

HOUSE BILL REPORT

SB 6167

As Reported by House Committee On:
Ways & Means

Title: An act relating to crimes against property.

Brief Description: Concerning crimes against property.

Sponsors: Senators Kline, Regala and Hargrove.

Brief History:

Committee Activity:

Ways & Means: 4/25/09 [DP].

Brief Summary of Bill

- Creates an organized retail crime task force.
- Directs the Sentencing Guidelines Commission to review the monetary threshold amounts differentiating property crimes in the state.
- Increases the dollar threshold values and some fines related to the property crimes of malicious mischief, theft, unlawful issuance of checks or drafts, theft of rental, leased, or loaned property, organized retail theft, and possessing stolen property.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Chandler, Cody, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Conway, Hinkle, Priest, Ross and Schmick.

Staff: Alex MacBain (786-7288)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The monetary amounts differentiating the various degrees of property crimes in this state were established in 1975 when the Washington Criminal Code was adopted. They have never been adjusted. For comparison purposes, \$250 in 1975 is equivalent to approximately \$954 in 2007, and \$1,500 in 1975 is equivalent to approximately \$5,721 in 2007. The consumer price index calculator currently contains data up to 2007.

A person is guilty of malicious mischief in the first degree, a class B felony, if that person knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$1,500. Malicious mischief in the second degree, a class C felony, is committed when a person knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$250. Malicious mischief in the third degree is a gross misdemeanor if the damage to the property is more than \$50 and it is a misdemeanor if the damage is \$50 or less. Theft in the first degree is committed when a person commits theft of property or services which exceed \$1,500 in value. Theft in the first degree is a class B felony. A person is guilty of theft in the second degree if that person commits theft of property or services which exceed \$250 in value but does not exceed \$1,500. Theft in the second degree is a class C felony. Theft in the third degree is committed when a person commits theft of property or services which does not exceed \$250 in value. Theft in the third degree is a gross misdemeanor.

A person is guilty of organized retail theft if that person, with an accomplice, commits theft of property from a mercantile establishment and the value of the property is at least \$250. It is organized retail theft in the first degree, a class B felony, if the property stolen has a value of at least \$1,500. It is organized retail theft in the second degree, a class C felony, if the value of the stolen property is at least \$250 but less than \$1,500.

A person who takes possession of goods that are offered for sale by any store without the consent of the owner or seller and with the intention of converting the goods to that person's own use without having paid a purchase price is liable, in addition to actual damages, for a penalty in the amount of the retail value of the goods, not to exceed \$1,000; plus an additional penalty of not less than \$100 nor more than \$200.

A court may impose a sentence above or below the standard range based upon aggravating or mitigating factors. Aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt.

Summary of Bill:

Theft, possession of stolen property, and malicious mischief in the first degree occur if the crimes involve property valued at over \$5,000. Theft, possession of stolen property, and malicious mischief in the second degree occur if the crimes involve property that exceeds \$750 but does not exceed \$5,000. Theft, possession of stolen property, and malicious mischief in the third degree occur if the crimes involve property valued at up to \$750. Unlawful issuance of a bank check is a gross misdemeanor if it was for \$750 or less and a class C felony if it is for an amount greater than \$750. Upon conviction for the misdemeanor crime of unlawful issuance of a bank check, the court shall impose upon the defendant a fine

of up to \$1,125. Of the fine imposed, at least \$375, or an amount equal to 150 percent of the amount of the check, whichever is greater, may not be suspended or deferred.

A person is guilty of organized retail theft if that person, with an accomplice, commits theft of property or possesses stolen property from a mercantile establishment and the value of the property is at least \$750 but less than \$5,000, or commits theft of property with a cumulative value of at least \$750 from one or more mercantile establishments within a period up to 180 days. It is organized retail theft in the first degree, a class B felony, if the property stolen has a value of at least \$5,000.

A mercantile establishment that has property alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile is aware. If the prosecuting jurisdiction declines the request to aggregate, it must promptly advise the mercantile establishment and provide the reasons for such decision. Merchants who create a database of individuals who have been apprehended, assessed a civil penalty, or convicted, are not subject to civil fines or penalties for sharing the database with other merchants, law enforcement officials, or legal professionals.

An organized retail crime task force is created to monitor the effects of raising the monetary threshold amounts used to define the various degrees of property crimes in Washington. The task force will examine the following: (1) the impact of raising the monetary values differentiating property crimes on the retail industry, the district and municipal courts, and the county and city offices of the prosecuting attorney; (2) the best methods for apportionment and sharing of costs for prosecution when multiple jurisdictions are involved; and (3) policies or procedures which would enhance investigation and prosecution of property crimes in Washington. The membership of the task force is specified in the bill and the members are not reimbursed for travel expenses. The task force is subject to the Open Public Meetings Act. The task force findings and recommendations are reported to the appropriate committees of the Legislature.

The Sentencing Guidelines Commission is directed to review the monetary threshold amounts differentiating the various degrees of property crimes in Washington to determine whether such amounts should be modified. It will report its recommendations to the Legislature by November 1, 2014, and every five years thereafter.

In addition to actual damages, the maximum penalty to the owner or seller of goods that are possessed by a person with the intention of converting the goods to that person's own use without payment of a purchase price is \$2,850 plus an additional penalty of not more than \$650. In addition to actual damages, the maximum penalty owed by the parent or legal guardian of an unemancipated minor who possessed with the intention of converting the goods to the minor's own use without payment of a purchase price is \$1,425 plus an additional penalty of not more than \$650.

The provisions of the bill are prospective and apply to crimes committed on or after September 1, 2009.

Appropriation: None.

Fiscal Note: Requested on April 21, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The big issue is how inflation interacts with the criminal code when we define crimes by a dollar value. The felony/misdemeanor threshold level was set in 1975. The most significant part of this bill is the change in the dollar value between a felony and a misdemeanor. This is a good change for the legislature to make for three reasons. First, at the district and municipal court levels, a prosecutor's sentencing options are broader. Second, the processing costs at the district and municipal court level is less than it is at the superior court level because there are six instead of 12 person juries, public defenders are paid less per case for defending misdemeanors, and there are fewer due process protections and procedural safeguards when dealing with misdemeanors. Finally, aggravated theft will be easier to prosecute under this bill, and there is an element of accountability with the prosecutors because they must give reasons to a retailer if they decide not to aggregate.

The system tends to move to fit what really works. These cases have been expedited to district and municipal court for 20 to 30 years, so it is time for the legislature to change the law to reflect what is happening in practice. In superior court, property crimes tend to be treated by all parties as less of a priority. In municipal and district court these are important cases, they're handled more quickly and more effectively, and the punishment meted out in those courts is more appropriate to the crime that has been committed. There will be a better result out of theft prosecutions for retailers and homeowners in the courts of limited jurisdiction.

(Neutral) Retailers, including independent grocers, oppose raising the felony theft threshold. Such businesses deal with very narrow profit margins so a change in the felony threshold is a big deal, and the retailers will never support such a change. However, this bill increases the ability to aggregate crimes into a felony offense for individuals who commit theft in multiple locations in a set period of time, and increases civil penalties. Both are very important aspects of the bill. Most of the time theft cases are ignored by the prosecutors, so civil penalties have proven to be effective. The bill requires a criminal history "look back" before sentencing. From the budget perspective, the task force is an incredibly important part of this bill; there will be an impact on the cities and on the retailers if this bill passes, so the task force is important.

Persons Testifying: (In Support) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Neutral) Carolyn Logue, Washington Food Industry.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.