

SENATE AMENDMENTS

2nd Printing

By: Kuempel, Moody, Zerwas, Sheffield,
Holland

H.B. No. 1178

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the punishment for burglary and theft of controlled
3 substances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 30.01, Penal Code, is amended by adding
6 Subdivision (4) to read as follows:

7 (4) "Controlled substance" has the meaning assigned by
8 Section 481.002, Health and Safety Code.

9 SECTION 2. Section 30.02, Penal Code, is amended by
10 amending Subsection (c) and adding Subsection (c-1) to read as
11 follows:

12 (c) Except as provided in Subsection (c-1) or (d), an
13 offense under this section is a:

14 (1) state jail felony if committed in a building other
15 than a habitation; or

16 (2) felony of the second degree if committed in a
17 habitation.

18 (c-1) An offense under this section is a felony of the third
19 degree if:

20 (1) the premises are a building in which a controlled
21 substance is generally stored, including a pharmacy, clinic,
22 hospital, or nursing facility; and

23 (2) the person entered or remained concealed in that
24 building with intent to commit a theft of a controlled substance.

1 SECTION 3. Section 31.03(e), Penal Code, is amended to read
2 as follows:

3 (e) Except as provided by Subsection (f), an offense under
4 this section is:

5 (1) a Class C misdemeanor if the value of the property
6 stolen is less than \$100;

7 (2) a Class B misdemeanor if:

8 (A) the value of the property stolen is \$100 or
9 more but less than \$750;

10 (B) the value of the property stolen is less than
11 \$100 and the defendant has previously been convicted of any grade of
12 theft; or

13 (C) the property stolen is a driver's license,
14 commercial driver's license, or personal identification
15 certificate issued by this state or another state;

16 (3) a Class A misdemeanor if the value of the property
17 stolen is \$750 or more but less than \$2,500;

18 (4) a state jail felony if:

19 (A) the value of the property stolen is \$2,500 or
20 more but less than \$30,000, or the property is less than 10 head of
21 sheep, swine, or goats or any part thereof under the value of
22 \$30,000;

23 (B) regardless of value, the property is stolen
24 from the person of another or from a human corpse or grave,
25 including property that is a military grave marker;

26 (C) the property stolen is a firearm, as defined
27 by Section 46.01;

1 (D) the value of the property stolen is less than
2 \$2,500 and the defendant has been previously convicted two or more
3 times of any grade of theft;

4 (E) the property stolen is an official ballot or
5 official carrier envelope for an election; or

6 (F) the value of the property stolen is less than
7 \$20,000 and the property stolen is:

8 (i) aluminum;

9 (ii) bronze;

10 (iii) copper; or

11 (iv) brass;

12 (5) a felony of the third degree if the value of the
13 property stolen is \$30,000 or more but less than \$150,000, or the
14 property is:

15 (A) cattle, horses, or exotic livestock or exotic
16 fowl as defined by Section 142.001, Agriculture Code, stolen during
17 a single transaction and having an aggregate value of less than
18 \$150,000; [~~or~~]

19 (B) 10 or more head of sheep, swine, or goats
20 stolen during a single transaction and having an aggregate value of
21 less than \$150,000; or

22 (C) a controlled substance, regardless of the
23 value of the controlled substance stolen;

24 (6) a felony of the second degree if:

25 (A) the value of the property stolen is \$150,000
26 or more but less than \$300,000; or

27 (B) the value of the property stolen is less than

1 \$300,000 and the property stolen is an automated teller machine or
2 the contents or components of an automated teller machine; or

3 (7) a felony of the first degree if the value of the
4 property stolen is \$300,000 or more.

5 SECTION 4. Section 31.03(h), Penal Code, is amended by
6 adding Subdivision (5) to read as follows:

7 (5) "Controlled substance" has the meaning assigned by
8 Section 481.002, Health and Safety Code.

9 SECTION 5. The change in law made by this Act applies only
10 to an offense committed on or after the effective date of this Act.
11 An offense committed before the effective date of this Act is
12 governed by the law in effect on the date the offense was committed,
13 and the former law is continued in effect for that purpose. For
14 purposes of this section, an offense was committed before the
15 effective date of this Act if any element of the offense occurred
16 before that date.

17 SECTION 6. This Act takes effect September 1, 2017.

ADOPTED

MAY 19 2017

Atty. Gen. Saw
Secretary of the Senate

By: Hinojosa

H.B. No. 1178

Substitute the following for ___B. No. ___:

By: Spencer R. Gilmer

C.S. H.B. No. 1178

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for burglary and theft involving
3 controlled substances.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 30.01, Penal Code, is amended by adding
6 Subdivisions (4) and (5) to read as follows:

7 (4) "Controlled substance" has the meaning assigned by
8 Section 481.002, Health and Safety Code.

9 (5) "Wholesale distributor of prescription drugs"
10 means a wholesale distributor, as defined by Section 431.401,
11 Health and Safety Code.

12 SECTION 2. Section 30.02, Penal Code, is amended by
13 amending Subsection (c) and adding Subsection (c-1) to read as
14 follows:

15 (c) Except as provided in Subsection (c-1) or (d), an
16 offense under this section is a:

17 (1) state jail felony if committed in a building other
18 than a habitation; or

19 (2) felony of the second degree if committed in a
20 habitation.

21 (c-1) An offense under this section is a felony of the third
22 degree if:

23 (1) the premises are a commercial building in which a
24 controlled substance is generally stored, including a pharmacy,

1 clinic, hospital, nursing facility, or warehouse; and

2 (2) the person entered or remained concealed in that
3 building with intent to commit a theft of a controlled substance.

4 SECTION 3. Section 30.04(d), Penal Code, is amended to read
5 as follows:

6 (d) An offense under this section is a Class A misdemeanor,
7 except that:

8 (1) the offense is a Class A misdemeanor with a minimum
9 term of confinement of six months if it is shown on the trial of the
10 offense that the defendant has been previously convicted of an
11 offense under this section; ~~and~~

12 (2) the offense is a state jail felony if:

13 (A) it is shown on the trial of the offense that
14 the defendant has been previously convicted two or more times of an
15 offense under this section; or

16 (B) the vehicle or part of the vehicle broken
17 into or entered is a rail car; and

18 (3) the offense is a felony of the third degree if:

19 (A) the vehicle broken into or entered is owned
20 or operated by a wholesale distributor of prescription drugs; and

21 (B) the actor breaks into or enters that vehicle
22 with the intent to commit theft of a controlled substance.

23 SECTION 4. Section 31.03(e), Penal Code, is amended to read
24 as follows:

25 (e) Except as provided by Subsection (f), an offense under
26 this section is:

27 (1) a Class C misdemeanor if the value of the property

1 stolen is less than \$100;

2 (2) a Class B misdemeanor if:

3 (A) the value of the property stolen is \$100 or
4 more but less than \$750;

5 (B) the value of the property stolen is less than
6 \$100 and the defendant has previously been convicted of any grade of
7 theft; or

8 (C) the property stolen is a driver's license,
9 commercial driver's license, or personal identification
10 certificate issued by this state or another state;

11 (3) a Class A misdemeanor if the value of the property
12 stolen is \$750 or more but less than \$2,500;

13 (4) a state jail felony if:

14 (A) the value of the property stolen is \$2,500 or
15 more but less than \$30,000, or the property is less than 10 head of
16 sheep, swine, or goats or any part thereof under the value of
17 \$30,000;

18 (B) regardless of value, the property is stolen
19 from the person of another or from a human corpse or grave,
20 including property that is a military grave marker;

21 (C) the property stolen is a firearm, as defined
22 by Section 46.01;

23 (D) the value of the property stolen is less than
24 \$2,500 and the defendant has been previously convicted two or more
25 times of any grade of theft;

26 (E) the property stolen is an official ballot or
27 official carrier envelope for an election; or

1 (F) the value of the property stolen is less than
2 \$20,000 and the property stolen is:

- 3 (i) aluminum;
4 (ii) bronze;
5 (iii) copper; or
6 (iv) brass;

7 (5) a felony of the third degree if the value of the
8 property stolen is \$30,000 or more but less than \$150,000, or the
9 property is:

10 (A) cattle, horses, or exotic livestock or exotic
11 fowl as defined by Section 142.001, Agriculture Code, stolen during
12 a single transaction and having an aggregate value of less than
13 \$150,000; [~~or~~]

14 (B) 10 or more head of sheep, swine, or goats
15 stolen during a single transaction and having an aggregate value of
16 less than \$150,000; or

17 (C) a controlled substance, having a value of
18 less than \$150,000, if stolen from:

19 (i) a commercial building in which a
20 controlled substance is generally stored, including a pharmacy,
21 clinic, hospital, nursing facility, or warehouse; or

22 (ii) a vehicle owned or operated by a
23 wholesale distributor of prescription drugs;

24 (6) a felony of the second degree if:

25 (A) the value of the property stolen is \$150,000
26 or more but less than \$300,000; or

27 (B) the value of the property stolen is less than

1 \$300,000 and the property stolen is an automated teller machine or
2 the contents or components of an automated teller machine; or
3 (7) a felony of the first degree if the value of the
4 property stolen is \$300,000 or more.

5 SECTION 5. Section 31.03(h), Penal Code, is amended by
6 adding Subdivisions (5) and (6) to read as follows:

7 (5) "Controlled substance" has the meaning assigned by
8 Section 481.002, Health and Safety Code.

9 (6) "Wholesale distributor of prescription drugs"
10 means a wholesale distributor, as defined by Section 431.401,
11 Health and Safety Code.

12 SECTION 6. The change in law made by this Act applies only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 7. This Act takes effect September 1, 2017.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 20, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft involving controlled substances.), **As Passed 2nd House**

The probable fiscal impact of implementing the bill is indeterminate because data collected at the statewide level do not contain the detail necessary to determine the type of facility or vehicle in which the offense of burglary or theft of a controlled substance is committed. This information is necessary to determine the impact of the bill's enhancement provisions.

The bill would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance under certain circumstances a third degree felony.

Increasing the penalty for any offense is expected to result in increased demands upon State correctional resources due to longer terms of supervision in the community or longer terms of confinement within state correctional institutions. The bill may have a negative fiscal impact by increasing the number of people under felony community supervision or incarcerated within state correctional institutions. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building or vehicle burglarized with the intent to commit theft of a controlled substance. Data collected at the statewide level do not contain the detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated within state correctional institutions for burglary of a building or vehicle under the circumstances in which the offense would be enhanced.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, SD, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 12, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1178** by Kuempel (Relating to the punishment for burglary and theft involving controlled substances.), **Committee Report 2nd House, Substituted**

The probable fiscal impact of implementing the bill is indeterminate because data collected at the statewide level do not contain the detail necessary to determine the type of facility or vehicle in which the offense of burglary or theft of a controlled substance is committed. This information is necessary to determine the impact of the bill's enhancement provisions.

The bill would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance under certain circumstances a third degree felony.

Increasing the penalty for any offense is expected to result in increased demands upon State correctional resources due to longer terms of supervision in the community or longer terms of confinement within state correctional institutions. The bill may have a negative fiscal impact by increasing the number of people under felony community supervision or incarcerated within state correctional institutions. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building or vehicle burglarized with the intent to commit theft of a controlled substance. Data collected at the statewide level do not contain the detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated within state correctional institutions for burglary of a building or vehicle under the circumstances in which the offense would be enhanced.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 20, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft of controlled substances.), **As Engrossed**

The probable fiscal impact of implementing the bill is indeterminate due to the unavailability of reliable data or information related to the type of facility in which the offense of burglary of a building is committed.

The bill would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance a third degree felony.

Increasing the penalty for any offense is expected to result in increased demands upon State correctional resources due to longer terms of supervision in the community, longer terms of confinement in state correctional institutions, and additional persons under parole supervision. The bill may have a negative fiscal impact by increasing the number of people on felony community supervision, incarcerated within state correctional institutions, or placed under parole supervision. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building burglarized. A statewide repository containing the level of detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated within state correctional institutions for burglary of a building under the circumstances in which the offense would be enhanced is also not available.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 5, 2017

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft of controlled substances.), **As Introduced**

The probable fiscal impact of implementing the bill is indeterminate due to the unavailability of reliable data or information related to the type of facility in which the offense of burglary of a building is committed.

The bill would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance a third degree felony.

Increasing the penalty for any offense is expected to result in increased demands upon State correctional resources due to longer terms of supervision in the community, longer terms of confinement in state correctional institutions, and additional persons under parole supervision. The bill may have a negative fiscal impact by increasing the number of people on felony community supervision, incarcerated within state correctional institutions, or placed under parole supervision. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building burglarized. A statewide repository containing the level of detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated within state correctional institutions for burglary of a building under the circumstances in which the offense would be enhanced is also not available.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

May 12, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft involving controlled substances.), **Committee Report 2nd House, Substituted**

The provisions of the bill that would amend the Penal Code as it relates to certain burglary and theft offenses are the subject of this analysis . Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance under certain circumstances a third degree felony. A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felony offenses are subject to an optional fine not to exceed \$10,000.

Increasing the penalty for any offense is expected to result in increased demands upon correctional resources of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. The bill may have a negative population impact by increasing the number of individuals under supervision in the community or incarcerated within state correctional institutions. Whether the bill would result in a significant population impact is indeterminate due to lack of statewide data related to the type of building or vehicle burglarized with the intent to commit theft of a controlled substance. Data collected at the statewide level do not contain the detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated for burglary of a building or vehicle under the circumstances in which the offense would be enhanced. In fiscal year 2016, 4,596 people were arrested, 851 were placed under felony community supervision, and 1,354 were admitted to state correctional institutions for burglary of a building. In fiscal year 2016, 5,264 people were arrested, and 657 were placed under felony community supervision for burglary of a vehicle. The punishment enhancements could significantly expand the number of individuals subject to prosecution under the offense of theft. This expansion could result in a significant impact on state correctional agencies, though the impact cannot be determined.

Source Agencies:

LBB Staff: UP, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

April 20, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft of controlled substances.), **As Engrossed**

The provisions of the bill that are the subject of this analysis would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A Misdemeanor punishment. In addition to confinement, all felony level offenses are subject to an optional fine not to exceed \$10,000.

Increasing the penalty for any offense is expected to result in increased demands upon correctional resources of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. The bill may have a negative fiscal impact by increasing the number of people on felony community supervision, incarcerated within state correctional institutions, or placed under parole supervision. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building burglarized. A statewide repository containing the level of detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated for burglary of a building under the circumstances in which the offense would be enhanced is also not available. In fiscal year 2016, 4,596 people were arrested, 851 were placed under felony community supervision, and 1,354 were admitted to state correctional institutions for burglary of a building. The bill would also make theft of any amount of a controlled substance punishable as a third degree felony. The probable impact of implementing the bill's provisions which amend this section of the Penal Code cannot be determined due to the unavailability of data related to theft of a controlled substance. The punishment enhancements could significantly expand the number of individuals subject to prosecution under the offense of theft. This expansion could result in a significant impact on state correctional agencies, though the impact cannot be determined.

Source Agencies:

LBB Staff: UP, KJo, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

March 5, 2017

TO: Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1178 by Kuempel (Relating to the punishment for burglary and theft of controlled substances.), **As Introduced**

The provisions of the bill that are the subject of this analysis would amend the Penal Code as it relates to certain burglary and theft offenses. Under the provisions of the bill, certain burglary offenses would be enhanced from a state jail felony to a third degree felony. The bill would also make theft of a controlled substance a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A Misdemeanor punishment. In addition to confinement, all felony level offenses are subject to an optional fine not to exceed \$10,000.

Increasing the penalty for any offense is expected to result in increased demands upon correctional resources of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. The bill may have a negative fiscal impact by increasing the number of people on felony community supervision, incarcerated within state correctional institutions, or placed under parole supervision. Whether the bill would result in a significant fiscal impact is indeterminate due to lack of statewide data related to the type of building burglarized. A statewide repository containing the level of detail necessary to isolate those individuals arrested, placed under felony community supervision, or incarcerated for burglary of a building under the circumstances in which the offense would be enhanced is also not available. In fiscal year 2016, 4,596 people were arrested, 851 were placed under felony community supervision, and 1,354 were admitted to state correctional institutions for burglary of a building. The bill would also make theft of any amount of a controlled substance punishable as a third degree felony. The probable impact of implementing the bill's provisions which amend this section of the Penal Code cannot be determined due to the unavailability of data related to theft of a controlled substance. The punishment enhancements could significantly expand the number of individuals subject to prosecution under the offense of theft. This expansion could result in a significant impact on state correctional agencies, though the impact cannot be determined.

Source Agencies:

LBB Staff: UP, KJo, LM