

SUBJECT: Penalty for theft of \$1,500 to \$20,000 from elderly individual

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Place, Talton, Dunnam, Farrar, Galloway, Keel, Nixon
0 nays
2 absent — Hinojosa, A. Reyna

WITNESSES: For — Mary Lee Conner, AARP; Steve Lyons, Houston Police Department; John W. Holtermann, Texas Silver Haired Legislature; Emil E. Fisher and Edward Ramirez, Greater San Antonio Crime Prevention Commission; Tom DeChant, Senior Citizens Task Force; Doloris Spence-Fritze; Marie M. Health; Laura G. Carpenter; Jim Duncan; Edward G. Witt; Juana Pedro Maldonado; Gladys Williams
Against — None

BACKGROUND : Penal Code sec. 31.03 increases the penalties for theft of property as the value of the property increases. Theft of property worth \$1,500 or more but less than \$20,000 is a state jail felony, with a penalty of six months to two years in a state jail and an optional fine of up to \$10,000. Theft of property worth \$20,000 to \$100,000 is a third-degree felony, with a penalty of two to 10 years in prison and an optional fine of up to \$10,000.

DIGEST: HB 195 would make theft of \$1,500 to \$20,000 from an elderly individual a third-degree felony. Elderly individuals would be defined as persons age 65 or older.
HB 195 would take effect September 1, 1997.

SUPPORTERS SAY: HB 195 is necessary to help deter theft from elderly Texans and to appropriately punish persons who take advantage of the elderly. Theft from elderly persons is a serious offense against some of the most vulnerable members of society who deserve special protections.

Unscrupulous scam artists often target the elderly because they perceive the elderly to be defenseless. Common scenarios include repairmen who use bogus home repair scams and perform work that is unnecessary or shoddy or perform no work at all, then charge inflated prices or demand more money than was agreed upon. Other scams include notification of bogus prizes that lure the elderly into giving out their credit card numbers or sending money to the scam artist.

The penalty established by HB 195 would be in line with the seriousness of the offense of theft from an elderly person. Preying on the elderly should carry a stiffer penalty than ordinary theft. Financial losses suffered by the elderly are most often in the range set by the bill for the enhanced penalty, \$1,500 to \$20,000.

Although the 1993 Penal Code established broad categories and general provisions, in this situation the framework is inadequate since the elderly are specifically preyed upon by thieves. HB 195 would be in line with other sections of the Penal Code that give special protections to the elderly. For example, Penal Code sec. 22.04 makes it a crime to injure a child, elderly individual or disabled individual, and sec. 29.03 allows robbery to be an aggravated offense in some circumstances if an elderly person is robbed.

**OPPONENTS
SAY:**

The careful balance of offenses and penalties created in the 1993 Penal Code should not be distorted with exceptions for special groups. The new Penal Code was carefully crafted to encompass broad language and eliminate special provisions.

The 1993 Penal Code established punishments for property crimes according to a “value ladder” that takes into account the value of the theft. HB 195 would be an warranted exception to that value ladder. Enhancing the penalty for theft of \$1,500 to \$20,000 from a state jail felony to a third-degree felony would be inappropriate. This level of property crime should be punished as a state jail felony because the state jail system was designed to handle low level property offenders. Felony punishments carry prison terms and should be reserved for the largest property offenses and crimes against persons.

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In addition, the 1993 Penal Code was written to try and avoid distinctions among victims for low levels of harm. A special category for an offense such as injury to an elderly individual may be justified, but theft is a property crime that should not carry a distinction based on the victim.

OTHER
OPPONENTS
SAY:

HB 195 would not require that a thief know that a victim is an elderly person. It would be unfair to enhance a penalty based on the status of a victim without requiring that the offender know the victim was in the special category.

NOTES:

The 74th Legislature in 1995 approved an identical bill, HB 145 by B. Turner, on the Local and Consent Calendar, but it died in the Senate Criminal Justice Committee.