

2C:20-12 to 2C:20-15 ✓

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:20-12 to 2C:20-15; 2A:43A-11 (Theft of library materials
--disorderly persons)

LAWS OF: 1985 CHAPTER: 373

BILL NO: S722

Sponsor(s): Brown

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks
according to Governor's recommendations

Date of Passage: Assembly: May 6, 1985 Re-enacted 9-1-85

Senate: June 18, 1985 Re-enacted
9-12-85

Date of Approval: November 26, 1985

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments,
adopted 6-24-85 (with statement)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

"Kean signs a tough, new law covering thefts from libraries," 11-27-85
Trenton Times.

"Bill aimed at cutting theft from libraries is sent to governor," 11-19-85
Trenton Times.

(OVER)

"Librarians ready to throw the book at literate thieves," 12-17-85 Atlantic City Press.

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 722

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Senator BROWN

AN ACT concerning theft of library material ****[and supplementing chapter 20 of Title 2C of the New Jersey Statutes]****.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The following definitions apply to ****sections 2 through 4
1A of**** this act ****as they relate to the theft of library mate-
1B rials****:

2 a. "Library material" means any material regardless of phys-
3 ical form or characteristics, or any part thereof, belonging to, on
4 loan to, or otherwise in the custody of a library facility;

5 b. "Library facility" means any public library, any library of
6 an educational, historical, or charitable institution, organization or
7 society, **or** any museum**, or any repository of public
8 records]**.

1 ****[2. ***[**a.**]**** A person shall be guilty of the theft of
2 library material if **without authorization** he purposely takes
3 possession of, carries away, transfers or causes to be carried away
4 or transferred any library material or purposely conceals on his
5 person or otherwise any library material with the intention of
6 depriving the library facility of the use or benefit of the material
7 and the value of the material involved is less than \$200.00.]****
8 ***[**b. *A person shall be guilty of theft of library material if he*
9 *fails to return any library material borrowed from a library facility*
10 *contrary to the rules and regulations of the library after 30 days*
11 *have elapsed from the date of notice demanding return of the ma-*
12 *terial borrowed. This notice shall be by certified mail, return re-*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 14, 1984.

**—Assembly committee amendments adopted February 23, 1985.

***—Senate amendments adopted June 24, 1985.

****—Senate amendments adopted in accordance with Governor's recommendations September 9, 1985.

13 *ceipt requested, addressed to that person at the last address*
 14 *furnished to the library facility. The notice shall include a state-*
 15 *ment advising the borrower of the penalties for failure to return*
 16 *the material.**】****

1 ****【3. Theft of library material is a disorderly persons offense,
 2 except that notwithstanding the fine provided under N. J. S.
 3 2C:43-3, a person found guilty of the theft of library material
 4 shall be sentenced to pay a fine**, *restitution, or both,*** *【or
 5 restitution】* of not more than \$500.00 for a first offense, not less
 6 than \$100.00 and not more than \$500.00 for a second offense, and
 7 not less than \$250.00 and not more than \$1,000.00 for a third and
 8 any subsequent offense. Enforcement of the offense may be in the
 9 municipal court of the municipality where the library facility is
 10 located.】****

1 ****【4.】**** ****2.**** Any person who purposely conceals, on
 2 or off the premises of the library facility, upon his person or among
 3 his belongings, or upon the person or among the belongings of
 4 another, any library material shall be prima facie presumed to have
 5 concealed the material for the purpose of depriving the library
 6 facility of its use or benefit.

1 ****【5.】**** ****3.**** a. A law enforcement officer, a special
 2 officer, or an employee of a library facility who has probable cause
 3 for believing that a person has willfully concealed library material
 4 and that he can recover the material by taking the person into
 5 custody, may, for the purpose of attempting to recover the material,
 6 take the person into custody and detain him in a reasonable manner
 7 for reasonable time. Taking the person into custody shall not
 8 render the law enforcement officer, the special officer, or the em-
 9 ployee of a library facility civilly or criminally liable.

10 b. Any law enforcement officer who has probable cause for believ-
 11 ing that a person has committed the offense of theft of library
 12 material may arrest the person without warrant.

13-14 c. An employee of a library facility who causes the arrest of a
 15 person for theft of library material, as provided for in this act,
 16 shall not be civilly or criminally liable where the employee has
 17 probable cause for believing that the person arrested committed
 18 the offense of theft of library material.

1 ****【6.】**** ****4.**** All library facilities shall post at their
 2 primary entrances and exits a conspicuous sign to read as follows:
 3 IN ORDER TO PREVENT THE THEFT OF BOOKS AND
 4 LIBRARY MATERIAL, STATE LAW AUTHORIZES THE
 5 DETENTION FOR A REASONABLE PERIOD OF ANY
 6 PERSON USING THESE FACILITIES WHO IS SUSPECTED

7 OF COMMITTING ****["THEFT OF LIBRARY MA-
8 TERIAL."]** **A THEFT OF LIBRARY MATERIAL.** **

1 ****[7.]**** 5. a. As used in this section:

2 (1) "Library material" means any material regardless of physi-
3 cal form or characteristics, or any part thereof, belonging to, on
4 loan to, or otherwise in the custody of a library facility;

5 (2) "Library facility" means any public library, any library of
6 an educational, historical, or charitable institution, organization
7 or society, or any museum.****

8 ****b.**** Prior to bringing a civil action against any person
9 committing an offense that would constitute theft of library ma-
10 terial, the library facility shall notify the person in writing that
11 if he has not reimbursed the library facility for the fair market
12 value of the library material plus any costs including attorney's
13 fees, and damages within 15 days of the notice, that a civil action
14 may be brought. Thereafter, ****[where]** **if**** a civil
15 action is brought by the library facility, ****[they]** **the
16 library**** may recover the value of the library material, costs and
17 damages including attorney's fees.

1 ****[**8. This act in no way is to affect the penalty for the un-
2 authorized removal, alteration, defacement, mutilation or destruc-
3 tion of public records pursuant to R. S. 47:3-29.**]******

1 **[8.]** ****[**9.**]** ****6.**** This act shall take effect
2 immediately.

STATEMENT

This bill creates a new offense, "theft of library material," as a supplement to chapter 20 of Title 2C of the New Jersey Statutes, which deals with theft and related offenses.

Modeled after New Jersey's law on shoplifting (N. J. S. 2C:20-11), this bill takes in to consideration the special circumstances surrounding the theft of such items as books from a facility to which the public has relatively free access. The library's employees are faced with delicate decisions regarding how much authority they have over the alleged thief and how much force they can employ.

5722(1985)

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 722

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 1985

This bill, as amended by the committee, would create a specific disorderly persons offense to cover the theft of library material with a value of less than \$200.00. Under present law, the theft of anything valued at less than \$200.00 is a disorderly persons offense. Presumably, the theft of library materials valued at more than \$200.00 would be covered by the general theft sections of chapter 20 of the criminal code.

Like other disorderly persons offenses, the offense created by this bill would be punishable by up to six months imprisonment. However, while the general fine for a disorderly persons offense is up to \$1,000.00, this bill establishes a specific fine structure: up to \$500.00 for a first offense; between \$100.00 and \$500.00 for a second offense and between \$250.00 and \$1,000.00 for a third or subsequent offense. The bill also allows for an order of restitution. Other provisions of Senate Bill No. 722 are as follows:

1. Creates a presumption that a person who purposely conceals library material on his person or among his belongings did so for the purpose of depriving the library of the benefit or use of the material.

2. Provides that a law enforcement officer or a library employee with probable cause to believe a person is concealing library material may take the person into custody for a reasonable period of time. An officer or employee acting under this provision would not be subject to civil or criminal liability.

3. Provides that a law enforcement officer with probable cause to believe that theft of library material has occurred may arrest without a warrant.

4. Provides a library employee shall not be subject to civil or criminal liability for having a person arrested for theft of library materials where the employee had probable cause to believe that the person committed the theft.

5. Permits library facilities to post signs indicating that the detention of persons suspected of stealing library materials is authorized.

6. Provides that in a civil action against a person who steals library material, the library facility may recover the value of the library material, cost and damages including attorney's fees. Prior to bringing such a civil action, the library facility is required to notify the person that if the library is not reimbursed within 15 days, a civil action may be brought.

7. The committee amended the bill to make it clear that its provisions do not apply to State, county or municipal records. Theft of those materials would be covered by another law.

The committee noted for the public record that it is the opinion of the Attorney General that this area may already be covered by the criminal code. However, it was the collective opinion of the committee that the bill nevertheless serves a valuable public function.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 722

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 14, 1984

This bill would create a specific disorderly persons offense to cover the theft of library material with a value of less than \$200.00. Under present law, the theft of anything valued at less than \$200.00 is a disorderly persons offense. Presumably, the theft of library materials valued at more than \$200.00 would be covered by the general theft sections of chapter 20 of the criminal code.

Like other disorderly persons offenses, the offense created by this bill would be punishable by up to six months imprisonment. However, while the general fine for a disorderly persons offense is up to \$1,000.00, this bill establishes a specific fine structure: up to \$500.00 for a first offense; between \$100.00 and \$500.00 for a second offense and between \$250.00 and \$1,000.00 for a third or subsequent offense. Other provisions of S-722 are as follows:

1. Creates a presumption that a person who purposely conceals library material on his person or among his belongings did so for the purpose of depriving the library of the benefit or use of the material.

2. Provides that a law enforcement officer or a library employee with probable cause to believe a person is concealing library material may take the person into custody for a reasonable period of time. An officer or employee acting under this provision would not be subject to civil or criminal liability.

3. Provides that a law enforcement officer with probable cause to believe that theft of library material has occurred may arrest without a warrant.

4. Provides a library employee shall not be subject to civil or criminal liability for having a person arrested for theft of library materials where the employee had probable cause to believe that the person committed the theft.

5. Permits library facilities to post signs indicating that the detention of persons suspected of stealing library materials is authorized.

6. Provides that in a civil action against a person who steals library material, the library facility may recover the value of the library material, cost and damages including attorney's fees. Prior to bringing

such a civil action, the library facility is required to notify the person that if the library is not reimbursed within 15 days, a civil action may be brought.

The committee amendments add language to indicate that if an action is to constitute theft of library materials, that action must have been undertaken without authorization. The amendments also delete the phrase "or restitution" from the penalty section of the bill. It was felt that this section was meant to specify the amount of fines for theft of library services but that the amount of restitution ordered by the court should be dependent on the value of the material taken.

Senate Amendments
proposed by Sen. Brown (6/24/85)
to

Senate Bill No. 722 (Assembly Reprint)
sponsored by Senator Brown DCR

Amend:

Page	Sec.	Line	
1	2	1	Omit "a."
1-2	2	8-16	Omit in entirety

STATEMENT

S-722 deals with the theft of library material. The Assembly Judiciary Committee added language to S-722 indicating that a person would be guilty of theft of library material if the person fails to return borrowed material within 30 days after receiving notice demanding return. This amendment would delete that language.

ADOPTED

JUN 24 1985

SEP 9 1985

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 28, 1985

SENATE BILL NO. 722 (2nd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 722 (2nd OCR) with my objections, for reconsideration.

The purpose of this bill is to supplement Chapter 20 of Title 2C of the New Jersey Statutes by purportedly creating the offense of "theft of library materials." Senate Bill No. 722 (2nd OCR) creates a disorderly persons offense for anyone who, without authorization, purposely takes possession, carries away, transfers or causes to be carried away or transferred any library material or purposely conceals any library material on his person with the intention of depriving the library facility of the use or benefit of the material where the value of the library material involved is less than \$200.00. Anyone who purposely conceals library materials is presumed to have done so in order to deprive the library of its use or benefit.

Although Senate Bill No. 722 (2nd OCR) provides that the theft of library materials is a disorderly persons offense, the bill establishes its own fine structure. Under N.J.S.A. 2C:43-3 a person who has been convicted of a disorderly persons offense may be sentenced to pay a fine not to exceed \$1,000.00. Senate Bill No. 722 (2nd OCR), however, provides that a first offense will be punishable by a fine of not more than \$500.00; a second offense by a fine between \$100.00 and \$500.00; and a third or subsequent offense by a fine of between \$250.00 and \$1,000.00. As with other disorderly persons offenses, the disorderly persons offense Senate Bill No. 722 (2nd OCR) creates would still be punishable by up to six months imprisonment. Provision is made for the detention and arrest without warrant of those suspected of violating the act. Civil and criminal immunity is given to any law enforcement or special officer or library employee who causes such an arrest or detention in accordance with the act. The bill also requires that warning notices be posted in libraries. Provision is also made for civil actions against persons who commit the offense.

The general theft law, N.J.S.A. 2C:20-1 et seq., already encompasses the crime established by this bill. Stealing library materials is already a criminal offense under our general theft statute, which proscribes the stealing

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of property. A special theft statute dealing with library materials specifically makes no substantive addition to our law. Indeed, the bill constitutes a piecemeal approach to Title 2C. One of the major reasons Title 2A was repealed and Title 2C was substituted was to eliminate the piecemeal nature of numerous specialized crimes created in Title 2A. Title 2C was designed to centralize and streamline the State's Criminal Code by defining criminal conduct in a general and comprehensive fashion. This bill runs counter to that policy. In fact, N.J.S.A. 2C:20-2 specifically consolidates all theft offenses into one chapter of the Criminal Code. As I have indicated, while its subject matter is laudable, the conduct this bill attempts to proscribe is already proscribed in the general theft provisions of Title 2C.

In addition, this bill downgrades the current penalty provisions by reducing the possible maximum fine which could be imposed. Currently a judge could impose a \$1,000.00 fine on a first offense. This bill restricts a judge's discretion by limiting the amount of fine that could be imposed on a first or second offense. A judge could be faced with a person who committed his first theft of library materials offense, but who has a long record of various other theft offenses. In such a case, it is not appropriate to limit the judge's discretion in sentencing by limiting the possible maximum penalty just because this is the first time the person stole from a library. For these reasons, I recommend that the provisions creating an offense for the theft of library materials and a special fine structure for that offense be deleted from the bill.

The remaining sections of this bill merit enactment as they strengthen current law and help combat the theft of library materials. These provisions are as follows: a) creates a presumption that a person who conceals library material intends to steal it; b) provides that a policeman or library employee who has probable cause can detain a person suspected of library theft and the policeman or library employee shall not be held civilly or criminally liable; c) provides that a library employee who causes the arrest of a person for theft of library material shall not be civilly or criminally liable; d) requires the posting of a sign stating a person can be detained; and e) authorizes a library

to maintain a civil action for the fair market value of library material, attorneys fees and damages. I would have no objection to the bill if only these provisions were enacted into law. In essence, sections 1, 4, 5, 6 and 7 would remain in the bill and sections 2, 3 and 8 would be deleted.

Accordingly, I herewith return Senate Bill No. 722 (2nd OCR) for reconsideration and recommend that it be amended as follows:

Page 1, Title, Lines 1-2:

After "material" DELETE the balance of line 1 and "chapter 20 of Title 2C of the New Jersey Statutes" on line 2

Page 1, Section 1, Line 1:

After "to" INSERT "sections 2 through 4 of"; after "act" INSERT "as they relate to the theft of library materials"

Page 1, Section 2, Lines 1-7:

DELETE in their entirety

Page 2, Section 3, Lines 1-10:

DELETE in their entirety

Page 2, Section 4, Line 1:

DELETE "4." INSERT "2."

Page 2, Section 5, Line 1:

DELETE "5." INSERT "3."

Page 2, Section 6, Line 1:

DELETE "6." INSERT "4."

Page 2, Section 6, Line 7:

DELETE ""THEFT OF LIBRARY MATERIAL."" and INSERT "A THEFT OF LIBRARY MATERIAL."

Page 3, Section 7, Line 1:

DELETE "7." INSERT new subsection "5. a. As used in this section:

(1) "Library material" means any material regardless of physical form or characteristics, or any part thereof, belonging to, on loan to, or otherwise in the custody of a library facility;

(2) "Library facility" means any public library, any library of an educational, historical, or charitable institution, organization or society, or any museum."

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Page 3, Section 7, Line 1:

Before "Prior" insert new subsection designation "b."

Page 3, Section 7, Line 7:

DELETE "where" INSERT "if"

Page 3, Section 7, Line 8:

DELETE "they" INSERT "the library"

Page 3, Section 8, Lines 1-3:

DELETE in their entirety

Page 3, Section 9, Line 1:

DELETE "9." INSERT "6."

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel