

SUBJECT: Increasing penalties for arson, certain thefts committed in a disaster area

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Collier, K. Bell, J. González, Hunter, P. King, Moody, Murr,  
Pacheco

0 nays

1 absent — Zedler

WITNESSES: For — Darvin Lynn Pearce, Aransas Pass Police Department; Robert Parker, Baytown Police Department; Caleb Breshears, Victoria Police Department; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association, State FOP; Jose Carlos Gonzalez, Gonzalez & Associates Homeland Security; Shanna Igo, Texas Municipal League; Noel Johnson, TMPA; Anthony Kivela)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under Penal Code sec. 12.50, punishments for certain crimes are increased to the next higher punishment category if an offense was committed in a declared disaster area or an area subject to an emergency evacuation. To qualify as a disaster area, the U.S. president, Texas governor, or head of a city or county must make a disaster declaration.

The increased penalties apply to assault, robbery, burglary, and theft. If an offense for assault or theft is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), the minimum jail term is increased to 180 days. If an offense for burglary or theft were punished 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), it cannot be increased under these provisions.

**DIGEST:** CSHB 1028 would add arson, burglary of coin-operated or coin collection machines, and burglary of vehicles to the list of crimes that carry higher penalties if committed during a state of disaster or an emergency evacuation. If arson was punished as a first-degree felony, the punishment would not be increased.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

**SUPPORTERS SAY:** CSHB 1028 would help deter looting and arson during hurricanes and other disasters and would give law enforcement authorities another tool to appropriately punish those who take advantage of emergencies by committing these crimes. While the current Penal Code does not have a separate crime for looting, it recognizes that assault, robbery, burglary, and theft committed during a disaster or evacuation are more serious than when they are committed during other times, considering the vulnerability of individuals, the necessity of keeping order, and the increased demand on law enforcement. Arson and stealing from coin-operated machines and vehicles are similar crimes that also warrant increased penalties if committed while society is facing these types of challenges. HB 1028 would help keep Texans and their property safe during disasters and evacuations and could help alleviate fears of residents who may not want to evacuate out of fear that their homes or businesses may be harmed.

**OPPONENTS SAY:** CSHB 1028 is unnecessary because current law contains adequate penalties for arson and burglary of coin-operated machines and vehicles. Penalties for arson range from a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000). Burglary of coin-operated machines is a class A misdemeanor, which can mean up to a year in jail, and most vehicle burglaries range from a class A misdemeanor to a state jail felony. The bill might not be an effective deterrent, as crimes committed during disasters and evacuations may not be planned or well thought out.