
ENGROSSED SUBSTITUTE SENATE BILL 5033

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senator Roach)

Read first time 01/28/97.

1 AN ACT Relating to possession of stolen checks or drafts; amending
2 RCW 9A.56.160, 9A.56.140, 9A.56.010 and 9A.56.040; prescribing
3 penalties; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.56.160 and 1995 c 129 s 15 (Initiative Measure No.
6 159) are each amended to read as follows:

7 (1) A person is guilty of possessing stolen property in the second
8 degree if:

9 (a) He or she possesses stolen property other than a firearm as
10 defined in RCW 9.41.010 which exceeds two hundred fifty dollars in
11 value but does not exceed one thousand five hundred dollars in value;
12 or

13 (b) He or she possesses a stolen public record, writing or
14 instrument kept, filed, or deposited according to law; or

15 (c) He or she possesses a stolen access device; or

16 (d) He or she possesses a stolen check or draft; or

17 (e) He or she possesses a stolen motor vehicle of a value less than
18 one thousand five hundred dollars.

1 (2) Possessing stolen property in the second degree is a class C
2 felony.

3 **Sec. 2.** RCW 9A.56.140 and 1987 c 140 s 3 are each amended to read
4 as follows:

5 (1) "Possessing stolen property" means knowingly to receive,
6 retain, possess, conceal, or dispose of stolen property knowing that it
7 has been stolen and to withhold or appropriate the same to the use of
8 any person other than the true owner or person entitled thereto.

9 (2) The fact that the person who stole the property has not been
10 convicted, apprehended, or identified is not a defense to a charge of
11 possessing stolen property.

12 (3) When a person (~~((not an issuer or agent thereof))~~) has in his or
13 her possession, or under his or her control, stolen access devices
14 issued in the names of two or more persons, he (~~((shall be))~~) or she is
15 presumed to know that they are stolen.

16 (~~((This))~~) (4) When a person has in his or her possession, or under
17 his or her control, two or more stolen checks with different account
18 numbers, he or she is presumed to know that they are stolen.

19 (5) The presumptions (~~((may be rebutted))~~) in subsections (3) and (4)
20 of this section are rebuttable by evidence raising a reasonable
21 inference that the possession of such stolen access devices, checks, or
22 drafts was without knowledge that they were stolen.

23 **Sec. 3.** RCW 9A.56.010 and 1995 c 92 s 1 are each amended to read
24 as follows:

25 The following definitions are applicable in this chapter unless the
26 context otherwise requires:

27 (1) "Appropriate lost or misdelivered property or services" means
28 obtaining or exerting control over the property or services of another
29 which the actor knows to have been lost or mislaid, or to have been
30 delivered under a mistake as to identity of the recipient or as to the
31 nature or amount of the property;

32 (2) "By color or aid of deception" means that the deception
33 operated to bring about the obtaining of the property or services; it
34 is not necessary that deception be the sole means of obtaining the
35 property or services;

36 (3) "Access device" means any card, plate, code, account number, or
37 other means of account access that can be used alone or in conjunction

1 with another access device to obtain money, goods, services, or
2 anything else of value, or that can be used to initiate a transfer of
3 funds, other than a transfer originated solely by paper instrument;

4 (4) "Check" and "draft" each have the meanings given in RCW 62A.3-
5 104;

6 (5) "Deception" occurs when an actor knowingly:

7 (a) Creates or confirms another's false impression which the actor
8 knows to be false; or

9 (b) Fails to correct another's impression which the actor
10 previously has created or confirmed; or

11 (c) Prevents another from acquiring information material to the
12 disposition of the property involved; or

13 (d) Transfers or encumbers property without disclosing a lien,
14 adverse claim, or other legal impediment to the enjoyment of the
15 property, whether that impediment is or is not valid, or is or is not
16 a matter of official record; or

17 (e) Promises performance which the actor does not intend to perform
18 or knows will not be performed(~~(-)~~);

19 (~~(+5)~~) (6) "Deprive" in addition to its common meaning means to
20 make unauthorized use or an unauthorized copy of records, information,
21 data, trade secrets, or computer programs;

22 (~~(+6)~~) (7) "Obtain control over" in addition to its common
23 meaning, means:

24 (a) In relation to property, to bring about a transfer or purported
25 transfer to the obtainer or another of a legally recognized interest in
26 the property; or

27 (b) In relation to labor or service, to secure performance thereof
28 for the benefits of the obtainer or another;

29 (~~(+7)~~) (8) "Wrongfully obtains" or "exerts unauthorized control"
30 means:

31 (a) To take the property or services of another;

32 (b) Having any property or services in one's possession, custody or
33 control as bailee, factor, pledgee, servant, attorney, agent, employee,
34 trustee, executor, administrator, guardian, or officer of any person,
35 estate, association, or corporation, or as a public officer, or person
36 authorized by agreement or competent authority to take or hold such
37 possession, custody, or control, to secrete, withhold, or appropriate
38 the same to his or her own use or to the use of any person other than
39 the true owner or person entitled thereto; or

1 (c) Having any property or services in one's possession, custody,
2 or control as partner, to secrete, withhold, or appropriate the same to
3 his or her use or to the use of any person other than the true owner or
4 person entitled thereto, where such use is unauthorized by the
5 partnership agreement;

6 (~~(8)~~) (9) "Owner" means a person, other than the actor, who has
7 possession of or any other interest in the property or services
8 involved, and without whose consent the actor has no authority to exert
9 control over the property or services;

10 (~~(9)~~) (10) "Receive" includes, but is not limited to, acquiring
11 title, possession, control, or a security interest, or any other
12 interest in the property;

13 (~~(10)~~) (11) "Services" includes, but is not limited to, labor,
14 professional services, transportation services, electronic computer
15 services, the supplying of hotel accommodations, restaurant services,
16 entertainment, the supplying of equipment for use, and the supplying of
17 commodities of a public utility nature such as gas, electricity, steam,
18 and water;

19 (~~(11)~~) (12) "Stolen" means obtained by theft, robbery, or
20 extortion;

21 (~~(12)~~) (13) "Subscription television service" means cable or
22 encrypted video and related audio and data services intended for
23 viewing on a home television by authorized members of the public only,
24 who have agreed to pay a fee for the service. Subscription services
25 include but are not limited to those video services presently delivered
26 by coaxial cable, fiber optic cable, terrestrial microwave, television
27 broadcast, and satellite transmission;

28 (~~(13)~~) (14) "Telecommunication device" means (a) any type of
29 instrument, device, machine, or equipment that is capable of
30 transmitting or receiving telephonic or electronic communications; or
31 (b) any part of such an instrument, device, machine, or equipment, or
32 any computer circuit, computer chip, electronic mechanism, or other
33 component, that is capable of facilitating the transmission or
34 reception of telephonic or electronic communications;

35 (~~(14)~~) (15) "Telecommunication service" includes any service
36 other than subscription television service provided for a charge or
37 compensation to facilitate the transmission, transfer, or reception of
38 a telephonic communication or an electronic communication;

1 (~~(15)~~) (16) Value. (a) "Value" means the market value of the
2 property or services at the time and in the approximate area of the
3 criminal act.

4 (b) Whether or not they have been issued or delivered, written
5 instruments, except those having a readily ascertained market value,
6 shall be evaluated as follows:

7 (i) The value of an instrument constituting an evidence of debt,
8 such as a check, draft, or promissory note, shall be deemed the amount
9 due or collectible thereon or thereby, that figure ordinarily being the
10 face amount of the indebtedness less any portion thereof which has been
11 satisfied;

12 (ii) The value of a ticket or equivalent instrument which evidences
13 a right to receive transportation, entertainment, or other service
14 shall be deemed the price stated thereon, if any; and if no price is
15 stated thereon, the value shall be deemed the price of such ticket or
16 equivalent instrument which the issuer charged the general public;

17 (iii) The value of any other instrument that creates, releases,
18 discharges, or otherwise affects any valuable legal right, privilege,
19 or obligation shall be deemed the greatest amount of economic loss
20 which the owner of the instrument might reasonably suffer by virtue of
21 the loss of the instrument.

22 (c) Whenever any series of transactions which constitute theft,
23 would, when considered separately, constitute theft in the third degree
24 because of value, and said series of transactions are a part of a
25 common scheme or plan, then the transactions may be aggregated in one
26 count and the sum of the value of all said transactions shall be the
27 value considered in determining the degree of theft involved.

28 (d) Whenever any person is charged with possessing stolen property
29 and such person has unlawfully in his or her possession at the same
30 time the stolen property of more than one person, then the stolen
31 property possessed may be aggregated in one count and the sum of the
32 value of all said stolen property shall be the value considered in
33 determining the degree of theft involved.

34 (e) Property or services having value that cannot be ascertained
35 pursuant to the standards set forth above shall be deemed to be of a
36 value not exceeding two hundred and fifty dollars;

37 (~~(16)~~) (17) "Shopping cart" means a basket mounted on wheels or
38 similar container generally used in a retail establishment by a
39 customer for the purpose of transporting goods of any kind;

1 (~~(17)~~) (18) "Parking area" means a parking lot or other property
2 provided by retailers for use by a customer for parking an automobile
3 or other vehicle.

4 **Sec. 4.** RCW 9A.56.040 and 1995 c 129 s 12 are each amended to read
5 as follows:

6 (1) A person is guilty of theft in the second degree if he or she
7 commits theft of:

8 (a) Property or services which exceed(s) two hundred and fifty
9 dollars in value other than a firearm as defined in RCW 9.41.010, but
10 does not exceed one thousand five hundred dollars in value; or

11 (b) A public record, writing, or instrument kept, filed, or
12 deposited according to law with or in the keeping of any public office
13 or public servant; or

14 (c) An access device; or

15 (d) A motor vehicle, of a value less than one thousand five hundred
16 dollars; or

17 (e) A check or draft.

18 (2) Theft in the second degree is a class C felony.

19 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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