

- SUBJECT:** Enhancing the penalty for theft from a nonprofit organization
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo
- 0 nays
- 2 absent — Hodge, Vaught
- WITNESSES:** For — Allison Palmer, District Attorney's Office for the 51st Judicial District; (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney's Office; John Hubert)
- Against — None
- BACKGROUND:** Sec. 31.03(e), Penal Code, contains the penalty ladder for theft under which the penalty for theft increases as the worth of the stolen property increases.
- Sec. 31.03(f), Penal Code, increases the penalty for theft to the next higher category of offense if:
- the actor was a public servant at the time of the theft and the property came into the actor's possession by virtue of his or her status as a public servant;
 - the actor was a government contractor at the time of the theft and the property came into the actor's possession by virtue of the contractual relationship; or
 - the owner of the stolen property is an elderly individual.
- DIGEST:** HB 671 would enhance the penalty for theft to the next higher category of offense when committed against a nonprofit organization. First-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) would not be enhanced. A nonprofit organization would have to meet the definition in 501(c)(3) of the Internal Revenue Code of 1986 for the penalty enhancement to apply.

The bill would apply to offenses committed on or after its September 1, 2009, effective date.

**SUPPORTERS
SAY:**

HB 671 would add a penalty enhancement to punish more appropriately those who prey on groups that help the less fortunate and the most vulnerable. Charities across the country are suffering from theft. In 2006, nonprofits may have lost as much as \$40 billion to fraud, almost 13 percent of the \$300 billion given to charities that year. Theft has become such a problem that in 2008, the IRS added a requirement that charities disclose on their tax forms whether they have suffered theft, embezzlement, or fraud during the prior year.

Most of the theft from nonprofits is committed by employees and volunteers or from the clients these groups serve. This is especially egregious and deserves an enhanced penalty because these persons take advantage of their relationship with the nonprofit. Nonprofits are especially vulnerable to loss because of their often-thin operating budgets and unpredictable sources of income. Additionally, nonprofits tend to have smaller staffs and often lack the ability or the funding to monitor closely accounting practices to prevent theft.

A penalty enhancement for theft against nonprofits would help deter this crime. All too often, those who steal from nonprofits receive a slap on the wrist. Thieves who receive an enhanced penalty, pay restitution, and suffer either incarceration or probation would be much less likely to reoffend because they would fear the stiffer penalty.

An enhancement would be appropriate in this case because nonprofits often are set up to distribute financial assistance, making them especially vulnerable to fraud. Those who target nonprofits almost always know that they are taking from a charitable organization because nonprofits usually hold themselves out as such.

A penalty enhancement also would discourage dishonest people from volunteering and would encourage donations, as donors would feel safer about the resources they contribute to nonprofits.

The criminal justice system is currently operating below capacity and will have the resources to process and incarcerate any offenders whose penalties would be enhanced by HB 671.

OPPONENTS
SAY:

HB 671 is not needed because charities already are protected by existing theft laws. When the Penal Code was revised in 1993, the Legislature decided there should not be varied treatment of victims subject to similar harm. The law on theft already takes into account the seriousness of any particular instance of theft by increasing the penalty as the value of the stolen properties increases. Under current law, the theft of property worth more than \$1,500 is punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). Under HB 671's proposed enhancement, the theft of \$500 to \$1,500 from a nonprofit would be punishable as state-jail felony.

Not all nonprofit agencies deserve special protections simply because they are "not-for-profit." Many organizations have decided to adopt the nonprofit business model for tax purposes. Many still have massive overhead costs and have well-paid executives and staff. While the vast majority of nonprofits perform critical services and relief work, they are too varied a class to be set aside for special protections.

A penalty enhancement would not deter crime. Theft often is a crime of opportunity. In the heat of the moment, an actor is not thinking about possible penalties or enhancements. HB 671 would enhance the penalty for theft even if the actor did not know he or she was stealing from a nonprofit or intend to steal from a nonprofit. HB 671 has no requirement that the actor intended to steal from a nonprofit. Unlike other classes of victims, it might not always be immediately obvious that an organization happens to be a nonprofit.

Texans cannot afford to enhance criminal penalties when existing punishments are severe and state budgets are tight. The criminal justice system already faces a resource shortage, and incarcerating prisoners for longer periods of time would strain the system further.