

SENATE BILL REPORT

SB 5634

As Reported by Senate Committee On:
Law & Justice, February 16, 2017

Title: An act relating to aggregating counts of retail theft with special circumstances.

Brief Description: Concerning aggregating counts of retail theft with special circumstances.

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

Brief History:

Committee Activity: Law & Justice: 2/07/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Allows a series of thefts committed by the same person from one or more mercantile establishments over a period of 180 days to be aggregated into one count.
- Requires the prosecuting attorney to tell the merchants the reason why aggregation was declined if it was.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5634 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frock and Wilson.

Staff: Aldo Melchiori (786-7439)

Background: Retail theft with special circumstances is theft from a mercantile establishment with one of the following special circumstances:

- to facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;
- the person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

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 person committed theft at three or more separate and distinct mercantile establishments within a 180-day period.

Retail theft with special circumstances in the first degree involves theft of property worth \$5,000 or more. It is a Class B felony ranked at Level III on the sentencing grid—1-3 months for a first offense and/or a \$20,000 fine. A person is guilty of retail theft with special circumstances in the second degree if the property is worth \$750 to \$4,999. Retail theft with special circumstances in the second degree is a Class C felony ranked at Level II on the sentencing grid—0-90 days for a first offense and/or up to a \$10,000 fine. Retail theft with special circumstances in the third degree involves theft of property worth under \$750. It is an unranked Class C felony—0-364 days for a first offense and/or up to a \$10,000 fine.

A court may sentence an offender to a term of confinement above the standard sentencing range if the finder of fact determines that there are substantial and compelling reasons to do so. Reasons included as justifying a departure are if:

- the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished;
- the current offense involved multiple victims or multiple incidents per victim; and
- the current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time.

Summary of Bill (First Substitute): For the purposes of determining the value of the property taken during the commission of retail theft with special circumstances, a series of thefts committed by the same person from one or more establishments over a 180-day period may be aggregated in one count and the sum of the value of all the property is the value considered in determining the degree of the theft. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which any of the thefts occurred.

Any establishment alleging that property has been stolen may request that the charge be aggregated with other thefts of property about which the mercantile establishment is aware. If the prosecuting attorney declines to aggregate the thefts, the establishment must be promptly advised of the decision and the reasons for the decision.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Clarifies that an aggregated theft charge or a charge for a single theft that has been aggregated in one county cannot be prosecuted in more than one county.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This will greatly assist businesses in the fight against organized retail theft. In King County, charges are only brought for economic crimes if they involved at least \$1,000. Aggregating the thefts will bring the threshold up to that amount. It is rare for a single theft to rise to the \$1,000 threshold.

OTHER: The provisions of the bill invite double jeopardy issues when crimes are aggregated between two different counties.

Persons Testifying: PRO: Mark Johnson, Washington Retail Association; Carolyn Logne, Washington Food Industry Association.

OTHER: Ramona Brandes, WACDL, WDA.

Persons Signed In To Testify But Not Testifying: No one.