

# HOUSE BILL REPORT

## HB 3032

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### As Reported By House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to protection of railroad property.

**Brief Description:** Enhancing railroad safety through vandalism and trespass prevention.

**Sponsors:** Representatives Robertson and Grant.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/4/98, 2/5/98 [DP].

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 8 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; O'Brien, Assistant Ranking Minority Member; Cairnes; McCune; Mitchell and Sullivan.

**Staff:** Yvonne Walker (786-7841).

**Background:** Any person who buys or receives stolen railroad property (including any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company) is guilty of a felony. The punishment shall include a conviction of five years imprisonment or a fine of \$1,000, or both.

Any person who endangers the safety of any engine, motor, car or train, or any person thereon, or interferes or tampers with or obstructs any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, or who discharges any firearm or throws any dangerous missile at any train, engine, motor, or car on any railway, shall be punished by incarceration for a maximum of 25 years.

**Summary of Bill:** Any person who buys or receives railroad freight knowing the equipment is stolen is guilty of a class C felony which carries a maximum penalty of five years in prison, a \$10,000 fine, or both. In addition, any person who willfully and with

intent to permanently deprive the owner, takes or removes railroad freight from any freight car is guilty of a class C felony.

A person is guilty of a criminal act if he or she causes damage to railroad property or bodily injury to another by:

- (a) Placing an object in the path of a locomotive or train;
- (b) Vandalizing railroad property;
- (c) Shooting a firearm at a train or throwing a dangerous object onto a railroad right of way;
- (d) Impairing the operation of any railroad signal system without consent of the railroad carrier involved;
- (e) Interfering or tampering with in any way any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier, without consent of the railroad carrier involved; or
- (f) Taking, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without the consent of the railroad carrier.

Any person who commits an act as listed above with reckless disregard for railroad property or the safety of others, is guilty of a:

- (a) Misdemeanor if railroad property damage does not exceed \$500 and bodily injury to another does not result. Upon conviction, the person must pay the railroad carrier involved for any railroad property damaged. In addition, if community service is available in the jurisdiction where the offense is committed, the person must perform community service for not more than 120 hours, and upon successful completion of community service, any portion of the term of confinement or fine may be waived by the court;
- (b) Class C felony if railroad property damage exceeds \$500 or bodily injury to another results. Upon conviction, in addition to the sentence imposed, the person may be required to pay the railroad carrier involved for the cost to repair any railroad property damaged;
- (c) Class B felony if serious bodily injury or death results. Upon conviction, in addition to the sentence imposed, the person may be required to pay the railroad carrier involved for the cost to repair any railroad property damaged.

In addition, any person who commits one of the acts as listed above with willful intent to damage railroad property or endanger the safety of another, is guilty of a:

- (a) Class C felony if railroad property damage does not exceed \$500 and no bodily injury to another results. Upon conviction, in addition to the sentence imposed, the person is required to pay the railroad carrier involved for the cost to repair any railroad property damaged;

(b) Class B felony if railroad property damage exceeds \$500 or bodily injury or serious bodily injury to another results. Upon conviction, in addition to the sentence imposed, the person may be required to pay the railroad carrier involved for the cost to repair any railroad property damaged;

(c) Class A felony if death results. Upon conviction, in addition to the sentence imposed, the person may be required to pay the railroad carrier involved for the cost to repair any railroad property damaged.

The following terms are defined:

1. "Bodily injury" means a cut, abrasion, bruise, burn, or disfigurement, physical pain, illness, impairment of the function of a bodily member, organ, or mental faculty, or any other injury to the body, no matter how temporary.

2. "Railroad" means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(b) High-speed ground transportation systems that connect metropolitan areas, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

3. "Railroad carrier" means a person providing railroad transportation.

4. "Railroad property" means all property owned, leased, or operated by a railroad carrier, but does not include administrative buildings, administrative offices, or administrative office equipment.

5. "Right of way" means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs.

6. "Serious bodily injury" means bodily injury which involves:

(a) A substantial risk of death;

(b) Extreme physical pain;

(c) Protracted and obvious disfigurement; or

(d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

7. "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.

8. "Passengers" means persons who are traveling by train with lawful authority and who do not participate in the train's operation. The term "passengers" does not include stowaways.
9. "Railroad" means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:
  - (a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and
  - (b) High-speed ground transportation systems that connect metropolitan areas; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.
10. "Railroad carrier" means a person providing railroad transportation.
11. "Railroad property" means all property owned, leased, or operated by a railroad carrier, but does not include administrative buildings, administrative offices, or administrative office equipment.
12. "Right of way" means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs.
13. "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.

The acts relating to malicious injury to railroad property (RCW 81.60.070) and willfully or maliciously tampering with railroad equipment (RCW 81.60.080) are both repealed.

Any person who, without lawful authority or the railroad carrier's consent, enters or remains upon railroad property except for the purpose of crossing such property at a public highway or other authorized crossing is guilty of a misdemeanor.

Every person who, without lawful authority or the railroad carrier's consent, knowingly rides on the outside or inside of a train is guilty of a misdemeanor unless the person is a:

- (a) Passenger on the train, or employee of a railroad carrier while engaged in the performance of official duties;
- (b) Police officer, fire fighter, peace officer, and emergency response personnel, while engaged in the performance of their official duties;
- (c) Person going upon the railroad property in an emergency to rescue a person or animal or to remove an object that the person reasonably believes to pose an imminent threat to life or limb;

- (d) Person on the station ground or in the depot of the railroad carrier as a passenger, or for the purpose of transacting business;
- (e) Person, or the person's family, invitee, employee, or independent contractor going upon a railroad's right of way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to a land that the person owns, leases, or operates;
- (f) Person having written permission from the railroad carrier to go upon the property in question;
- (g) Representative of the Department of Transportation or State Utilities and Transportation Commission, the Federal Railroad Administration, or the National Transportation Safety Board while engaged in official duties.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 1998.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The theft and destruction of railroad property has been on the increase. Many vandals have caused costly damage to railroad property and railroad cars at the expense of the owners.

In addition, nomadic gangs are notorious for committing burglaries of area railroad yards, stations, and nearby neighborhoods. These gangs also are known for committing murders and robbing innocent passengers at railroad stations. They in turn use the trains as a quick get away for escapes to other cities and states.

Trespassing deaths are also on the rise. Last year over 400 people lost their lives and nearly 500 people were injured. Children of all ages have been caught playing on or near trains and railroad yards. Many others have become dismembered due to sheer recklessness.

The adoption of this bill will put Washington in the forefront of other states in helping to decrease railroad vandalism, injuries, and deaths.

**Testimony Against:** None.

**Testified:** Representative Eric Robertson, prime sponsor; and Nancy Goldman and Darren Hettinger, United States Department of Transportation, Federal Railroad Administration (pro).