

- SUBJECT:** Use of a vehicle to gain access to a building to commit burglary.
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton
- 0 nays
- 1 absent — Moreno
- WITNESSES:** None
- BACKGROUND:** Under the Penal Code, sec. 30.02, a person commits burglary if the person, without the consent of the owner:
- enters a habitation, or a building not then open to the public, with intent to commit a felony, theft, or an assault;
  - remains concealed, with intent to commit a felony, theft, or an assault; or
  - enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.
- Burglary is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if committed in a building other than a habitation or a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if committed in a habitation. Burglary is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the premises intruded upon are a habitation and any party to the offense entered the habitation with intent to commit a felony other than felony theft or committed or attempted to commit a felony other than felony theft.
- DIGEST:** CSHB 2950 would amend Penal Code, sec. 30.02, to make burglary a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the actor, with intent to commit a theft involving an ATM or safe, used an object or the actor's body to damage a wall, door, or window and gain entry into a building other than a habitation.

The bill would take effect September 1, 2007, and would apply only to an offense committed on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 2950 would help to protect financial institutions, ATMs, and other areas important to commerce. By increasing the penalty for destructive burglary of these places, the bill would help to deter attacks on them.

CSHB 2950 addresses a small but an increasing and important crime. Thieves increasingly are using stolen vehicles to smash through walls, windows, ATMs and safes to gain access to the contents. The bill would provide a stiffer penalty for this crime and help to deter the use of any other object or the burglar's body to damage or gain entry into a building while attempting to gain access to an ATM or safe.

It is important to punish burglary that involves the destruction of property to gain access to an ATM or safe because this offense creates ancillary damage beyond the theft. In addition, the disturbing use of vehicles to commit these crimes involves a serious threat to public safety because of the need for the driver to develop ramming speed, which endangers not only the burglars but innocent bystanders as well. Even if CSHB 2950 increased the number of people incarcerated, it would do so in order to punish a serious and dangerous crime.

**OPPONENTS  
SAY:**

CSHB 2950 is unnecessary because burglary already is punished as a serious crime in Texas. The minimum punishment available is a state-jail felony. If the underlying goal of the burglary is theft, it can be punished as a second-degree felony if the actor entered a habitation. This provision certainly could apply if the actor entered a habitation to invade a personal safe.

Texas law is sufficiently tough and already addresses the targeted offense. By enhancing the penalties for this offense, CSHB 2950 would result in longer periods of incarceration for offenders when the state correctional system already is operating at capacity.

**OTHER  
OPPONENTS  
SAY:**

This bill would punish burglars who used their bodies or an object to damage a wall, door, or window and gain entry into a building other than a habitation. However, it would not raise the penalty for burglars who picked a lock without damaging it or found other, non-destructive methods of access. The use of skill or deceit to gain access to an ATM or safe is more insidious than brute force. It is easier to prevent brute force through

the construction of proper barriers. Also, the use of skill or deceit requires additional planning and preparation, while throwing an object through a window is likely a more impulsive act. The law traditionally has treated intent as a major aspect of crime and CSHB 2950 would punish the lesser rather than the greater criminal intent.

**NOTES:**

As filed, HB 2950 would have applied only to burglaries in which a vehicle was used to gain access to an ATM or safe.