prison system in Texas already is nearing capacity and could not bear the burden of hundreds, possibly thousands, of additional felons entering the system each year. This would be a cost that Texas taxpayers could not afford.

NOTES:

A related bill, HB 151 by Truitt, et al., which would make burglary of a vehicle a state jail felony on the first offense, passed the House by 102-43 on March 30 and was referred to the Senate Criminal Justice Committee on April 5. During second-reading consideration of HB 151, the House tabled an amendment by Rep. Dutton that was identical to HB 1324. It also tabled an amendment by Rep. Hodge that would have established a state jail felony for any repeat offense of burglary of a vehicle.

The fiscal note estimates that the bill would cost \$1.8 million in fiscal 2006-07 and \$3.9 million in fiscal 2008-09. The Criminal Justice Impact Statement projects an increase in the community supervision (probation)

population of 138 in fiscal 2006-07 and 533 in fiscal 2008-09, and an increase in demand for state jail capacity of 141 in fiscal 2006-07 and 281 in fiscal 2008-09.

The companion bill, SB 366 by Staples, has been referred to the Senate Criminal Justice Committee.