

SUBJECT: State jail felony for theft of personal identifying information

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Pena, Hodge, Raymond, Reyna

0 nays

3 absent — Denny, Escobar, P. Moreno

WITNESSES: None

BACKGROUND: Under Penal Code, sec. 31.03, the theft offense generally is punished according to the value of the property stolen. Theft is punished as a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if:

- the value of the property stolen is at least \$1,500, but less than \$20,000;
- the value of the stolen property is less than \$1,500, but the defendant has two or more previous theft convictions; or
- the property is a specified number of livestock, stolen from another's person or from a human corpse or grave, a firearm, or an official ballot or official carrier envelope for an election.

Under Penal Code, sec. 32.51, it is a state jail felony, under the offense of fraudulent use or possession of identifying information, to obtain, possess, transfer, or use identifying information of another person without the other person's consent and with the intent to harm or defraud another.

Sec. 32.51 defines identifying information as information that alone or in conjunction with other information identifies an individual, including:

- a name, social security number, date of birth, and government-issued identification number;
- unique biometric data;
- unique electronic identification number, address and routing code, and financial institution account number; and

- telecommunication identifying information or access device.

**DIGEST:** HB 752 would make theft of identifying information a state jail felony regardless of the value of the information.

The bill would take effect September 1, 2005, and apply only to offenses committed on or after that date.

**SUPPORTERS SAY:** HB 752 would help combat identity theft by allowing some thefts of personal information to be prosecuted under the general theft statute. For the offense of fraudulent use or possession of identifying information (sec. 32.51), prosecutors must prove intent to harm or defraud another. In some identity theft situations, this can be difficult if the thief has stolen another's private information but not yet used it or if the thief possesses the private information of only one person. Other statutes, such as those penalizing forgery or credit card abuse, also contain elements or requirements that do not quite fit the actions contemplated by HB 752.

For example, if someone has stolen another's checks, police officers or prosecutors might be reluctant to pursue the case under sec. 32.51 if the checking account was quickly closed, and they might be reluctant to pursue the case under the theft statute because the checks themselves have little value. In addition, if the thief has not yet tried to pass off a forged check, prosecution under the forgery statute would be difficult. However, because the information the thief can get from the checks could be used to commit identity theft, the thief should be prosecuted before the harm to a victim becomes more serious.

HB 752 would address this problem by giving prosecutors the flexibility to prosecute as a state jail felony under the theft statute someone who steals another's identifying information regardless of its value. This statute requires generally that prosecutors prove property unlawfully was appropriated with the intent to deprive the owner of it. Because of the seriousness of the crime of identity theft, the huge monetary and emotional costs to victims, and the growth in the number of these crimes, prosecutors should have as many tools as possible to combat the crime and the state should enact strong deterrents.

Subsection (e) of Penal Code sec. 32.51, part of the statute for fraudulent use or possession of identifying information, allows prosecution either under that section or under another section if a person's conduct is an

offense under more than one Penal Code section. This allows prosecutors to charge a person with whichever crime best fits the facts of a case.

HB 752 would make theft of identifying information a state jail felony, the same as the punishment under sec. 32.51, fraudulent use or possession of identifying information. This would be the appropriate punishment for theft of identifying information because state jail felonies were designed to include non-violent, property offenses.

This theft offense could not be placed into the standard framework of the value ladder, which imposes stiffer penalties as the value of the item stolen increases, because a dollar value cannot be placed on a person's identifying information. The theft statute contains several items not subject to the value ladder, and HB 752 would just add one more appropriate item to that list.

The criminal justice impact statement for HB 752 states that the increased workload and demand for resources resulting from the bill probably would not be substantial. Because the actions described by HB 752 could be prosecuted under other provisions providing for state jail felonies, the bill should not result in a significant increase in the number of admissions to state facilities.

**OPPONENTS  
SAY:**

HB 752 is unnecessary because current laws already allow the prosecution of persons who steal identifying information. Penal Code sec. 32.51 makes the use or possession of such information a crime and rightfully requires that the person with the information have the intent to harm or defraud another. This ensures that persons are not convicted of a felony offense unless they intended to commit a serious harm. Other statutes, such as those penalizing forgery or credit card abuse, also can be used to prosecute actions that result from stealing identifying information.

The Penal Code's theft statute was designed to assign punishments based on the value of the item stolen, and HB 752 would add yet another exception to this framework. As more exceptions are added and special punishments for certain classes of property are enacted, the statute could lose its capacity fairly to punish different levels of crimes.

**OTHER  
OPPONENTS  
SAY:**

Any offense that could send more offenders to state correctional facilities should be carefully scrutinized. Current projections estimate that the state will run out of space in state correctional facilities some time this summer,

and HB 752 could exacerbate this situation. State facilities should be reserved for violent or repeat offenders, and lower level, non-violent property offenders might best be handled on the local level.

NOTES: The companion bill, SB 1220 by Ellis, has been referred to the Senate Criminal Justice Committee.