

Senate Bill 82

Theft Is Not Armed Robbery

Senator Nancy Skinner, D-Berkeley

THIS BILL

California's robbery law allows prosecutors to charge some types of simple theft such as shoplifting or snatching a cell phone as felony robbery. The blurred interpretation between robbery and theft has resulted in convictions and lengthy prison sentences disproportionate to the crime.

SB 82 sets to establish a clear distinction between theft and robbery by creating a second category of petty theft for cases where no weapon was used and no one was seriously injured, but where there may have been an inadvertent use of force or perceived fear.

The Committee on the Revision of Penal Code, which includes judges in its membership, discussed at length the need to address the problem of theft being charged as robbery and recommended the code changes contained in SB 82. New York, Oregon, Illinois and Texas are among the states that have enacted similar statutes.

ISSUE

California's robbery statute has not been updated since 1872. The 150-year-old definition of robbery still allows people to be sentenced to substantial terms in prison for minor petty thefts where the incident involved a perception of fear or a very minimal use of force.

This is how it works. Under current law, a person who used minimal "force" or was perceived to invoke "fear" during a petty theft can be charged and convicted of robbery, which is a felony. The terms "force" and "fear" can be interpreted loosely. For example, someone accused of having made a verbal threat during a shoplifting incident, even when no force was used and no weapon was involved, can be charged with robbery. Likewise, if the person accused of shoplifting bumps into another customer or security guard while running out of the store causing no serious injury, their charge can be elevated to robbery. Data on such cases shows that such charges are much more likely when the shoplifter was a person of color. This leads to the law being applied unequally.

Unfortunately, these types of cases are all too common. For instance, a California woman was convicted of robbery, rather than shoplifting, after she resisted the restraint of two male security

guards who grabbed her by both arms and took her back into the store after she shoplifted deodorant, cheese, meat, and two avocados.

Individuals experiencing a mental health crisis or who have a developmental disability also have a higher likelihood of having their charge include force or fear.

Under current law, prosecutors can elect not to charge robbery when minimal force is used. However, that discretion is not always exercised resulting in many shoplifting or other petty theft crimes being elevated to robbery, a felony that carries up to a five-year prison sentence.

SOLUTION

SB 82 reforms California's 150-year-old statute to ensure that petty theft is no longer treated like armed robbery by doing the following:

- Creates a new category of "petty theft in the first degree" for thefts under \$950 that may involve force or fear **but did not** cause serious injury or the use of a deadly weapon. This new category includes a higher penalty than simple petty theft, and is punishable by up to one year of jail time and/or \$1,000 fine.
- Categorizes petty theft that does not involve any force or fear as "petty theft in the second degree" **which remains** punishable by jail time for up to six months and/or \$1,000 fine.
- Prohibits either category of petty theft from being charged as robbery or burglary.
- Applies this change retroactively allowing individuals convicted of robbery to apply for resentencing if they meet the criteria.

SUPPORT

Californians for Safety and Justice (Co-Sponsor)
California Public Defenders Association (Co-Sponsor)

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