

HOUSE BILL REPORT

SB 5632

As Reported by House Committee On:
Public Safety

Title: An act relating to organized retail theft.

Brief Description: Modifying organized retail theft provisions.

Sponsors: Senators O'Ban, Palumbo, Angel, Wilson, Zeiger, Rossi and Padden.

Brief History:

Committee Activity:

Public Safety: 3/23/17, 3/27/17 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Expands the offense of Organized Retail Theft to include circumstances where a person commits theft with at least six accomplices and makes or sends an electronic communication seeking participation in the theft.

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: Kelly Leonard (786-7147).

Background:

Theft.

A person commits Theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services;
- by deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services; or

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- appropriates lost or misdelivered property or services of another with intent to deprive him or her of the property or services.

For general Theft offenses, the degree and classification of Theft depends upon the value of the property stolen. Theft of property or services valued more than \$5,000 is a first degree offense and a class B felony with a seriousness level of II. Theft of property or services valued more than \$750 (but not more than \$5,000) is a second degree offense and class C felony with a seriousness level of I. Theft of property or services valued at \$750 or less is a third degree offense and a gross misdemeanor.

Organized Retail Theft.

A person commits the offense of Organized Retail Theft if he or she:

- Commits Theft of property or possesses stolen property with a value of at least \$750 from a mercantile establishment with an accomplice.
- Commits Theft of property with a cumulative value of at least \$750 from one or more mercantile establishments within a period of up to 180 days.

If the if value of the property stolen or possessed is \$5,000 or more, then it is a first degree offense and a class B felony with a seriousness level of III. Otherwise, it is a second degree offense and class C felony with a seriousness level of II.

For Organized Retail Theft, a series of thefts committed by the same person from one or more mercantile establishments over a period of 180 days may be aggregated into one count and the sum of the value of all the property determines the degree of the offense. When aggregating the offense for transactions occurring in different counties, the offense may be prosecuted in any county in which any one of the transactions occurred.

A mercantile establishment whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property. In the event a request to aggregate the prosecution is declined, the prosecutor must promptly notify the mercantile establishment of the reasons for the decision.

Sentencing.

Crimes are classified as misdemeanors, gross misdemeanors, or felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. When a person is convicted of a felony, the Sentencing Reform Act (SRA) applies and determines a specific range of sentence within the statutory maximum. Sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Generally, the higher the seriousness level or offender score, the longer the sentence.

Summary of Amended Bill:

An additional means to commit Organized Retail Theft is created. A person commits the offense if he or she commits Theft of property with a cumulative value of at least \$750 from a mercantile establishment with at least six accomplices and makes or sends at least one electronic communication seeking participation in the theft in the course of planning or committing the theft.

The thefts committed by the principal and accomplices may be aggregated into one count and the value of all the property is the value considered in determining the degree of Organized Retail Theft involved.

Amended Bill Compared to Original Bill:

The striking amendment limits the new means to commit Organized Retail Theft to a circumstance where a person makes or sends an electronic communication seeking participation in the theft (rather than where a person makes or receives an electronic communication). The striking amendment removes the provision that makes a conviction for organized retail theft under the new means a gross misdemeanor on the first offense and a class C felony on the second or subsequent offense, thereby classifying the new means based on current law in accordance with the value of the property stolen or possessed.

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) This bill addresses a very serious issue. Perpetrators of theft have used social media and other electronic communications to organize themselves, and they will show up at a predetermined location to damage property and hurt people. In one particular 2014 case, a group of 40 people arrived at a small convenience store after organizing and planning on a social media site. They stole merchandise, destroyed property, and threw cans of beer at the store employee. This same group of people then proceeded to a nearby gas station and committed the same acts. There have been similar recent incidents in Oregon and California.

Many retailers participated in a task force several years ago to address retail theft, and some issues were left unaddressed. This bill is another step to bring the state into the twenty-first century. The state should send a message that this type of behavior is not permitted. The proponents hope it will be a deterrent for future incidents in Washington.

(Opposed) None.

(Other) The intent of the bill is to address flash mobs, but it is going to capture other conduct. The bill should be modified to include only conduct completed in furtherance of the

conspiracy. As currently written, the bill allows a circumstance where two people steal together, and then one person goes back on their own and steals more later independently. However, the accomplice that wasn't involved in the second occurrence is criminally liable for both thefts. Furthermore, this bill also doesn't add anything to current law to address flash mobs, but it probably does make it harder to prosecute these cases by adding an additional element to be proved by the prosecutor.

Persons Testifying: (In support) Mark Johnson, Washington Retail Association; and Carolyn Logue, Washington Food Industry Association.

(Other) Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.