

SUBJECT: Felony punishment for burglary while evading arrest

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler

0 nays

WITNESSES: For — Stephen Casco, Houston Police Department; Chris Jones, Combined Law Enforcement Associations of Texas; Gary Tittle, Dallas Police Department (*Registered, but did not testify*: Donald Baker; John Chancellor, Texas Police Chiefs Association; Lon Craft, Texas Municipal Police Association; Bill Elkin, Houston Police Retired Officers Association; James Jones, San Antonio Police Department)

Against — (*Registered, but did not testify*: Jodyann Dawson, Texans Care for Children)

BACKGROUND: Penal Code, sec. 30.02 defines burglary as entering a building not then open to the public or remaining concealed in a residence or building, without the consent of the owner and with the intent to commit a felony, theft, or assault, or entering a building and committing or attempting to commit a felony, theft, or assault.

Burglary is punishable as 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 residence, as a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if in a residence, and 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) if in a residence and the person entered with intent to commit a felony other than felony theft.

DIGEST: HB 341 would make it an offense under the burglary statute, Penal Code sec. 30.02, to, without the consent of the owner, enter a building or habitation while evading or attempting to evade arrest or detention, to enter a building not then open to the public with intent to evade arrest or detention, or to remain concealed in a building or habitation with intent to evade arrest or detention.

HB 341 would exclude burglary while evading arrest or detention from first-degree felony punishment.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

When suspects flee law enforcement and enter someone's home to evade arrest, the risk to the family and to law enforcement from an ambush justifies a felony charge. The current offense charged is criminal trespass, which is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if a residence and a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if a building.

Burglary already is an offense that requires intent to commit another crime, such as theft. This bill would not be an enhancement of the burglary offense, but simply would fix the statute, which always should have included evading arrest. The point of the burglary statute, as opposed to criminal trespass, is to protect the sanctity of the home from people with bad intent. If a person enters another's home with the intent to do something illegal, then the risk is greater to the family and the punishment should be more severe.

The offense of evading arrest on foot, in Penal Code sec. 38.04, is a Class A misdemeanor, but is a state jail felony if the actor uses a vehicle to flee or was previously convicted for evading arrest. The same logic would apply here. Just as using a vehicle makes evading arrest more dangerous to others and warrants harsher punishment, entering a person's home with the intent to evade arrest creates a potentially dangerous situation that warrants felony punishment. Although relatively few cases of burglary while evading arrest would be charged, resulting in no significant fiscal impact to the state, the statute still needs to be changed to better protect the sanctity of the home.

**OPPONENTS
SAY:**

HB 341 would not protect the public or police any more than current law. When a suspect flees down a hallway and into someone's apartment to evade arrest, that suspect would not know that the punishment had been changed to a felony. The suspect would not be deterred by the more severe penalty, especially in the panic of evading arrest. Even though this enhancement to the burglary statute would not provide greater safety, it

would cost the state additional money because a felony conviction would mean prison time.

Burglary while evading arrest also could result in unintended consequences, with juveniles likely the most at risk. Juveniles who commit minor crimes, or perhaps commit no crime at all but feel guilty about something, could see a police officer approaching and take off running. Once the juvenile entered an office building accidentally left open, a relatively minor infraction could turn into a felony. Serving prison time in this scenario would not fit the crime.

The burglary statute has long been about breaking into a home to steal or to harm someone. HB 341 would complicate that traditional understanding of burglary. The intention of the suspects in these cases is to evade police, not to burglarize the house in the traditionally understood sense. Evading arrest statutes are the better place to address a person fleeing police, and criminal trespass statutes better address running into the building to hide. Current law is sufficient.