

SENATE BILL REPORT

E3SHB 1001

As Reported By Senate Committee On:
Judiciary, March 30, 2007
Ways & Means, April 2, 2007

Title: An act relating to auto theft.

Brief Description: Combating auto theft.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lovick, Priest, McCoy, Pearson, Kirby, Ross, Hunt, Skinner, Simpson, Newhouse, O'Brien, Armstrong, Ericks, Moeller, Miloscia, Grant, Sells, Green, Eickmeyer, Takko, Kelley, B. Sullivan, Hudgins, Cody, Haigh, Morrell, Chase, Ormsby, Kessler, Blake, Conway, Chandler, P. Sullivan, McDonald, Rodne, Haler, Jarrett, Roach, Walsh, Kristiansen, Wallace, McDermott, Condotta, VanDeWege, Dunshee, McCune, Kenney, Schual-Berke, Hinkle, Bailey, Lantz, Warnick, Upthegrove, Alexander, Campbell and Rolfes).

Brief History: Passed House: 3/13/07, 80-16.

Committee Activity: Judiciary: 3/28/07, 3/30/07 [DPA].

Ways & Means: 4/02/07 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Hatfield, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Roach, Rockefeller, Schoesler and Tom.

Staff: Richard Ramsey (786-7412)

Background: Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's

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felony convictions. The number of points an offender receives for current and prior felonies varies according to certain rules. A person is guilty of theft (of a motor vehicle) in the first degree if the person commits theft of property or services that exceed \$1,500 in value, other than theft of a firearm. Theft in the first degree is ranked as a seriousness level II, class B felony under the SRA. For a first-time adult offender, the standard sentence range is zero to 90 days in jail. Under the Juvenile Justice Act (JJA), theft in the first degree is a category B offense and a first-time juvenile offender would receive a local sanction. Local sanctions consists of a maximum of 30 days in detention, 12 months of community supervision, 150 hours of community restitution, and a \$500 fine.

A person is guilty of theft (of a motor vehicle) in the second degree if the person commits theft of a motor vehicle valued at \$1,500 or less. Theft in the second degree is ranked as a seriousness level I, class C felony offense under the SRA. For a first-time adult offender, the standard sentence range is zero to 60 days in jail. Under the JJA, theft in the second degree is a category C offense and a first-time juvenile offender would receive a local sanction.

A person is guilty of possession of stolen property in the first degree if he or she possesses stolen property (or a vehicle) which exceeds \$1,500 in value. Possession of stolen property in the first degree is ranked as a seriousness level II, class B felony offense under the SRA which, for a first-time adult offender, has a standard sentence range of zero to 90 days in jail. Under the JJA, the offense is a category B offense and a first-time juvenile offender would receive a local sanction.

A person is guilty of possession of stolen property in the second degree if he or she possesses stolen property (or a vehicle) valued at \$1,500 or less. Possession of stolen property in the second degree is ranked as a seriousness level I, class C felony offense under the SRA. For a first-time adult offender, the offense has a standard sentence range of zero to 60 days in jail. Under the JJA, possession of stolen property in the second degree is a category C offense and a first-time juvenile offender would receive a local sanction.

A person is guilty of taking a motor vehicle without permission in the first degree, if the person intentionally takes a motor vehicle without permission and alters the vehicle to change its appearance or identification numbers; removes parts from the vehicle with the intent to sell the parts; exports or attempts to export the vehicle out-of-state or out of the country for profit; intends to sell the vehicle; or is engaged in a conspiracy, the object of which is the theft of motor vehicles for sale to others for profit. Taking a motor vehicle without permission in the first degree is ranked as a seriousness level V, class B felony offense under the SRA. For a first-time adult offender, the offense has a standard sentence range of six to 12 months in jail. Under the JJA, taking a motor vehicle without permission is a category C offense and a first-time juvenile offender would receive a local sanction.

A person who intentionally takes a motor vehicle without permission or voluntarily rides in a vehicle knowing it was taken without permission is guilty of a second degree taking a motor vehicle without permission offense. Taking a motor vehicle without permission in the second degree is ranked as a seriousness level I, class C felony offense under the SRA and it has a standard sentence range of zero to 60 days in jail for a first time offender. The offense is a category C offense under the JJA and a first-time offender would receive a local sanction.

A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property, he or she enters or remains unlawfully in a vehicle, other than a motor home or a vessel. Vehicle prowling in the second degree is a gross misdemeanor offense and is punishable by a fine of not more than \$5,000 or imprisonment for not more than one year in jail, or both. Generally, gross misdemeanor offenses do not count as part of an offender's score when calculating his or her standard sentence range.

Home detention is a program of partial confinement. The offender is confined in a private residence and is subject to electronic surveillance. Generally, it may not be imposed for offenders convicted of a violent offense, drug offense, sex offense, or certain assault offenses.

A person who, with intent to deprive the owner, wrongfully obtains, exerts, or gains unauthorized control over personal property that is rented or leased to the person is guilty of theft of rental, leased, or lease-purchased property. It is a seriousness level II, class B felony if the property is valued at \$1,500 or more. It is a seriousness level I, class C felony if the property is valued between \$250 and \$1,500. It is a gross misdemeanor if the property is valued at less than \$250. The statute does not expressly include loaned property. Generally, a traffic infraction is a non-criminal offense. The penalty for a traffic infraction may include a financial penalty or suspension, revocation, or denial of the person's driver's license. The base penalty for a traffic infraction ranges from \$37 to \$500 and is established by court rule. Other statutory penalties and fees can also apply.

Summary of Engrossed Third Substitute Bill: The act, known as the Elizabeth Nowak-Washington Auto Theft Prevention Act, provides for increased penalties and triple scoring of prior motor vehicle-related offenses (theft, possession of a stolen vehicle, and taking a vehicle without permission). Home detention is established as an option for first-time adult offenders. Juvenile offenders are subject to risk assessments, home detention, and increased penalties for the same offenses. New crimes are created to cover the making and possession of motor vehicle theft tools. A Statewide Auto Theft Prevention Authority is created to study motor vehicle theft in Washington.

If a present conviction is for an offense involving motor vehicle theft, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree, the offender will receive one point for each prior conviction involving vehicle prowling and three points for each prior adult and juvenile conviction involving theft of a motor vehicle, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree.

The crimes of theft of a motor vehicle and possession of a stolen motor vehicle are removed from the general statutory provisions relating to theft or possession of stolen property and services. Separate statutory provisions are created to specifically cover the crimes of theft or possession of a stolen motor vehicle. A person is guilty of motor vehicle theft if such person commits theft of any motor vehicle, regardless of the vehicle value. Theft of a motor vehicle is punishable as a seriousness level II, class B felony for adult offenders and a category B offense for juvenile offenders.

A person is guilty of possession of a stolen motor vehicle if he or she possesses a stolen vehicle, regardless of the vehicle value. Possession of a stolen motor vehicle is punishable as a seriousness level II, class B felony for adult offenders and a category B offense for juveniles.

Under the JJA, the offense of taking a motor vehicle without permission in the first and second degree is a category B offense.

The eligibility for home detention is expanded to include adult offenders convicted of taking a motor vehicle without permission in the second degree, theft of a motor vehicle, or possession of a stolen motor vehicle in the first degree. To be eligible, the offender must have no convictions for taking a motor vehicle without permission, theft of a motor vehicle, or possession of a stolen motor vehicle during the preceding five years; no more than two prior motor vehicle-related (theft, possession, or taking without permission) convictions; no violent convictions in the preceding two years; no more than two prior convictions for a violent offense in total; no prior escape charges; and he or she must have fulfilled any other conditions of the home detention program.

In any case, where a juvenile has been adjudicated for a motor vehicle theft-related offense, the juvenile's disposition must include an evaluation to determine whether the juvenile is in need of treatment. A juvenile offender adjudicated of theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission in the first degree is subject to the following mandatory minimum sentencing terms:

- with no prior adjudications, a minimum of five days home detention, 45 hours of community service, and a \$200 fine;
- with one prior adjudication, a minimum of 10 days detention, 90 hours of community service, and a \$400 fine; and
- with two or more prior adjudications, no less than 15-36 weeks confinement, seven days home detention, four months supervision, 90 hours of community service, and a \$400 fine.

A juvenile offender adjudicated of taking a motor vehicle without permission in the second degree is subject to the following mandatory minimum sentencing terms:

- with no prior adjudications, no less than one day home detention, one month supervision, 15 hours of community service, and a \$50 fine;
- with one prior adjudication, no less than one day detention, two days home detention, two months supervision, 30 hours of community service, and a \$150 fine; and
- with two or more prior adjudications, no less than three days detention, seven days home detention, three months supervision, 45 hours of community service, and a \$150 fine.

The statute pertaining to rental, leased, or lease-purchased property is expanded to include loaned property. A person who, with intent to deprive the owner, wrongfully obtains, exerts, or gains unauthorized control over personal property that is loaned to the person is guilty of theft of rental, leased, lease-purchased, or loaned property. The penalties in current statute apply.

A person who makes, mends, uses, or possesses tools commonly used for the commission of vehicle theft is guilty of making or having vehicle theft tools, a gross misdemeanor offense. A motor vehicle theft tool includes, but is not limited to, the following: slim jim, false master key, master purpose key, altered or shaved key, trial or jiggle keys, slide hammer, lock puller, picklock, bit, nippers, and any other implement shown by facts and circumstances to be intended for use in the commission of a motor vehicle theft.

The Washington Auto Theft Prevention Authority (WATPA) is established within the Washington Association of Sheriffs and Police Chiefs. It will review and make recommendations to the Legislature and the Governor regarding motor vehicle theft in Washington. The WATPA consists of the following members, appointed by the Governor, and each serving staggered four-year terms: the Executive Director of the Washington Association of Sheriffs and Police Chiefs, or the executive director's designee; the Chief of the Washington State Patrol, or the chief's designee; two police chiefs; two sheriffs; one prosecuting attorney; a representative from the insurance industry responsible for writing property and casualty liability insurance in Washington; a representative from the automobile industry; and one member of the general public. The WATPA may obtain or contract for staff services, including an executive director, and any facilities and equipment as the authority requires to carry out its duties. It may also solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources to support its activities.

In preparing its recommendations, the authority must review the following issues:

- determine the scope of the problem of motor vehicle theft, including particular areas of the state where the problem is the greatest;
- analyze the various methods of combating the problem of motor vehicle theft;
- develop and implement a plan of operation; and
- develop and implement a financial plan.

The authority must annually report its activities, findings, and recommendations during the preceding year to the Legislature by December 31.

The WATPA is not a law enforcement agency and may not gather, collect, or disseminate intelligence information for the purpose of investigating specific crimes or capturing specific perpetrators. Members of the WATPA who are not public employees are compensated in accordance with the salaries and expense statute and are reimbursed for travel expenses. The WATPA Account (Account) is created in the custody of the State Treasurer. All receipts from gifts, grants, bequests, devises, specific traffic infraction surcharges, or other funds from public and private sources to support its activities must be deposited into the Account. Expenditures from the Account may be used only for purposes of the WATPA and implementing this auto theft act under statute. The Account is subject to allotment procedures under the state budgeting, accounting, and reporting system statute but an appropriation is not required for expenditures. The WATPA must allocate monies in the Account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including providing financial support:

- to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;
- to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;
- for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and
- for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

The costs of administration shall not exceed 10 percent of the monies in the Account in any one year so that the greatest possible portion of the monies available to the authority is expended on combating motor vehicle theft. Prior to awarding any monies from the Account,

the authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to, administration, law enforcement, prosecutor, court, and county offender confinement costs. Monies expended from the Account must be used to supplement, not supplant, other monies that are available for motor vehicle theft prevention.

In addition to any other penalties imposed by law, a person found to have committed a traffic infraction must be assessed a \$10 surcharge per infraction. Revenue from this fee must be deposited to the State Treasurer for deposit in the WATPA Account.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Judiciary): Juveniles adjudicated of theft of a motor vehicle or possession of a stolen motor vehicle are subject, for the first offense, to either five days home detention and 45 hours of community restitution or no home detention and 90 hours of community restitution. Juveniles adjudicated of a first offense of taking a motor vehicle without permission in the 2nd degree are subject to either one day of home detention, one month of supervision, and 15 hours of community restitution or no home detention, one month of supervision, and 30 hours of community restitution.

A person is guilty of taking a motor vehicle without permission in the 1st degree if he or she is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

A person commits the gross misdemeanor offense of taking a motor vehicle without permission in the 3rd degree when he or she: (1) intentionally takes a motor vehicle without the permission of the owner and the person committing the offense has an established relationship with the owner; or (2) voluntarily rides in a motor vehicle knowing that it was unlawfully taken, regardless of the relationship between the driver and the owner of the vehicle.

It is a priority that financial awards from the Washington auto theft prevention authority have sufficient funding to cover state, municipal, and county offender and juvenile confinement costs.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Ways & Means): The Washington Auto Theft Prevention Authority Account is made an appropriated account, and the provision creating a new crime of taking a motor vehicle without permission 3 (gross misdemeanor) is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Judiciary): PRO: Statistics confirm what many Washingtonians know from experience that Washington ranks 4th per capita in the country for vehicle thefts. Seattle, Tacoma, and Bellevue are ranked 6th and Yakima is 10th. Auto theft is not just committed by teenagers out for a joyride, it's a big business run by organized

crime. It goes hand in hand with identity theft and methamphetamine. This bill raises the penalties for adults and juveniles. For adults, it gets them into jail faster and keeps them there longer. Juvenile car thieves will be assessed to determine if they have a drug or alcohol problem. They will also be subject to home detention, community service, and fines.

Also recommended is the creation of the Washington auto theft prevention authority. Officer Nowak was killed by a man who had convictions for auto theft as well as convictions for assaulting an officer, so it is appropriate that this bill is named for her.

In Seattle alone, there has been 8,000 vehicles stolen. One hour of patrol time is spent taking a report for each vehicle stolen so that's 8,000 hours of patrol time which could have been spent on traffic safety and public safety issues.

There is a nexus with methamphetamine, and a direct nexus with car prowling. Rural areas are also impacted by this crime. Statistics from last July for Hoquiam show that 30 vehicles were stolen and only four people were arrested for them. It's a difficult crime to track down. The statistics show that many of the vehicles stolen are older cars and not ritzy, but to the owners, those vehicles are their lifeline to their job, getting their kids to school, to doctors appointments. It is hoped, with this bill, that law enforcement can be more proactive instead of always just reacting to these auto theft crimes.

CON: Juvenile sentencing is seen as remedial, not punitive, but juveniles' and adults' provisions are put together in this bill. Judges in the juvenile system have more discretion. There is no method in the sentencing scheme to deal with different ages of kids but the judge may take that fact into account. Also there is no right to trial by jury in the juvenile justice act. Sentences generally run consecutively but for adults, it's concurrent. The mandatory minimums should not be applied to all juveniles, without discretion.

OTHER: The juvenile provisions should either be removed from the bill or the bill should return to the form it was in when it left the House Human Services committee. The way the bill raises funds is problematic because it puts the burden on people who commit traffic infractions but there is no clear connection between someone who runs a red light and auto theft.

Persons Testifying (Judiciary): PRO: Representative Lovick, prime sponsor; Representative Priest, co-sponsor; Nicholas Metz, Seattle Police; Chief Meyers, City of Hoquiam; Randy Carroll, Chief of Police Bellingham; Norm Maleng, King County Prosecutor, Washington Association of Prosecuting Attorneys.

CON: John Sinclair, Washington Association of Criminal Defense Lawyers.

OTHER: Sarah Cherin, Children's Alliance; Jeff Hall, Board for Judicial Administration.

Staff Summary of Public Testimony (Ways & Means): PRO: This is a good bill.

OTHER: You should reconsider the fund source for the new account. Mandatory surcharges on traffic infractions may not be appropriate.

Persons Testifying (Ways & Means): PRO: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Jeff Hall, Board for Judicial Administration.