

SUBJECT: Enhanced punishment for repeat offenses of burglary of a vehicle

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 5 ayes — Pena, Vaught, Escobar, Mallory Caraway, Pierson

0 nays

4 absent — Riddle, Hodge, Moreno, Talton

WITNESSES: For — Lofton Harrison, Harris County Sheriff's Office and Texas Automobile Theft Prevention Authority; Ralph Mendoza, Six Major Cities Chiefs; Mike Ritchey, San Antonio Police Department; (*Registered, but did not testify*: Richard Alpert, Tarrant County District Attorney's Office; Tom Gaylor, Texas Municipal Police Association; Michele Gregg, Texas Apartment Association; Shanna Igo, Texas Municipal League; James Jones, City of Houston Police Department; Scott Joslove, Texas Hotel & Lodging Association and the San Antonio Tourism Council; Sean Mannix, Austin Police Department; Hans Marticihc, Houston Police Officers Union; James McLaughlin, Texas Police Chiefs Association; Felix Rendon, San Antonio Police Officers Association; Gary Tittle, Dallas Police Department; Charley Wilkison, Combined Law Enforcement Associations of Texas)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association; Will Harrell, ACLU; Ana Yanez-Correa, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Dominic Gonzales, Texas Criminal Justice Coalition)

On — Shannon Edmonds, Texas District and County Attorneys Assn.; Marc Levin, Texas Public Policy Foundation (*Registered, but did not testify*: Susan Sampson, Auto Theft Prevention Authority; Vicki Spriggs, Texas Juvenile Probation Commission)

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

Penal Code, sec. 12.43 provides higher minimum penalties for repeat and habitual misdemeanor offenders. If it is shown at a trial of a class A misdemeanor that the defendant has been previously convicted of a class A misdemeanor, then on conviction the offender shall be punished by the usual fine of a maximum of \$4,000 and/or and a jail term of not less than 90 days nor more than a year.

DIGEST:

HB 1887 would increase the penalty for repeat offenses of burglary of a motor vehicle. A second offense would be a class A misdemeanor with a minimum of six months in county jail and a minimum one year period of community supervision. If an offender had been previously convicted two or more times of burglarizing a vehicle, then a subsequent conviction for the same offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

A plea of guilty or no contest in return for a grant of deferred adjudication would count as a conviction in determining previous offenses for burglary of a vehicle regardless of whether the sentence had been imposed or the defendant subsequently discharged from community supervision.

HB 1887 would direct the Automobile Theft Prevention Authority to include prevention of burglary of a motor vehicle in its education programs and to provide experimental equipment to assist vehicle owners in preventing their vehicles from being burglarized. HB 1887 would include burglary of a motor vehicle in the definition of “automobile theft rate” in sec. 11(a), art. 4413(37), Revised Statutes.

SUPPORTERS
SAY:

By increasing the penalties for repeat offenses of burglary of a vehicle, HB 1887 would reflect the increasing economic toll this crime takes on society. Since 1994, when the penalty for burglary of a motor vehicle was reduced to a misdemeanor, offenses have increased sharply in Texas. According to the Texas Crime Report from the Department of Public Safety, 266,900 vehicle burglaries were reported in 2005, the most recent year for which statistics are available, resulting in stolen property in the amount of \$207.2 million. This represents about a 26 percent increase in the number of offenses and a 126 percent increase in the value of property stolen. Considering the scale of this crime, a state jail felony would be appropriate on a third offense.

Many of the offenders arrested for vehicle 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.

Offenders target vehicles out of convenience. Offenders choose vehicles because they have increasingly become repositories not only of valuables but of personal information that can be used as the basis for identity theft. This reflects the increasing amount of time people spend in their cars. HB 1887 would work to protect this space as it becomes increasingly important in people's lives.

Many repeat offenders commit these crimes to feed a drug habit. Drug treatment programs in state jails can be more effective than those in county jails and in misdemeanor probation programs, so addicted repeat offenders more likely would receive the treatment they need to rehabilitate themselves in state jails. Even if such offenders were not rehabilitated in state jail, it might be better to keep them safely behind bars while they struggled with their drug problems than to release them into society, where they almost certainly would commit more criminal offenses.

Enhancing the penalty would give more leverage to prosecutors, who often 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 a plea of guilty. If the maximum penalty for repeat offenses was a state jail felony, or two years in jail, then prosecutors could bargain for state jail time of more than one year.

The current law to enhance the penalty for repeat offenses of the same misdemeanor is inadequate because it increases the minimum jail sentence only to 90 days. A six-month minimum for a second offense and a state jail felony for a third or subsequent offense for vehicle burglary is necessary to give prosecutors an adequate range effectively to negotiate plea agreements with meaningful punishments.

HB 1887's use of deferred adjudications for penalty enhancements would not undermine the deferred adjudication system. The purpose of deferred adjudication is to give a benefit to first-time offenders — people who slipped because of the inexperience of youth or one bad decision. But if a person commits the same offense again, then that person should not get

the benefits of deferred adjudication. Its use for penalty enhancements would be justified and reasonable because the person did not use society's clemency productively.

OPPONENTS
SAY:

The statistics showing that vehicular burglaries have increased since 1994 neglect the fact that poverty and drug use — two key reasons that people burglarize vehicles — also have increased during this time. As a result, increasing the penalty would not affect the cause of the increase, and burglaries of motor vehicles still would continue to rise.

During the 11-year period from 1994, when the penalty for burglary of a motor vehicle was decreased, until 2005, the most recent year for which crime statistics are available, DPS reported a 58 percent increase in the number of arrests for drug abuse. Imprisoning drug addicts does not cure their drug addiction. When these offenders reenter society, they return to crime to support their habits. Substance abuse programs in state jails would offer no solution because funding for these programs has decreased in the past few years, reducing their effectiveness and availability.

Alternatives to enhancement can be more effective in punishing offenders and repaying victims. The key to reducing these offenses is drug addiction treatment and penalty alternatives like victim-offender mediation or mandatory victim compensation. Penalty enhancements do not provide restoration to victims. Also, increasing the penalty to a felony for repeat offenses of burglary of a motor vehicle would stigmatize more Texans by labeling them felons, making it more difficult for them to find employment and safe housing, while not addressing the underlying causes of crime.

Prosecutors already have the power to punish repeat misdemeanor offenders under sec. 12.43 of the Penal Code, which increases the minimum sentence for repeat offenders. Current law provides adequate enhancements for repeat offenders without making them felons.

The Penal Code was carefully drafted to assign penalties to specific crimes. A critical separation was decided on to reserve felony level punishment for crimes against people. Most property crimes involving items of little value were properly punished as misdemeanors. HB 1887 would make this repeat property crime a felony regardless of the value of the item stolen. Not only would this reassignment of state priorities place crimes against property on the same level as crimes against the person, it

likely would result in the diversion of some criminal justice resources away from prosecuting and preventing important crimes against the person.

HB 1887 also would undermine deferred adjudication by using it for penalty enhancements. When people agree to deferred adjudication, they are told that they are not being convicted and will have clean records because they will not be counted as criminal offenders. However, a defendant who received deferred adjudication for burglary of a motor vehicle would be considered guilty of a prior offense for purposes of sentencing enhancement. This would undermine the deferred adjudication system because these people would be treated as if they were convicted criminals.

HB 1887 would cost the state dollars and prison beds it cannot afford. According to the fiscal note, it would cost the state \$3.4 million a year by fiscal 2012 and necessitate the use of an additional 219 state jail beds by the same year. These resources would be better spent on violent offenders who pose a greater threat to society.

NOTES:

According to the fiscal note, HB 1887 would cost the state \$466,221 in fiscal 2008, \$2,541,113 in fiscal 2009, and an average of \$3.3 million a year between fiscal 2010 and fiscal 2012. HB 1887 would necessitate the use of an estimated 33 state jail beds in 2008 and 178 beds in 2009 and would require the use of an average of 214 beds between fiscal 2010 and fiscal 2012.

The companion bill, SB 807 by Whitmire, was scheduled for a public hearing by the Senate Criminal Justice Committee on April 3.

During the 2005 regular session, HB 151 by Truitt, which would have enhanced the penalty for repeat burglary of a vehicle from a class A misdemeanor to a state-jail felony, and HB 1324 by Pena, which would have enhanced the penalty for a third or subsequent offense from a class A misdemeanor to a state-jail felony, both passed the House, but died in the Senate Criminal Justice Committee.