

**SUBJECT:** Increasing the penalty for burglary of a vehicle offense

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Keel, Riddle, Pena, Raymond, Reyna  
1 nay — Hodge  
3 absent — Denny, Escobar, P. Moreno

**WITNESSES:** For — Rick Anderssen, Texas Capital Bank; Gregory Autry, Downtown Dallas Security Directors Association; Tom Gaylor, Texas Municipal Police Association; Gregory F. Holliday, Crescent Real Estate Equities; Jane Kieke; David Kunkle, City of Dallas; Chris Malek, Houston Police Department, Texas Association of Vehicle Theft Investigators; Ralph Mendoza, City of Fort Worth; Michele Molter, Texas Apartment Association; Anthony Paonessa, Houston Police Department; Julian Ramirez, Harris County District Attorney’s Office; Neal Sleeper, Public Safety Interest Group; Mark Thielman, Tarrant County District Attorney’s Office; Brian Ungarean; Laura Vanloh, Post Properties; James Walters  
  
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 151 would increase the penalty for 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 the nine-year period since the penalty was decreased.

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 to support their drug habits. Drug treatment programs in state jails can be more effective than those in county jails and misdemeanor probation programs, and thus addicted offenders more likely would receive in state jails the treatment they need to rehabilitate themselves. 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 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 a plea of guilty. If the maximum punishment were two years for a state jail felony, then prosecutors would be able to bargain for state jail time of more than one year, which would be half of the new maximum.

A judge also would have the discretion in some cases to authorize a prosecutor to charge an offender who had burglarized a vehicle with a misdemeanor rather than a state jail felony. This could help ensure that young offenders with no criminal histories would not be branded as felons.

**OPPONENTS  
SAY:**

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

Many repeat offenders burglarize vehicles to steal money to support their drug addictions. 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. Statistics have shown that imprisoning drug addicts does not cure their drug addiction. 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 dramatically 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 the penalties for even first-time offenders would dramatically increase the number of felons in Texas each year. Increasing punishment for this crime to a felony 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.

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 is a cost that Texas taxpayers cannot afford. It would make more sense to focus on repeat offenders and enhance the penalty in those cases than raise the penalty for all cases, including first offenses.

NOTES:

A related bill, HB 1324 by Pena, et al., set on tomorrow's General State Calendar, would increase the penalty for third and subsequent offenses of burglarizing a vehicle from a class A misdemeanor to a state jail felony.

In fiscal note, the Legislative Budget Board estimates that the bill would cost \$9.1 million in general revenue in fiscal 2006-07. The projection in the criminal justice impact statement is that demand for state jail capacity would increase by 587 in fiscal 2006-07 and 1,392 in fiscal 2008-09.

The companion bill, SB 138 by Nelson, has been referred to the Senate Criminal Justice Committee.