

SUBJECT: State jail felony for theft of less than \$1,500 of certain types of wire

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Pena, Vaught, Riddle, Escobar, Hodge, Mallory Caraway,  
Pierson, Talton

0 nays

1 absent — Moreno

WITNESSES: For — Suzanne Jaroch, BNSF Railway; Scott Norman, Texas Association of Builders; Robert B. Ray, Union Pacific Railroad; (*Registered, but did not testify*: David Arterburn, United Transportation Union; Walt Baum, AECT, Association of Electric Companies of Texas; Todd Baxter, Texas Cable and Telecommunications Association; Henry Flores, EMBARQ; Bryan Gonterman, AT&T Texas; James Jones, representing Police Chief Harold Hurtt, Houston Police Department; Helen Knaggs, Verizon; Laura Matz, Texas Railroad Association; David Mintz, Texas Apartment Association; Ron M. Olson, Union Pacific Railroad; Rick A. Watson, representing David M. Kunkle, chief of Police, Dallas Police Department; Larry Zacharias, Texas Police Chiefs Association)

Against — (*Registered, but did not testify*: Will Harrell, ACLU)

BACKGROUND: Under Penal Code, sec. 31.03 punishments for theft generally are assigned by a value ladder that imposes more serious punishments as the value of the property stolen increases. Thefts are punished as misdemeanors if the value of the property is less than \$1,500.

It is a class C misdemeanor (maximum fine of \$500) if the value of the property is less than \$50; a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the value is \$50 or more but less than \$500; and a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the value is at least \$500 but less than \$1,500.

If the value of the property stolen is \$1,500 up to \$20,000 or involves certain quantities of livestock, it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Theft is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the value of the property is \$20,000 or more but less than \$100,000.

DIGEST:

HB 1766 would increase the penalties for the theft of insulated or noninsulated wire or cable that was at least 50 percent aluminum, bronze, or copper and worth up to \$1,500. Penalties would increase from misdemeanors to a state jail felony.

The bill would take effect September 1, 2007, and apply to offenses committed on or after that date.

SUPPORTERS  
SAY:

HB 1766 is necessary to address the growing problem of theft of certain types of wire. As the value of copper, aluminum, and bronze have increased, the number of these thefts are increasing and harming public safety, commerce, and consumers in Texas.

Certain industries in Texas, such as railroads and homebuilders, are particularly hard hit by the growing number of thefts of copper, aluminum, and bronze wire. For example, recently 22,000 feet of railroad wire was stolen in west Texas. When thieves cut the wires, signals to trains telling them when to stop and traffic crossing signals are disrupted. Trains must be stopped, crews sent out to make repairs, and dispatchers used to manage the trains. This causes trains to back up, sometimes blocking traffic, and causes commerce to slow.

In the homebuilding industry, theft of copper electrical wiring and copper coils from air conditioning units also are growing. Thieves cut out the wiring from houses under construction or steal the coils from an air conditioning unit. Homebuilders are having to pay millions for security to replace the wiring and to repair the damage done when thieves strike. This drives up the cost of the homes for consumers. An increasing number of thefts from churches also are occurring because they often are unattended in the evening. These thefts are dangerous for the thieves as some people have been electrocuted and died when trying to steal the wiring.

HB 1766 would address this problem by making the punishment for all thefts of wire up to \$20,000 punished as a state jail felony, because even low-value thefts can have serious effects. This more accurately would reflect the damage even a small theft can cause and would help deter them. Punishing these offenses according to the value ladder in the Penal Code

does not take into account the public safety costs and the costs of repairing property damaged when wires are stolen. In some cases, these thieves have been charged with misdemeanor thefts more than once and do not seem deterred by the punishment. The theft statute already makes many exceptions to the value ladder for property and circumstances that do not fit within its framework. For example, punishments for thefts of livestock and of firearms vary from the value ladder.

It would be appropriate to punish all thefts of wire under \$20,000 as state jail felonies because the state jail system was designed to handle low-level property offenses, and HB 1766 would not violate this principle. As always, courts would use discretion in imposing punishments within the allowed range. The fiscal note for HB 1766 says it would have no significant fiscal implication to the state, and the criminal justice impact statement says it would not result in a significant impact on state agencies.

OPPONENTS  
SAY:

HB 1766 is unnecessary because the Penal Code adequately and appropriately punishes theft according to the value of the property stolen. The value ladder in the Penal Code is designed to minimize special punishments for certain classes of property so that thefts are treated fairly. Current law appropriately applies this ladder to punish the theft of wire according to the value of the property, and there is no compelling reason to vary from the value ladder for these crimes.

If the value of wire stolen is at least \$1,500, the crime already is punished as a state jail felony, and it is only the lower-value amounts that are misdemeanors. It would be inappropriate to punish thefts of smaller amounts of wire as more than misdemeanors. Some of these incidents are low-level thefts of a small amount of copper from an air conditioning unit, and this should not be treated the same as a theft of a large volume of wire. Under current law, low-level repeat offenders can have their punishments increased, and this is more appropriate than increasing the punishments across the board.

The Legislature should not enhance penalty punishments, especially by raising some property crimes from misdemeanors to felonies. Enhancing punishments generally does not deter crimes such as theft when offenders believe there is a low probability of being caught. This is especially true if it is a low-level theft done to support a drug habit. Enhancing the punishment for small-time thefts of wire that are now misdemeanors to state jail felonies would shift responsibility for confining these offenders

from the counties to the state, which could burden state resources. It would be especially unwise to confine more petty thieves in state facilities when those facilities are operating at capacity now.