

- SUBJECT:** Extending the statute of limitations for arson
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Keel, Riddle, Ellis, Denny, Pena, Talton
3 nays — Dunnam, Hodge, P. Moreno
- WITNESSES:** For — Marshall Kramer, Harris County Fire Marshal’s Office
Against — None
On — Robert Kepple, Texas District and County Attorneys Association
- BACKGROUND:** Code of Criminal Procedure, art. 12.01 establishes statutes of limitations for different criminal offenses. Indictments may not be presented for the following crimes after 10 years from the date of commission:
- theft of any estate by an executor, administrator, guardian, or trustee with intent to defraud any creditor, heir, or beneficiary;
 - theft by a public servant of government property over which the public servant exercises control in his or her official capacity;
 - forgery or using or passing forged instruments;
 - intentionally or knowingly injuring a child or an elderly or disabled person in a manner that causes serious bodily injury, serious mental deficiency, impairment, or injury, punishable as a first-degree felony; and
 - sexual assault.
- The statute of limitations is five years for:
- theft, burglary, robbery;
 - arson;
 - kidnaping;
 - injury to a child or an elderly or disabled person that is not punishable as a first-degree felony; and
 - abandoning or endangering a child.

A person commits arson if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with the intent to destroy or damage any vegetation, fence, or structure on open-space land or any building, habitation, or vehicle. Arson is a second-degree felony (punishable by two to 20 years in prison and an optional fine of up to \$10,000) unless any person suffers bodily injury or death as a result of the offense, or unless the property intended to be damaged or destroyed was a habitation or a place of assembly or worship, in which case it is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

DIGEST: HB 182 would extend the statute of limitations for arson from five years to 10 years after the commission of the offense. The bill would take effect September 1, 2003.

SUPPORTERS SAY: HB 182 would bring the statute of limitations for arson in line with federal law, which provides a 10-year statute of limitations for this offense.

The current five-year statute of limitations has precluded investigation of major arson cases. These cases pose unique investigative problems and may require more time to solve than other types of cases. Investigators often must sort through large amounts of charred materials. Offenders should not escape justice simply because incriminating evidence was not discovered until after the statute of limitations expired.

HB 182 would not lead to inconsistencies among different offenses. Arson is no less serious a crime than theft of an estate with intent to defraud, theft by a public servant of government property, or forgery, all of which carry 10-year limitation periods. Arson is not only a property crime. Starting a fire can endanger people in the vicinity, who could be gravely injured or killed.

HB 182 appropriately would balance the state's right to prove its case and the defendant's right to defend against the charges. The state faces unique difficulties in proving arson cases, and extending the statute of limitations would not impair a defendant's ability to defend against the crime.

Concerns about the costs of incarcerating a greater number of arson offenders under this bill are misplaced. The Legislative Budget Board has determined that the bill would create no significant fiscal impact.

**OPPONENTS
SAY:**

HB 182 would send the wrong message by extending the statute of limitations for arson but keeping it at five years for kidnaping, abandoning or endangering a child, or injuring child or an elderly or disabled person. Arson is a property crime and should not be treated more seriously than these grave offenses against people. HB 182 would not reflect appropriate priorities for the state when it comes to enforcing crime.

Statutes of limitations are designed to balance the difficulty in proving a case with the defendant's difficulty in defending against charges long after the offense that gave rise to them occurred. The more time passes, the harder it is for defendants to track down witnesses and other evidence in their favor. This bill would infringe on a defendant's rights for no good reason.

Texas prisons are filled to capacity and will face serious shortfalls during the next biennium. Legislators should be looking at ways to ease crowding. Extending the statute of limitations for arson unnecessarily would lead to more offenders being incarcerated at a greater cost to the state.

NOTES:

The companion bill, SB 483 by Jackson, has been referred to the Senate Criminal Justice Committee.