

SUBJECT: Using concealment to prove intent in theft cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Farrar, Nixon, Pitts, Solis
0 nays
3 absent — Greenberg, Hudson, Pickett

WITNESSES: For — James M. Kite, Pasadena Chamber of Commerce
Against — None
On — Sherri Wallace, assistant district attorney, Dallas County

BACKGROUND: Theft is defined in the Penal Code as unlawful appropriation of property with intent to deprive the owner of property.

DIGEST: HB 431 would allow evidence that a person has concealed or attempted to conceal another's property to be used to prove intent to deprive the owner of the property. The bill would take effect September 1, 1995.

SUPPORTERS SAY: HB 431 would help deter shoplifting by closing a loophole in Texas law that effectively restricts prosecution of shoplifters and costs business and consumers millions in stolen merchandise. Many prosecutors will not prosecute accused shoplifters unless the suspect has left the retail premises without paying for merchandise. This reluctance stems from the practice of shoplifters who are still in a store claiming they intended to pay for the merchandise. Yet many employers prohibit employees from chasing shoplifters outside of a store because of the danger of pursuing shoplifters into a parking lot or mall. Persons pursuing shoplifters have been struck by vehicles, shot at and assaulted.

HB 431 would facilitate the prosecution of accused shoplifters apprehended in a store while holding concealed merchandise without jeopardizing the safety of store employees. It is unlikely that store owners would abuse the law by requesting prosecution of persons who have innocently placed

something in their pockets. Such unreasonable demands would hurt a store's reputation with customers and foster ill will from shoppers.

HB 431 would not make a substantive change in the theft statutes but would simply allow prosecutors to use concealment of goods to prove a person's *intent* in theft cases.

OPPONENTS
SAY:

HB 431 could easily lead to shoplifting prosecutions of innocent persons who had no intention of stealing merchandise and harassment of persons merchants may consider undesirable, such as young minority-group members. Many shoppers innocently place an item in a pocket or bag while continuing to shop, with every intention of paying for it.

"Attempted concealment" is too broad a standard. Shoppers may absentmindedly place an item in a pocket or bag — to free a hand while comparing the item to other merchandise, for instance — then forget about them until confronted by a store employee, could be charged with theft.

HB 431 is unnecessary. Shoplifters apprehended inside a store already may be prosecuted when sufficient proof is found, as when suspects are found with 10 pairs of blue jeans under their own clothing.