
HOUSE BILL 1144

State of Washington

61st Legislature

2009 Regular Session

By Representatives O'Brien, Sells, Chase, Ericks, Springer, Simpson, and Goodman

Read first time 01/14/09. Referred to Committee on Public Safety & Emergency Preparedness.

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, and 9A.56.170; reenacting and amending
4 RCW 9.94A.535; and 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 2007 c 199 s 3 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 or a motor vehicle, 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 2007 c 199 s 4 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 fifty dollars in value but does not exceed (~~one~~) five thousand (~~five~~
17 ~~hundred~~) dollars in value, other than a firearm as defined in RCW
18 9.41.010 or a motor vehicle; 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.

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

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

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

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

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

34 (1) Any person who shall with intent to defraud, make, or draw, or
35 utter, or deliver to another person any check, or draft, on a bank or

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

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

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

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

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

34 (a) The court shall order the defendant to make full restitution;

35 (b) The defendant need not be imprisoned, but the court shall
36 impose a minimum fine of five hundred dollars. Of the fine imposed, at
37 least fifty dollars shall not be suspended or deferred. Upon

1 conviction for a second offense within any twelve-month period, the
2 court may suspend or defer only that portion of the fine which is in
3 excess of five hundred dollars.

4 **Sec. 8.** RCW 9A.56.096 and 2007 c 199 s 17 are each amended to read
5 as follows:

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

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

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

19 (b) That the renter, lessee, or borrower presented identification
20 to the owner or the owner's agent that was materially false,
21 fictitious, or not current with respect to name, address, place of
22 employment, or other 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, lease-purchase, or loan
26 period, mailed by certified or registered mail to the renter, lessee,
27 or borrower at: (a) The address the renter, lessee, or borrower gave
28 when the contract was made; or (b) the renter, lessee, or borrower's
29 last known address if later furnished in writing by the renter, lessee,
30 borrower, or the agent of the renter, lessee, or borrower.

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

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

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

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

8 (6) This section applies to rental agreements that provide that the
9 renter may return the property any time within the rental period and
10 pay only for the time the renter actually retained the property, in
11 addition to any minimum rental fee, to lease agreements, to lease-
12 purchase agreements as defined under RCW 63.19.010, and to vehicles
13 loaned to prospective purchasers borrowing a vehicle by written
14 agreement from a motor vehicle dealer licensed under chapter 46.70 RCW.
15 This section does not apply to rental or leasing of real property under
16 the residential landlord-tenant act, chapter 59.18 RCW.

17 **Sec. 9.** RCW 9A.56.150 and 2007 c 199 s 6 are each amended to read
18 as follows:

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

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

25 **Sec. 10.** RCW 9A.56.160 and 2007 c 199 s 7 are each amended to read
26 as follows:

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

29 (a) He or she possesses stolen property, other than a firearm as
30 defined in RCW 9.41.010 or a motor vehicle, which exceeds (~~two~~) seven
31 hundred fifty dollars in value but does not exceed (~~one~~) five
32 thousand (~~five hundred~~) dollars in value; or

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

35 (c) He or she possesses a stolen access device.

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

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

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

11 (2) Possessing stolen property in the third degree is a gross
12 misdemeanor.

13 **Sec. 12.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
14 each reenacted and amended to read as follows:

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

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

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

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

33 (1) Mitigating Circumstances - Court to Consider

34 The court may impose an exceptional sentence below the standard
35 range if it finds that mitigating circumstances are established by a

1 preponderance of the evidence. The following are illustrative only and
2 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

13 (e) The defendant's capacity to appreciate the wrongfulness of his
14 or her conduct, or to conform his or her conduct to the requirements of
15 the law, was significantly impaired. Voluntary use of drugs or alcohol
16 is excluded.

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

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

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

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

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

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

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

4 (d) The failure to consider the defendant's prior criminal history
5 which was omitted from the offender score calculation pursuant to RCW
6 9.94A.525 results in a presumptive sentence that is clearly too
7 lenient.

8 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
9 the Court

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

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

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

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

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

23 (i) The current offense involved multiple victims or multiple
24 incidents per victim;

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

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

29 (iv) The defendant used his or her position of trust, confidence,
30 or fiduciary responsibility to facilitate the commission of the current
31 offense.

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

37 (i) The current offense involved at least three separate

1 transactions in which controlled substances were sold, transferred, or
2 possessed with intent to do so;

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

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

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

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

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

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

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

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

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

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

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

31 (i) The offense resulted in the pregnancy of a child victim of
32 rape.

33 (j) The defendant knew that the victim of the current offense was
34 a youth who was not residing with a legal custodian and the defendant
35 established or promoted the relationship for the primary purpose of
36 victimization.

37 (k) The offense was committed with the intent to obstruct or impair

1 human or animal health care or agricultural or forestry research or
2 commercial production.

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

6 (m) The offense involved a high degree of sophistication or
7 planning.

8 (n) The defendant used his or her position of trust, confidence, or
9 fiduciary responsibility to facilitate the commission of the current
10 offense.

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

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

14 (q) The defendant demonstrated or displayed an egregious lack of
15 remorse.

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

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

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

23 (u) The current offense is a burglary and the victim of the
24 burglary was present in the building or residence when the crime was
25 committed.

26 (v) The offense was committed against a law enforcement officer who
27 was performing his or her official duties at the time of the offense,
28 the offender knew that the victim was a law enforcement officer, and
29 the victim's status as a law enforcement officer is not an element of
30 the offense.

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

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

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

1 (z)(i)(A) The current offense is theft in the first degree, theft
2 in the second degree, possession of stolen property in the first
3 degree, or possession of stolen property in the second degree; (B) the
4 stolen property involved is metal property; and (C) the property damage
5 to the victim caused in the course of the theft of metal property is
6 more than three times the value of the stolen metal property, or the
7 theft of the metal property creates a public hazard.

8 (ii) For purposes of this subsection, "metal property" means
9 commercial metal property, private metal property, or nonferrous metal
10 property, as defined in RCW 19.290.010.

11 (aa) The defendant committed the offense with the intent to
12 directly or indirectly cause any benefit, aggrandizement, gain, profit,
13 or other advantage to or for a criminal street gang as defined in RCW
14 9.94A.030, its reputation, influence, or membership.

15 (bb) The offense was for a single or aggregated series of offenses
16 constituting theft, unlawful issuance of a check or draft, or forgery
17 with a total monetary value over two hundred thousand dollars.

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