

BILL ANALYSIS

Senate Research Center

S.B. 359
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Intergovernmental Relations
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill addresses punishment levels for the offense of theft committed in evacuated areas or disaster areas. After Hurricane Ike, local officials brought to light the problem of looting in abandoned or evacuated areas. Section 31.03(f) (relating to certain offenses committed by actors that qualify for the next higher category of offense) of the Penal Code lists several specific theft offenses for which penalties are increased to the next higher category of offense.

S.B. 359 adds Section 12.50 (Penalty if Offense Committed in Disaster Area or Evacuated Area) to Subchapter D (Exceptional Sentences), Chapter 12 (Punishments), Penal Code, to provide that the punishment for an offense is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that is considered to be a disaster by certain government officials.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 12, Penal Code, by adding Section 12.50, as follows:

Sec. 12.50. PENALTY IF OFFENSE COMMITTED IN DISASTER AREA OR EVACUATED AREA. (a) Provides that the punishment for an offense, subject to Subsection (c), described by Subsection (b), subject to Subsection (c), is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that was, at the time of the offense subject to a declaration of a state of disaster made by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); the governor under Section 418.014 (Declaration of State of Disaster), Government Code; or the presiding officer of the governing body of a political subdivision under Section 418.108 (Declaration of Local Disaster), Government Code; or subject to an emergency evacuation order.

(b) Provides that the increase in punishment authorized by this section applies only to an offense under Section 22.01 (Assault), Section 29.02 (Robbery), Section 30.02 (Burglary), and Section 31.03 (Theft).

(c) Provides that if an offense listed under Subsection (b)(1) or (4) is punishable as a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. Provides that if the offense listed under Subsection (b)(3) or (4) is punishable as a felony of the first degree, the punishment for that offense is prohibited from being increased under this section.

(d) Provides that it is a defense to a charge under Subsection (b)(4) that the conduct in question meets the elements of necessity outlined in Section 9.22 (Necessity).

(e) Defines "emergency evacuation order."

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.