

# HOUSE BILL REPORT

## SB 5336

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to criminalizing damaging, destroying, tampering, or removing ballot return boxes or contents.

**Brief Description:** Criminalizing damaging, destroying, tampering, or removing ballot return boxes or contents.

**Sponsors:** Senators Miloscia, Hunt, Zeiger, Kuderer, Wellman and Fortunato; by request of Secretary of State.

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 3/21/17, 3/27/17 [DPA].

#### **Brief Summary of Bill (As Amended by Committee)**

- Provides that a person is guilty of Malicious Mischief if he or she causes, or creates a substantial risk of, an impairment to a service rendered to the public by damaging, destroying, or removing an official ballot deposit box or ballot drop box, or its contents.
- Raises the classification of unlawful removal of a ballot from a voting center or ballot drop location from a gross misdemeanor to an unranked class C felony.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

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*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.*

### Malicious Mischief.

A person who knowingly and maliciously causes damage to the property of another is guilty of Malicious Mischief. The degree of the crime depends on the nature of the harm caused, the type of property involved, and the value of the property destroyed.

A person commits Malicious Mischief in the first degree, a class B felony offense, if he or she knowingly and maliciously:

- damages property in an amount exceeding \$5,000;
- causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle, government property, or a public utility or mode of public transportation, power, or communication; or
- physically damages or tampers with an aircraft or its parts and impairs its safety, efficiency, or operation.

A person commits Malicious Mischief in the second degree, a class C felony offense, if he or she:

- damages property in an amount of over \$750, but not exceeding \$5,000; or
- creates a substantial risk of interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle, government property, or a public utility or mode of public transportation, power, or communication.

Knowingly and maliciously damaging the property of another under circumstances not amounting to first or second degree Malicious Mischief, and graffiti, qualifies as Malicious Mischief in the third degree.

### Unlawful Removal of a Ballot.

Any person who, without lawful authority, removes a ballot from a voting center or ballot drop location is guilty of a gross misdemeanor.

### Criminal Penalties and Sentencing.

Maximum criminal penalties are established in statute as follows:

- For class A felonies, life imprisonment, a fine of up to \$50,000, or both imprisonment and a fine.
- For class B felonies, 10 years imprisonment, a fine of \$20,000, or both imprisonment and a fine.
- For class C felonies, five years imprisonment, a fine of \$10,000, or both imprisonment and a fine.
- For gross misdemeanors, 364 days, a fine of \$5,000, or both imprisonment and a fine.
- For misdemeanors, 90 days, a fine of \$1,000, or both imprisonment and a fine.

When a person is convicted of a ranked felony, the Sentencing Reform Act (SRA) applies and determines a specific sentence range within the statutory maximum. Sentence ranges are calculated using both a statutory severity designation for the offense, or its "seriousness level," and the convicted person's "offender score," which is based on the offender's criminal history. If a felony offense does not have a designated seriousness level under the SRA, the maximum period of confinement is one year regardless of the class of felony. These offenses are referred to as unranked felonies.

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**Summary of Amended Bill:**

Malicious Mischief.

A person is guilty of Malicious Mischief in the first degree if he or she causes an interruption or impairment of service rendered to the public by, without lawful authority, physically damaging, destroying, or removing an official ballot deposit box or ballot drop box, or damaging, destroying, removing, or tampering with the ballot box's contents. Creating a substantial risk of interruption or impairment of service through such conduct is a second degree offense.

Unlawful Removal of a Ballot.

The penalty for unauthorized removal of a ballot from a voting center or ballot drop box location is elevated from a gross misdemeanor to an unranked class C felony.

**Amended Bill Compared to Original Bill:**

All provisions of the underlying bill are retained, but language is removed stating that removal of a ballot box or ballot must be "without permission" in order to be considered Malicious Mischief, and instead any conduct relating to ballot boxes and ballots to be taken "without lawful authority" in order to be considered Malicious Mischief.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) More and more people are using ballot drop boxes to vote. Statewide, in 2016, 57 percent of ballot returns were to ballot boxes, and in some counties over 77 percent of ballots were returned in this manner. Another measure pending in the Legislature would expand the number of ballot boxes, and would put them in less trafficked areas. Casting a ballot is a constitutional right and needs to be protected. State law is lacking when compared to penalties for tampering with a postal box. This is a clarification and housekeeping bill. The bill was drafted in consultation with prosecutors and was drafted to exclude juvenile misbehavior like graffiti.

(Opposed) None.

**Persons Testifying:** Senator Miloscia, prime sponsor; David Elliott, Office of the Secretary of State; and Kathy Sakahara, League of Women Voters.

**Persons Signed In To Testify But Not Testifying:** None.