

RÉSUMÉ DIGEST

SB 36

2022 Regular Session

Henry

Present law defines simple assault as an assault committed without a dangerous weapon. Present law further provides that whoever commits the simple assault is to be fined not more than \$200, or imprisoned for not more than 90 days, or both.

Proposed law would have retained present law and would have added that a crime is committed upon a store's or merchant's employee who is acting in the course and scope of his employment duties while the offender is engaged in the perpetration or attempted perpetration of theft. The offender would be fined not more than \$500 and imprisoned for not less than 15 days nor more than six months without the benefit of suspension of sentence.

Would have become effective August 1, 2022.

(Proposed to amend R.S. 14:38(B) and enact R.S. 14:38(C))

VETO MESSAGE:

"Please be advised that I have vetoed Senate Bill 36 of the Regular Session of 2022.

Senate Bill 36 expands the crime of simple assault and provides for increased penalties when an assault is committed upon a store employee during the commission of a theft. This bill would inappropriately take away the discretion of a court in sentencing by requiring a mandatory minimum sentence of fifteen days, without the benefit of suspension, for anyone convicted under this provision. Further, it is unnecessary as the court has discretion to impose a sentence of up to ninety days under current law.

In addition, under current law, prosecutors have the opportunity to charge further offenses depending on the circumstances. Pursuant to La. R.S. 14:65, simple robbery is the taking of anything of value belonging to another from the person of another or that is in the immediate control of another, by use of force or intimidation, but not armed with a dangerous weapon. Whoever commits simple robbery shall be fined not more than three thousand dollars, imprisoned with or without hard labor for not more than seven years, or both. In the event a store clerk is placed in reasonable apprehension of receiving a battery during the commission of a theft, simple robbery is a possible charge.

Under La. R.S. 14:64.1, first degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon. When the offender leads the store employee to believe the offender is armed with a dangerous weapon, the prosecutor may charge the offender with first degree robbery. Furthermore, this crime carries a sentence of imprisonment for not less than three years and for not more than forty years, without benefit of parole, probation or suspension of the sentence.

In situations where the offender is armed with a dangerous weapon during the commission of a theft and the store keeper is placed in fear of receiving a battery during the commission of the theft, it is an armed robbery. Under La. R.S. 14:64, whoever commits an armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence.

Each of the aforementioned crimes require the prosecutor to prove the offender engaged in the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation. If the store employee is placed in apprehension of receiving a battery, one must reasonably conclude the offender used "force or intimidation." Furthermore, when two or more offenders engage in the perpetration or attempted perpetration a crime the law of principals may be applied as all persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime are culpable.

Although Senate Bill 36 intends to increase penalties for offenders who intimidate store employees during the commission of a theft, the fact remains that there are numerous other crimes in existing law that prosecutors have the discretion to utilize in making charging decisions. Senate Bill 36 creates an unnecessary expansion of the criminal code and therefore, it has to be vetoed."