

**SUBJECT:** Criminal offense for keeping library materials

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Place, Talton, Galloway, Keel, Nixon, A. Reyna  
0 nays  
3 absent — Dunnam, Farrar, Hinojosa

**WITNESSES:** For — Catherine Ensign, Texas Library Association; Susan Mann  
Against — None

**BACKGROUND :** The Penal Code provisions on theft provide that an offense is committed when a person appropriates property without the owner's consent and with intent to deprive the owner of the property. Theft of service is an offense committed when a person, with intent to avoid payment for service provided for compensation, controls property held under a written rental agreement beyond the expiration of the rental period without consent from the owner. Offenses are penalized according to the value of the service stolen.

**DIGEST:** HB 237 would expand the Penal Code's theft of service provisions to encompass overdue library materials. Theft of service would include situations where a person intentionally held under a written borrowing agreement property belonging to a public library beyond the expiration of the borrowing period without the library's consent. Intent to improperly hold property would be presumed if a person failed to return the overdue materials before the 10th day after receiving an overdue notice.

If the value of the property was less than \$500, the offense would be a class C misdemeanor (maximum penalty of \$500 fine).

HB 237 would take effect September 1, 1997, and apply to offenses committed on or after that date.

SUPPORTERS  
SAY:

HB 237 would allow the recovery of valuable state and local resources that are currently disappearing at an alarming rate. Each of the 500 public libraries in Texas has an average of \$29,000 worth of materials so long overdue that they are presumed lost. In total, this amounts to an estimated \$14.5 million in lost materials, over half the total amount spent annually on public library materials.

Theft of library materials now goes unprosecuted because of gaps in the laws covering similar crimes. Prosecution for general theft requires that an item be taken without the owner's effective consent. In the case of library materials, the library has given its consent for the borrower to remove the materials. Under theft of service provisions, prosecution is complicated by a requirement that a person has to wrongly obtain a service knowing it is provided only for compensation. Library materials, of course, are provided without charge to borrowers. HB 237 would close this gap in state law.

HB 237 would not penalize individuals who failed to return materials out of sheer forgetfulness. People would not be subject to prosecution until the 10th day after they received an overdue notice from a library. Since most libraries send overdue notices out weeks after due dates, ample time would be allowed for the return of materials. It is likely that anyone keeping materials after that time is intentionally keeping them.

Cities could pass ordinances addressing the problem of lost library materials, but counties have no ordinance-making authority. As a result, the 105 county libraries in Texas have no recourse for recovering lost materials. HB 237 would provide a uniform standard for libraries across the state; in fact, 58 percent of public librarians said they would use such authority to track down missing items.

Whether intentional or not, the loss of library materials is serious, both to the libraries themselves and to other patrons who want to read or use lost materials. The penalties HB 237 would provide are commensurate with the offense. For overdue materials valued at less than \$500, the offense would be a Class C misdemeanor, penalized only by a \$500 fine. Most library materials have an average value of less than \$30 per item; an individual would have to have kept almost 20 items before the offense would be

considered a Class A misdemeanor, incurring up to one year in jail and a \$2,000 fine.

OPPONENTS  
SAY:

HB 237 would criminalize forgetfulness — something that most people have been guilty of and that creates relatively little harm. A variety of circumstances, from illness to vacation, could cause a person to miss the 10-day deadline for complying with an overdue notice and make them vulnerable to prosecution. Furthermore, libraries could opt to send overdue notices as soon as the day after the materials were due, making persons subject to arrest a little more than a week after the due date.

HB 237 could actually increase the theft of library materials by encouraging people to steal things outright instead of using the check out system. With the present system, libraries have a record of transactions and the means to pursue individuals who keep overdue materials.

Failure to return materials with a total value of \$500 or more would be a Class A misdemeanor, carrying a maximum penalty of up to a year in jail. Such a severe penalty would be overkill, dealing more harshly than the seriousness of the problem warrants.

NOTES:

The committee substitute would codify the offense under the theft of service section of the Penal Code rather than create a separate section.