

SUBJECT: Increasing the punishment for burglary and theft of controlled substances

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang,
Wilson

0 nays

WITNESSES: For — Vance Oglesbee and Miguel Rodriguez, Texas Pharmacy Business Council; (*Registered, but did not testify*: David Gonzales, Alliance of Independent Pharmacies of Texas; Richard Beck, AmerisourceBergen Services Corp; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Clay Taylor, Dept. of Public Safety Officers Association; David Sinclair, Game Warden Peace Officers Association; Dennis Wiesner, H-E-B; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers' Union; Bill Elkin, Houston Police Retired Officers Association; Karen Reagan, National Association of Chain Drug Stores; Annie Spilman, National Federation of Independent Business/Texas; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Jimmy Rodriguez, San Antonio Police Officers Association; Buddy Mills, Ricky Scaman, Micah Harmon, and AJ Louderback, Sheriffs' Association of Texas; Nora Del Bosque, Texas Dental Association; Brad Shields, Texas Federation of Drug Stores; Scot Kibbe, Texas Health Care Association; Jennifer Banda, Texas Hospital Association; Duane Galligher, Texas Independent Pharmacies Association; Dan Finch, Texas Medical Association; Monty Wynn, Texas Municipal League; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Royce Poinsett, Texas Veterinary Medical Association)

Against — Derek Cohen, Texas Public Policy Foundation; (*Registered, but did not testify*: Kathy Mitchell, Texas Criminal Justice Coalition)

BACKGROUND: Penal Code, sec. 30.02 defines and sets penalties for burglary. Sec. 31.03 defines and sets penalties for theft.

DIGEST: HB 1178 would enhance the penalty for burglary of a building that generally stores controlled substances, including a pharmacy, clinic, hospital, or nursing facility, from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person entered or remained concealed with intent to commit theft of a controlled substance. The bill also would make the theft of a controlled substance a third-degree felony, regardless of the value of the amount stolen.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1178 would give prosecutors a more powerful tool to stop professional drug thieves who are undeterred by current criminal penalties. The opioid abuse epidemic across the country has led to a dramatic increase in attempts to steal drugs, particularly from pharmacies and other premises that typically store controlled substances. This has led to an escalating competition between business owners, who must spend considerable sums to protect their properties, and organized criminals, who continue devising new ways to steal. This is costing businesses and the companies that insure them a great deal of money, and those costs are passed on to consumers who have a legitimate need for these and other medications provided by these businesses. Enhancing the penalty for burglary with intent to steal a controlled substance from a pharmacy, hospital, or similar facility would present a more effective deterrent against drug theft.

Under current law, the severity of punishment attached to theft is based on the value of the stolen goods. By enhancing the penalty for theft of any controlled substance regardless of its value, this bill could deter drug thieves in a way that the graduated approach in current law does not.

OPPONENTS SAY: While opioid abuse is a serious problem, HB 1178 inappropriately would punish the theft of even a trivial amount of a controlled substance as a third-degree felony. At a time when policy makers are recognizing the

onerous financial and moral burdens created by overly harsh criminal penalties, this bill could move Texas in the wrong direction.

NOTES:

A companion bill, SB 536 by Hinojosa, was referred to the Senate Criminal Justice Committee on February 8.

The Legislative Budget Board's fiscal note suggests an indeterminate increase in demand for correctional resources due to longer sentences that might result from HB 1178.