

SUBJECT: Prohibiting setting false alarms to distract from another theft

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Pena, Vaught, Riddle, Escobar, Talton
2 nays — Hodge, Mallory Caraway
2 absent — Moreno, Pierson

WITNESSES: For — *(Registered, but did not testify:* Ted Heydinger, Walgreens; Jay Howard, Wal-Mart Stores Inc.; Gary Huddleston, Kroger Food Stores; Patrick Key, Randalls/Tom Thumb Food Markets; Phil Metzinger, Brookshire; Karen Reagan, Texas Retailers Association; Brian Yarbrough, The Home Depot)

Against — Benny Hernandez, American Civil Liberties Union of Texas

BACKGROUND: Penal Code, sec. 31.03 defines theft as when a person unlawfully appropriates property with intent to deprive the owner of that property. Penal Code, sec. 31.03 (e) (1) provides that a theft is a class C misdemeanor (maximum fine of \$500) if the value of the property stolen is less than \$50 or less than \$20 if the property is stolen by passing a bad check; and sec. 31.03 (e) (2) makes it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the person had been previously convicted for stealing property worth less than \$50 or stealing property worth less than \$20 by passing a bad check.

Penal Code, sec. 31.03 (f) provides enhancement to penalties if theft is committed by a public servant or a government contractor or if the theft was committed against an elderly person.

DIGEST: HB 3247 would amend Penal Code, sec. 31.03 (f) and would enhance the penalty if a person was shown at trial to have intentionally, knowingly, or recklessly caused an alarm to sound or otherwise become activated during the commission of a theft. The penalty would be enhanced to either a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) or class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), depending on whether it was a first or second offense.

The bill takes effect on September 1, 2007.

**SUPPORTERS
SAY:**

Shoplifters sometimes deliberately set off a store's alarm system to distract security personnel while they or their confederates flee during the resulting confusion. They only are updating the timeless tactic of creating a distraction — such as setting a fire down the street or having an accomplice create a scene — to execute a theft. Setting off an alarm could cause panic and put the safety of other shoppers at risk. Enhancing the penalty could serve to deter these stratagems.

Setting alarms to create distractions imply a degree of planning and possible conspiracy. These offenses should be punished more severely.

Police and prosecutors should be allowed to exercise their discretion in prosecuting these crimes, but they need the effective tools. The fiscal note projects that the cost of the bill would vary according to how many such offenses might occur and the court's disposition of those cases. It would not significantly increase the population of county jails.

**OPPONENTS
SAY:**

Enhancing penalties does not necessarily deter crime. Those charged with class B or class A misdemeanors could be liable for jail sentences, and county correctional facilities have become increasingly overcrowded. It would cost taxpayers additional money to incarcerate these individuals and not necessarily improve public safety.

Misdemeanors often are crimes of impulse and opportunity. Offenders, particularly juveniles, should not be subjected to enhanced penalties.