

SUBJECT: Grand jury disqualification for persons convicted of theft

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Hinojosa, Dunnam, Garcia, Green, Keel, Nixon, Smith, Talton
0 nays
1 absent — Wise

WITNESSES: None

BACKGROUND: Under Code of Criminal Procedure, Art. 19.08, potential grand jurors are disqualified if they have pending misdemeanor theft or felony charges. A person convicted of misdemeanor theft may serve as a grand juror, while a person convicted of any felony may not serve. Misdemeanor theft covers property or services worth less than \$1,500.

DIGEST: HB 881 would amend the Code of Criminal Procedure, Art. 19.08(4), to disqualify a person convicted of misdemeanor theft from being selected for or serving on a grand jury.

HB 881 would take effect September 1, 1999.

SUPPORTERS SAY: HB 881 would correct an inconsistency in the qualifications for grand jury service. It makes no sense for a person convicted of misdemeanor theft to be able to serve as a grand juror when people who only are charged with misdemeanor theft cannot serve. This inconsistency does not exist in the qualifications for serving on a trial or petit jury. The criminal history requirements for grand jury service should be the same as those for trial or petit jury service.

Texas has an obligation to ensure the purity and effectiveness of the grand jury system. A conviction for theft, a crime of moral turpitude, shows that a person does not have the requisite character to serve on a grand jury and may have a bias against the state.

If a defendant appealed a conviction because a grand juror had been convicted of theft, the defendant still would have to prove harm to get appellate relief. This high hurdle would prevent the needed change made by HB 881 from being abused as grounds for appeal.

OPPONENTS
SAY:

People should not be prohibited from grand jury service for misdemeanor thefts that occurred decades ago or involved amounts of less than \$5. The law should at least be limited in both time and amount so that people are not disqualified for youthful indiscretions involving theft of insignificant amounts.

Limiting the pool of potential jurors as proposed in HB 881 would make it more difficult to organize a grand jury that represents the population. Current law does not require that grand jurors and trial or petit jurors have the same qualifications. Grand jurors do not decide guilt or innocence and are not selected by the same process as are trial or petit juries.

HB 881 could provide defendants with an additional basis for appeal if a convicted thief was found to have served on the grand jury that indicted the defendant. The current law has been in effect for decades and has caused no problems for either prosecutors or defendants.

OTHER
OPPONENTS
SAY:

In determining the qualifications of grand jurors, theft should not be treated differently from other misdemeanors that are based on a value range. This bill would prevent someone convicted of misdemeanor theft for stealing a \$1,499 stereo from serving on a grand jury, but someone convicted of criminal mischief for destroying the same stereo would not be disqualified.

NOTES:

The companion bill, SB 216 by Duncan, passed the Senate on March 4 by voice vote. The House Criminal Jurisprudence Committee reported SB 216 favorably, without amendment, on March 23, making it eligible to be considered in lieu of HB 881.