

SUBJECT: State jail felony for burglary of a rail car

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Green, Nixon, Talton
0 nays
3 absent — Keel, Smith, Wise

WITNESSES: For — Sam Arrington and Randy Lane, United Transportation Union; Robert Pounds, Burlington Northern Santa Fe Railway Police
Against — None

BACKGROUND: Penal Code, sec. 30.04 makes burglary of a vehicle a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

DIGEST: CSHB 2231 would make it a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000, to commit burglary of a rail car.

It would be a defense to prosecution that a person who entered a rail car or any part of a rail car was an employee or representative of employees exercising a right under the federal Railway Labor Act.

CSHB 2231 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 2231 would help deter the serious offense of rail car burglary and would institute a more appropriate punishment for these offenders.

Burglary of a rail car can have serious, even deadly, consequences. Once a rail car has been burgled, the contents of the car are subject to shifting that could result in damages to the product and even threaten public and rail safety with a derailment. Rail cars often carry hazardous materials that can be dangerous if moved from the car. Theft of merchandise from a rail car hurts consumers who often must pay higher prices to compensate companies for

their losses. Even more serious, a railroad employee has been killed when hit by a door left open by a burglar.

These offenders often are repeat offenders. One rail company reported one burglar who was arrested for offenses in the rail yard four times in one year and five times the next year.

Rail cars also deserve special protections because they are more difficult to protect than ordinary vehicles. They can be parked in remote areas or left unattended for long periods.

Although the 1993 Penal Code established broad categories of offenses, in this situation the framework is inadequate. The serious consequences of the offense and the tendency to have repeat offenders both warrant a state jail felony. A sentence to a state jail would keep the offender out of the prison system, where space should be reserved for violent offenders, but would punish the offender more severely than time in a county jail and would give the offender a felony conviction record. A Class A misdemeanor punishment is not enough of a deterrent or punishment for this offense. The Legislature has made numerous alterations to the 1993 Penal Code revisions when circumstances warrant.

OPPONENTS
SAY:

The 1993 Penal Code revisions were crafted carefully to encompass broad, consistent categories and to eliminate special provisions, and they should not be distorted with exceptions for special circumstances. The revisions ranked offenses and punishments according to severity. Burglary of a vehicle is a Class A misdemeanor; burglary of a building, a state jail felony; and burglary of a habitation, a second-degree felony unless committed while in conjunction with a felony other than theft, in which case it is a first-degree felony. CSHB 521 would upset this ranking by singling out one type of burglary of a vehicle for harsher punishment.

NOTES:

The committee substitute added the defense to prosecution for employees or their representatives exercising rights under federal law.