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SENATE BILL 5343

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State of Washington

60th Legislature

2007 Regular Session

By Senator Kline

Read first time 01/17/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to crimes against property; amending RCW 9A.48.070,  
2 9A.48.080, 9A.48.090, 9A.56.030, 9A.56.040, 9A.56.050, 9A.56.060,  
3 9A.56.096, 9A.56.150, 9A.56.160, 9A.56.170, and 9.94A.535; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended  
7 to read as follows:

8 (1) A person is guilty of malicious mischief in the first degree if  
9 he or she knowingly and maliciously:

10 (a) Causes physical damage to the property of another in an amount  
11 exceeding ((one)) five thousand ((five-hundred)) dollars;

12 (b) Causes an interruption or impairment of service rendered to the  
13 public by physically damaging or tampering with an emergency vehicle or  
14 property of the state, a political subdivision thereof, or a public  
15 utility or mode of public transportation, power, or communication; or

16 (c) Causes an impairment of the safety, efficiency, or operation of  
17 an aircraft by physically damaging or tampering with the aircraft or  
18 aircraft equipment, fuel, lubricant, or parts.

19 (2) Malicious mischief in the first degree is a class B felony.

1       **Sec. 2.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read  
2 as follows:

3       (1) A person is guilty of malicious mischief in the second degree  
4 if he or she knowingly and maliciously:

5       (a) Causes physical damage to the property of another in an amount  
6 exceeding ~~((two))~~ seven hundred fifty dollars; or

7       (b) Creates a substantial risk of interruption or impairment of  
8 service rendered to the public, by physically damaging or tampering  
9 with an emergency vehicle or property of the state, a political  
10 subdivision thereof, or a public utility or mode of public  
11 transportation, power, or communication.

12       (2) Malicious mischief in the second degree is a class C felony.

13       **Sec. 3.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read  
14 as follows:

15       (1) A person is guilty of malicious mischief in the third degree if  
16 he or she:

17       (a) Knowingly and maliciously causes physical damage to the  
18 property of another, under circumstances not amounting to malicious  
19 mischief in the first or second degree; or

20       (b) Writes, paints, or draws any inscription, figure, or mark of  
21 any type on any public or private building or other structure or any  
22 real or personal property owned by any other person unless the person  
23 has obtained the express permission of the owner or operator of the  
24 property, under circumstances not amounting to malicious mischief in  
25 the first or second degree.

26       ~~((2))~~ Malicious mischief in the third degree ~~((under~~  
27 ~~subsection (1)(a) of this section is a gross misdemeanor if the damage~~  
28 ~~to the property is in an amount exceeding fifty dollars.~~

29       ~~(b) Malicious mischief in the third degree under subsection (1)(a)~~  
30 ~~of this section is a misdemeanor if the damage to the property is fifty~~  
31 ~~dollars or less.~~

32       ~~(c) Malicious mischief in the third degree under subsection (1)(b)~~  
33 ~~of this section)) is a gross misdemeanor.~~

34       **Sec. 4.** RCW 9A.56.030 and 2005 c 212 s 2 are each amended to read  
35 as follows:

1 (1) A person is guilty of theft in the first degree if he or she  
2 commits theft of:

3 (a) Property or services which exceed(s) (~~one~~) five thousand  
4 (~~five hundred~~) dollars in value other than a firearm as defined in  
5 RCW 9.41.010;

6 (b) Property of any value other than a firearm as defined in RCW  
7 9.41.010 taken from the person of another; or

8 (c) A search and rescue dog, as defined in RCW 9.91.175, while the  
9 search and rescue dog is on duty.

10 (2) Theft in the first degree is a class B felony.

11 **Sec. 5.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read  
12 as follows:

13 (1) A person is guilty of theft in the second degree if he or she  
14 commits theft of:

15 (a) Property or services which exceed(s) (~~two~~) seven hundred  
16 (~~and~~) fifty dollars in value other than a firearm as defined in RCW  
17 9.41.010, but does not exceed (~~one~~) five thousand (~~five hundred~~)  
18 dollars in value; or

19 (b) A public record, writing, or instrument kept, filed, or  
20 deposited according to law with or in the keeping of any public office  
21 or public servant; or

22 (c) An access device; or

23 (d) A motor vehicle, of a value less than (~~one~~) five thousand  
24 (~~five hundred~~) dollars.

25 (2) Theft in the second degree is a class C felony.

26 **Sec. 6.** RCW 9A.56.050 and 1998 c 236 s 4 are each amended to read  
27 as follows:

28 (1) A person is guilty of theft in the third degree if he or she  
29 commits theft of property or services which (a) does not exceed (~~two~~)  
30 seven hundred (~~and~~) fifty dollars in value, or (b) includes ten or  
31 more merchandise pallets, or ten or more beverage crates, or a  
32 combination of ten or more merchandise pallets and beverage crates.

33 (2) Theft in the third degree is a gross misdemeanor.

34 **Sec. 7.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read  
35 as follows:

1 (1) Any person who shall with intent to defraud, make, or draw, or  
2 utter, or deliver to another person any check, or draft, on a bank or  
3 other depository for the payment of money, knowing at the time of such  
4 drawing, or delivery, that he or she has not sufficient funds in, or  
5 credit with (~~said~~) the bank or other depository, to meet (~~said~~) the  
6 check or draft, in full upon its presentation, (~~shall be~~) is guilty  
7 of unlawful issuance of bank check. The word "credit" as used herein  
8 shall be construed to mean an arrangement or understanding with the  
9 bank or other depository for the payment of such check or draft, and  
10 the uttering or delivery of such a check or draft to another person  
11 without such fund or credit to meet the same shall be prima facie  
12 evidence of an intent to defraud.

13 (2) Any person who shall with intent to defraud, make, or draw, or  
14 utter, or deliver to another person any check, or draft on a bank or  
15 other depository for the payment of money and who issues a stop-payment  
16 order directing the bank or depository on which the check is drawn not  
17 to honor (~~said~~) the check, and who fails to make payment of money in  
18 the amount of the check or draft or otherwise arrange a settlement  
19 agreed upon by the holder of the check within twenty days of issuing  
20 (~~said~~) the check or draft (~~shall be~~) is guilty of unlawful issuance  
21 of a bank check.

22 (3) When any series of transactions which constitute unlawful  
23 issuance of a bank check would, when considered separately, constitute  
24 unlawful issuance of a bank check in an amount of (~~two~~) seven hundred  
25 fifty dollars or less because of value, and the series of transactions  
26 are a part of a common scheme or plan, the transactions may be  
27 aggregated in one count and the sum of the value of all of the  
28 transactions shall be the value considered in determining whether the  
29 unlawful issuance of a bank check is to be punished as a class C felony  
30 or a gross misdemeanor.

31 (4) Unlawful issuance of a bank check in an amount greater than  
32 (~~two~~) seven hundred fifty dollars is a class C felony.

33 (5) Unlawful issuance of a bank check in an amount of (~~two~~) seven  
34 hundred fifty dollars or less is a gross misdemeanor and shall be  
35 punished as follows:

- 36 (a) The court shall order the defendant to make full restitution;  
37 (b) The defendant need not be imprisoned, but the court shall  
38 impose a minimum fine of five hundred dollars. Of the fine imposed, at

1 least fifty dollars shall not be suspended or deferred. Upon  
2 conviction for a second offense within any twelve-month period, the  
3 court may suspend or defer only that portion of the fine which is in  
4 excess of five hundred dollars.

5 **Sec. 8.** RCW 9A.56.096 and 2003 c 53 s 77 are each amended to read  
6 as follows:

7 (1) A person who, with intent to deprive the owner or owner's  
8 agent, wrongfully obtains, or exerts unauthorized control over, or by  
9 color or aid of deception gains control of personal property that is  
10 rented or leased to the person, is guilty of theft of rental, leased,  
11 or lease-purchased property.

12 (2) The finder of fact may presume intent to deprive if the finder  
13 of fact finds either of the following:

14 (a) That the person who rented or leased the property failed to  
15 return or make arrangements acceptable to the owner of the property or  
16 the owner's agent to return the property to the owner or the owner's  
17 agent within seventy-two hours after receipt of proper notice following  
18 the due date of the rental, lease, or lease-purchase agreement; or

19 (b) That the renter or lessee presented identification to the owner  
20 or the owner's agent that was materially false, fictitious, or not  
21 current with respect to name, address, place of employment, or other  
22 appropriate items.

23 (3) As used in subsection (2) of this section, "proper notice"  
24 consists of a written demand by the owner or the owner's agent made  
25 after the due date of the rental, lease, or lease-purchase period,  
26 mailed by certified or registered mail to the renter or lessee at: (a)  
27 The address the renter or lessee gave when the contract was made; or  
28 (b) the renter or lessee's last known address if later furnished in  
29 writing by the renter, lessee, or the agent of the renter or lessee.

30 (4) The replacement value of the property obtained must be utilized  
31 in determining the amount involved in the theft of rental, leased, or  
32 lease-purchased property.

33 (5)(a) Theft of rental, leased, or lease-purchased property is a  
34 class B felony if the rental, leased, or lease-purchased property is  
35 valued at ~~((one))~~ five thousand ~~((five-hundred))~~ dollars or more.

36 (b) Theft of rental, leased, or lease-purchased property is a class

1 C felony if the rental, leased, or lease-purchased property is valued  
2 at ~~((two))~~ seven hundred fifty dollars or more but less than ~~((one))~~  
3 five thousand ~~((five-hundred))~~ dollars.

4 (c) Theft of rental, leased, or lease-purchased property is a gross  
5 misdemeanor if the rental, leased, or lease-purchased property is  
6 valued at less than ~~((two))~~ seven hundred fifty dollars.

7 (6) This section applies to rental agreements that provide that the  
8 renter may return the property any time within the rental period and  
9 pay only for the time the renter actually retained the property, in  
10 addition to any minimum rental fee, to lease agreements, and to lease-  
11 purchase agreements as defined under RCW 63.19.010. This section does  
12 not apply to rental or leasing of real property under the residential  
13 landlord-tenant act, chapter 59.18 RCW.

14 **Sec. 9.** RCW 9A.56.150 and 1995 c 129 s 14 are each amended to read  
15 as follows:

16 (1) A person is guilty of possessing stolen property in the first  
17 degree if he or she possesses stolen property other than a firearm as  
18 defined in RCW 9.41.010 which exceeds ~~((one))~~ five thousand ~~((five~~  
19 ~~hundred))~~ dollars in value.

20 (2) Possessing stolen property in the first degree is a class B  
21 felony.

22 **Sec. 10.** RCW 9A.56.160 and 1995 c 129 s 15 are each amended to  
23 read as follows:

24 (1) A person is guilty of possessing stolen property in the second  
25 degree if:

26 (a) He or she possesses stolen property other than a firearm as  
27 defined in RCW 9.41.010 which exceeds ~~((two))~~ seven hundred fifty  
28 dollars in value but does not exceed ~~((one))~~ five thousand ~~((five~~  
29 ~~hundred))~~ dollars in value; or

30 (b) He or she possesses a stolen public record, writing or  
31 instrument kept, filed, or deposited according to law; or

32 (c) He or she possesses a stolen access device; or

33 (d) He or she possesses a stolen motor vehicle of a value less than  
34 ~~((one))~~ five thousand ~~((five-hundred))~~ dollars.

35 (2) Possessing stolen property in the second degree is a class C  
36 felony.

1       **Sec. 11.** RCW 9A.56.170 and 1998 c 236 s 2 are each amended to read  
2 as follows:

3       (1) A person is guilty of possessing stolen property in the third  
4 degree if he or she possesses (a) stolen property which does not exceed  
5 (~~two~~) seven hundred fifty dollars in value, or (b) ten or more stolen  
6 merchandise pallets, or ten or more stolen beverage crates, or a  
7 combination of ten or more stolen merchandise pallets and beverage  
8 crates.

9       (2) Possessing stolen property in the third degree is a gross  
10 misdemeanor.

11       **Sec. 12.** RCW 9.94A.535 and 2005 c 68 s 3 are each amended to read  
12 as follows:

13       The court may impose a sentence outside the standard sentence range  
14 for an offense if it finds, considering the purpose of this chapter,  
15 that there are substantial and compelling reasons justifying an  
16 exceptional sentence. Facts supporting aggravated sentences, other  
17 than the fact of a prior conviction, shall be determined pursuant to  
18 the provisions of RCW 9.94A.537.

19       Whenever a sentence outside the standard sentence range is imposed,  
20 the court shall set forth the reasons for its decision in written  
21 findings of fact and conclusions of law. A sentence outside the  
22 standard sentence range shall be a determinate sentence.

23       If the sentencing court finds that an exceptional sentence outside  
24 the standard sentence range should be imposed, the sentence is subject  
25 to review only as provided for in RCW 9.94A.585(4).

26       A departure from the standards in RCW 9.94A.589 (1) and (2)  
27 governing whether sentences are to be served consecutively or  
28 concurrently is an exceptional sentence subject to the limitations in  
29 this section, and may be appealed by the offender or the state as set  
30 forth in RCW 9.94A.585 (2) through (6).

31       (1) Mitigating Circumstances - Court to Consider

32       The court may impose an exceptional sentence below the standard  
33 range if it finds that mitigating circumstances are established by a  
34 preponderance of the evidence. The following are illustrative only and  
35 are not intended to be exclusive reasons for exceptional sentences.

36       (a) To a significant degree, the victim was an initiator, willing  
37 participant, aggressor, or provoker of the incident.

1 (b) Before detection, the defendant compensated, or made a good  
2 faith effort to compensate, the victim of the criminal conduct for any  
3 damage or injury sustained.

4 (c) The defendant committed the crime under duress, coercion,  
5 threat, or compulsion insufficient to constitute a complete defense but  
6 which significantly affected his or her conduct.

7 (d) The defendant, with no apparent predisposition to do so, was  
8 induced by others to participate in the crime.

9 (e) The defendant's capacity to appreciate the wrongfulness of his  
10 or her conduct, or to conform his or her conduct to the requirements of  
11 the law, was significantly impaired. Voluntary use of drugs or alcohol  
12 is excluded.

13 (f) The offense was principally accomplished by another person and  
14 the defendant manifested extreme caution or sincere concern for the  
15 safety or well-being of the victim.

16 (g) The operation of the multiple offense policy of RCW 9.94A.589  
17 results in a presumptive sentence that is clearly excessive in light of  
18 the purpose of this chapter, as expressed in RCW 9.94A.010.

19 (h) The defendant or the defendant's children suffered a continuing  
20 pattern of physical or sexual abuse by the victim of the offense and  
21 the offense is a response to that abuse.

22 (2) Aggravating Circumstances - Considered and Imposed by the Court  
23 The trial court may impose an aggravated exceptional sentence  
24 without a finding of fact by a jury under the following circumstances:

25 (a) The defendant and the state both stipulate that justice is best  
26 served by the imposition of an exceptional sentence outside the  
27 standard range, and the court finds the exceptional sentence to be  
28 consistent with and in furtherance of the interests of justice and the  
29 purposes of the sentencing reform act.

30 (b) The defendant's prior unscored misdemeanor or prior unscored  
31 foreign criminal history results in a presumptive sentence that is  
32 clearly too lenient in light of the purpose of this chapter, as  
33 expressed in RCW 9.94A.010.

34 (c) The defendant has committed multiple current offenses and the  
35 defendant's high offender score results in some of the current offenses  
36 going unpunished.

37 (d) The failure to consider the defendant's prior criminal history



1 which was omitted from the offender score calculation pursuant to RCW  
2 9.94A.525 results in a presumptive sentence that is clearly too  
3 lenient.

4 (3) Aggravating Circumstances - Considered by a Jury -Imposed by  
5 the Court

6 Except for circumstances listed in subsection (2) of this section,  
7 the following circumstances are an exclusive list of factors that can  
8 support a sentence above the standard range. Such facts should be  
9 determined by procedures specified in RCW 9.94A.537.

10 (a) The defendant's conduct during the commission of the current  
11 offense manifested deliberate cruelty to the victim.

12 (b) The defendant knew or should have known that the victim of the  
13 current offense was particularly vulnerable or incapable of resistance.

14 (c) The current offense was a violent offense, and the defendant  
15 knew that the victim of the current offense was pregnant.

16 (d) The current offense was a major economic offense or series of  
17 offenses, so identified by a consideration of any of the following  
18 factors:

19 (i) The current offense involved multiple victims or multiple  
20 incidents per victim;

21 (ii) The current offense involved attempted or actual monetary loss  
22 substantially greater than typical for the offense;

23 (iii) The current offense involved a high degree of sophistication  
24 or planning or occurred over a lengthy period of time; or

25 (iv) The defendant used his or her position of trust, confidence,  
26 or fiduciary responsibility to facilitate the commission of the current  
27 offense.

28 (e) The current offense was a major violation of the Uniform  
29 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
30 trafficking in controlled substances, which was more onerous than the  
31 typical offense of its statutory definition: The presence of ANY of  
32 the following may identify a current offense as a major VUCSA:

33 (i) The current offense involved at least three separate  
34 transactions in which controlled substances were sold, transferred, or  
35 possessed with intent to do so;

36 (ii) The current offense involved an attempted or actual sale or  
37 transfer of controlled substances in quantities substantially larger  
38 than for personal use;

1 (iii) The current offense involved the manufacture of controlled  
2 substances for use by other parties;

3 (iv) The circumstances of the current offense reveal the offender  
4 to have occupied a high position in the drug distribution hierarchy;

5 (v) The current offense involved a high degree of sophistication or  
6 planning, occurred over a lengthy period of time, or involved a broad  
7 geographic area of disbursement; or

8 (vi) The offender used his or her position or status to facilitate  
9 the commission of the current offense, including positions of trust,  
10 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
11 other medical professional).

12 (f) The current offense included a finding of sexual motivation  
13 pursuant to RCW 9.94A.835.

14 (g) The offense was part of an ongoing pattern of sexual abuse of  
15 the same victim under the age of eighteen years manifested by multiple  
16 incidents over a prolonged period of time.

17 (h) The current offense involved domestic violence, as defined in  
18 RCW 10.99.020, and one or more of the following was present:

19 (i) The offense was part of an ongoing pattern of psychological,  
20 physical, or sexual abuse of the victim manifested by multiple  
21 incidents over a prolonged period of time;

22 (ii) The offense occurred within sight or sound of the victim's or  
23 the offender's minor children under the age of eighteen years; or

24 (iii) The offender's conduct during the commission of the current  
25 offense manifested deliberate cruelty or intimidation of the victim.

26 (i) The offense resulted in the pregnancy of a child victim of  
27 rape.

28 (j) The defendant knew that the victim of the current offense was  
29 a youth who was not residing with a legal custodian and the defendant  
30 established or promoted the relationship for the primary purpose of  
31 victimization.

32 (k) The offense was committed with the intent to obstruct or impair  
33 human or animal health care or agricultural or forestry research or  
34 commercial production.

35 (l) The current offense is trafficking in the first degree or  
36 trafficking in the second degree and any victim was a minor at the time  
37 of the offense.

1 (m) The offense involved a high degree of sophistication or  
2 planning.

3 (n) The defendant used his or her position of trust, confidence, or  
4 fiduciary responsibility to facilitate the commission of the current  
5 offense.

6 (o) The defendant committed a current sex offense, has a history of  
7 sex offenses, and is not amenable to treatment.

8 (p) The offense involved an invasion of the victim's privacy.

9 (q) The defendant demonstrated or displayed an egregious lack of  
10 remorse.

11 (r) The offense involved a destructive and foreseeable impact on  
12 persons other than the victim.

13 (s) The defendant committed the offense to obtain or maintain his  
14 or her membership or to advance his or her position in the hierarchy of  
15 an organization, association, or identifiable group.

16 (t) The defendant committed the current offense shortly after being  
17 released from incarceration.

18 (u) The current offense is a burglary and the victim of the  
19 burglary was present in the building or residence when the crime was  
20 committed.

21 (v) The offense was committed against a law enforcement officer who  
22 was performing his or her official duties at the time of the offense,  
23 the offender knew that the victim was a law enforcement officer, and  
24 the victim's status as a law enforcement officer is not an element of  
25 the offense.

26 (w) The defendant committed the offense against a victim who was  
27 acting as a good samaritan.

28 (x) The defendant committed the offense against a public official  
29 or officer of the court in retaliation of the public official's  
30 performance of his or her duty to the criminal justice system.

31 (y) The victim's injuries substantially exceed the level of bodily  
32 harm necessary to satisfy the elements of the offense. This aggravator  
33 is not an exception to RCW 9.94A.530(2).

34 (z) The offense was for a single or aggregated series of offenses  
35 constituting theft, unlawful issuance of a check or draft, or forgery  
36 with a total monetary value over two hundred thousand dollars.

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