

- SUBJECT:** Enhanced penalties for certain crimes committed during a disaster
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught
- 0 nays
- 2 absent — Hodge, Vo
- SENATE VOTE:** On final passage, April 9 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — Joe Cosgrove, Jr., AT&T; (*Registered, but did not testify:* Kevin Petroff, Harris County District Attorney’s Office)
- Against — (*Registered, but did not testify:* Samuel England, ACLU of Texas)
- BACKGROUND:** Penal Code, sec. 22.01 sets criminal penalties for assault offenses, not including sexual or aggravated assaults or injuries to children or elderly or disabled individuals. Sec. 29.02 sets criminal penalties for robbery offenses, not including aggravated robbery. Sec. 30.02 sets criminal penalties for burglary offenses, not including burglary of vehicles or coin-operated or coin collection machines, or criminal trespass offenses. Sec. 31.03 sets criminal penalties for theft offenses, not including theft of trade secrets, identification number tampering, or theft of multichannel video or information services.
- DIGEST:** SB 359 would increase to the next highest category the punishment for most assault, robbery, burglary, or theft offenses if committed within a federal-, state-, or local-declared disaster area or an area subject to an emergency evacuation order. However, if the punishment for an assault or theft was ordinarily a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), it would remain so under the bill but the minimum jail term would be raised to 180 days.
- If the punishment for a burglary or theft offense was ordinarily a first-

degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), it could not be increased. SB 359 also would make it a defense that a theft offense was necessary to avoid imminent harm.

The bill would apply only to offenses committed on or after its September 1, 2009, effective date.

**SUPPORTERS
SAY:**

SB 359 would help deter potential criminal behavior during a hurricane or other disaster by increasing the punishment for certain crimes if they occurred within a declared disaster area. Curfews are not enough to deter burglary or theft after a hurricane, because many looters and burglars are discovered after set curfew times. Some residents do not evacuate during hurricanes out of fear that their homes or businesses will be broken into or looted. By enhancing criminal penalties for certain offenses, the bill would provide peace of mind to residents and business owners.

Adequately punishing criminals who take advantage of others during a disaster should be of greater concern than a marginal increase in incarceration costs, and the bill would provide a defense for those who felt they needed to steal water or other necessary supplies in certain cases.

**OPPONENTS
SAY:**

Increasing the amount of time criminals spend in jail increases the burden on the state or the localities that must pay for that incarceration. SB 359 would require more money to be spent without increasing the number of people arrested for these crimes.