

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 158
 SPONSOR: Senator Villalobos
 SUBJECT: Facilitating or Furthering a Burglary
 DATE: April 9, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Noble</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 158 provides that a person who, for the purpose of facilitating or furthering the commission or attempted commission of a burglary of a dwelling, damages a wire or line that transmits or conveys telephone or power to that dwelling, impairs any other equipment necessary for telephone or power transmission or conveyance, or otherwise impairs or impedes such telephone or power transmission or conveyance commits a third degree felony.

The bill ranks the new offense in Level 2 of the Criminal Punishment Code offense severity ranking chart.

This bill creates s. 810.061, F.S.

II. Present Situation:

Burglars sometimes damage wires or lines that transmit or convey telephone or power to a dwelling prior to entry into a dwelling. By impairing or impeding transmission or conveyance of telephone and power to the dwelling, the burglar intends to prevent the occupant of the dwelling from calling law enforcement, disable any burglar alarm system and disable floodlighting and other lighting that reveals the burglar and makes the burglar an easier target, if the resident has a weapon.

There are several offenses that may punish this act. *See, e.g.,* s. 806.13, F.S. (criminal mischief) and s. 812.14, F.S. (trespass and larceny with relation to utility fixtures). Neither of these offenses specifically speaks to impairing or impeding transmission or conveyance of telephone or power to a dwelling for the purpose of facilitating or furthering the commission or attempted

commission of a burglary of a dwelling. Those two offenses appear to be mainly concerned with the disruption of services and/or the monetary cost of the damage to property.

Section 806.13(1)(a), F.S., provides, in part, that it is unlawful to willfully and maliciously injure or damage, by any means, any real or personal property belonging to another. If the damage to such property is \$200 or less, it is a second degree misdemeanor. If the damage to such property is greater than \$200 but less than \$1,000, it is a first degree misdemeanor. If the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore, it is a third degree felony. If the person has one or more previous convictions for any of the noted violations, the misdemeanor is reclassified as a third degree felony.

Section 812.14(2)(a), F.S., provides, in part, that it is a first degree misdemeanor to “[w]illfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage”

Other offenses may apply in the context of this act if requisite elements of the offenses are met, such as burglary, theft and criminal trespass.

Additionally, a person who commits this act may be charged as an aider and abettor of the burglary under an aiding and abetting theory. The State must prove that the defendant’s disabling of the transmission or conveyance helped the person who actually committed the crime (caused, encouraged, incited, or otherwise assisted that person in committing the crime). *Shaw v. State*, 824 So.2d 265, 270 (Fla. 4th DCA 2002). The State must also prove that the defendant intended to participate in the crime. *Id.* There does not appear to be any case on point as to whether a jury can reasonably infer a defendant’s intent to participate in a burglary of a dwelling based solely on proof that the defendant impaired or impeded transmission or conveyance of telephone or power to that dwelling. However, it seems probable that these facts, in combination with other surrounding circumstances (*e.g.*, defendant’s proximity to the crime scene), would be more than sufficient for a jury to reasonably infer that the defendant intended to participate in the burglary, if the jury elects to make that inference.

An aider or abettor is treated as a principal in the first degree and may be subject to the same punishment as the actual perpetrator of the burglary. *See* 777.011, F.S. It is “unnecessary to show that the principal perpetrator had been convicted of the same crime, ‘nor is it even necessary to show that he was convicted at all.’” *State. C.H.*, 747 So.2d 450 (Fla. 4th DCA 2000), summarizing and quoting from the holding in *Potts v. State*, 430 So.2d 900, 902 (Fla. 1982).

Facilitating or furthering a particular crime or any crime has been treated and punished in a number of different ways. *See, e.g.*, ss. 775.31, 817.569, 843.11, 847.0135, 860.065, 934.215, F.S. Section 775.31, F.S., reclassifies the felony or misdemeanor degree of any offense that facilitates or furthers any act of terrorism. Section 817.569, F.S., provides that it is a third degree felony to use a public record or information obtainable only in a public record to facilitate or further the commission of a felony. Section 843.11, F.S., provides that it is a second degree felony to convey into a place of confinement anything that is adapted or useful to aid a prisoner

in making his or her escape with the intent to facilitate such escape. Section 847.0135, F.S., provides that it is a third degree felony to transmit by computer certain information regarding a minor in order to facilitate sexual conduct of or with any minor. Section 860.065, F.S., provides that it is a third degree felony to attempt to obtain, solicit to obtain, or obtain any means of public or commercial transportation or conveyance with the intent to use such transportation or conveyance to commit any felony or facilitate the commission of any felony. Section 934.215, F.S., provides that it is a third degree felony to use a two-way communications device to facilitate or further the commission of any felony.

III. Effect of Proposed Changes:

Senate Bill 158 creates s. 810.061, F.S., a new section of the Florida Statutes, which provides that a person who, for the purpose of facilitating or furthering the commission or attempted commission of a burglary of a dwelling by any person, damages a wire or line that transmits or conveys telephone or power to that dwelling, impairs any other equipment necessary for telephone or power transmission or conveyance, or otherwise impairs or impedes such telephone or power transmission or conveyance commits a third degree felony.

The new section also provides that the term “burglary,” as used in the new section, has the same meaning as in s. 810.02(1)(b), F.S., which contains the most current offense of burglary. Further, the bill reenacts s. 810.02(1)(b), F.S.

Section 921.0022(3)(b), F.S., is amended to rank the new offense in Level 2 of the Criminal Punishment Code offense severity ranking chart. This ranking puts the new offense on the same severity level as the felony criminal mischief offense in s. 806.13(1)(b)3., F.S. (damage \$1000 or greater or interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service).

In a scenario in which the State has evidence to prove both that the defendant committed a burglary and committed this new offense, the defendant could be charged and convicted of both offenses, because, the act punished by the new offense is independent of the burglary and not inherent to its nature. Further, unlike aiding and abetting, the new offense does not require proof of intent to participate in the burglary. Also, unlike criminal mischief, the State does not have to prove that the damage to the property was willful or malicious.

In addition to the new offense being either a primary offense or additional offense, the new offense could be scored as a prior offense in the event the defendant recidivated, or could be counted as a prior qualifying offense for the purpose of punishment under the habitual offender provision.

Further, even if charging burglary is not an option, a prosecutor may want to charge the new offense, rather than aiding and abetting. With aiding and abetting, the prosecutor must still rely on the jury to make the inference of the defendant’s participation in the burglary from the evidence that the defendant impaired or impeded transmission or conveyance of telephone or power to a dwelling to facilitate or further the commission or attempted commission of a burglary of that dwelling. With the new offense, the prosecutor’s case rests on simply proving

that the defendant facilitated or furthered the burglary by impairing or impeding such transmission or conveyance.

The act takes effect on July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined SB 158 is likely to have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.