

# HOUSE BILL REPORT

## HB 2704

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

**Title:** An act relating to organized retail theft.

**Brief Description:** Including organized retail theft in crime guidelines.

**Sponsors:** Representatives O'Brien, Pearson, Darneille, Kirby, Ahern, Williams, Strow, Kilmer, Green, Sells and Morrell.

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/27/06, 2/2/06 [DP].

**Brief Summary of Bill**

- Establishes three new theft-related crimes: Theft with the Intent to Resell, Organized Retail Theft, and Retail Theft with Extenuating Circumstances.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kirby, Strow and Williams.

**Staff:** Jim Morishima (786-7191).

**Background:**

I. Theft-Related Crimes

A. *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; or
- by color or aid of deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services.

A person is guilty of Theft in the first degree if the value of the property exceeds \$1,500 or is taken from the person of the victim. Theft in the first degree is a class B felony with a seriousness level of II.

A person is guilty of Theft in the second degree if: (a) the value of the property exceeds \$250 and is less than \$1,500; (b) the property is a public record, writing, or instrument kept, filed, or deposited according to law or with or in the keeping of any public office or public service; (c) the property is an access device; or (d) the property is a motor vehicle valued less than \$1,500. Theft in the second degree is a class C felony with a seriousness level of I.

A person is guilty of Theft in the third degree if the value of the property is less than \$250 or includes more than 10 merchandise pallets or beverage crates. Theft in the third degree is a gross misdemeanor.

#### *B. Possession of Stolen Property*

A person commits Possession of Stolen Property if he or she knowingly receives, retains, possesses, conceals, or disposes of stolen property knowing that it has been stolen and to withhold or appropriate the property to the use of any person other than the true owner.

A person commits Possession of Stolen Property in the first degree if the value of the property exceeds \$1,500. Possession of Stolen Property in the first degree is a class B felony with a seriousness level of II.

A person commits Possession of Stolen Property in the second degree if: (a) the value of the property exceeds \$250 and is less than \$1,500; (b) the property is a public record, writing, or instrument kept, filed, or deposited according to law; (c) the property is an access device; or (d) the property is a motor vehicle valued less than \$1,500. Possession of Stolen Property in the second degree is a class C felony with a seriousness level of I.

A person commits Possession of Stolen Property in the third degree if the value of the property is less than \$250 or includes more than 10 merchandise pallets or beverage crates. Possession of Stolen Property in the third degree is a gross misdemeanor.

#### II. Aggregation

When determining the value of the property involved, the value of separate third degree thefts may be aggregated if they are all part of a criminal episode or a common scheme or plan.

#### III. Criminal Profiteering

The Criminal Profiteering Act (CPA) prohibits acts and patterns of criminal activity that constitute organized crime and criminal profiteering. The CPA defines criminal profiteering as the commission of certain enumerated crimes for financial gain. Persons can be subject to civil penalties for engaging in a pattern of criminal profiteering, including fines, injunctive relief, and civil forfeiture.

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### **Summary of Bill:**

#### I. Theft-Related Crimes

Three new theft-related crimes are established: Theft with the Intent to Resell, Organized Retail Theft, and Retail Theft with Extenuating Circumstances.

*A. Theft with the Intent to Resell*

A person commits Theft with the Intent to Resell if he or she commits theft of property with a value of at least \$250 with the intent to resell the property for monetary or other gain. The person commits Theft with the Intent to Resell in the first degree if the property has a value of \$1,500 or more. Theft with the Intent to Resell in the first degree is a class B felony with a seriousness level of III. The person commits Theft with the Intent to Resell in the second degree if the property has a value of at least \$250, but less than \$1,500. Theft with the Intent to Resell in the second degree is a class C felony with a seriousness level of II.

*B. Organized Retail Theft*

A person commits Organized Retail Theft if he or she commits Theft or Possession of Stolen Property with an accomplice and the property has a value of at least \$250. The person commits Organized Retail Theft in the first degree if the property has a value of \$1,500 or more. Organized Retail Theft in the first degree is a class B felony with a seriousness level of III. The person commits Organized Retail Theft in the second degree if the property has a value of at least \$250, but less than \$1,500. Organized Retail Theft in the second degree is a class C felony with a seriousness level of II.

*C. Retail Theft with Extenuating Circumstances*

A person is guilty of Retail Theft with Extenuating Circumstances if he or she commits theft of property from a mercantile establishment and one of the following extenuating circumstances exists:

- the person leaves through an emergency exit to facilitate the theft;
- the person is in possession of an item designed to overcome security systems such as a lined bag or a tag remover; or
- the person committed theft at three or more separate and distinct mercantile establishments within a 180-day period.

The person is guilty of Retail Theft with Extenuating Circumstances in the first degree if the theft involved constitutes Theft in the first degree. Retail Theft with Extenuating Circumstances in the first degree is a class B felony with a seriousness level of III. The person is guilty of Retail Theft with Extenuating Circumstances in the second degree if the theft involved constitutes Theft in the second degree. Retail Theft with Extenuating Circumstances in the second degree is a class C felony with a seriousness level of II. The person is guilty of Retail Theft with Extenuating Circumstances in the third degree if the theft involved constitutes Theft in the third degree. Retail Theft with Extenuating Circumstances in the third degree is an unranked class C felony.

II. Aggregation

For purposes of determining the value of the property involved for Theft with the Intent to Resell and Organized Retail Theft, a series of thefts may be aggregated to determine the degree of the crime if they were committed by the same person from one or more mercantile establishments over a 180-day period. For purposes of Theft, Theft with the Intent to Resell, and Organized Retail Theft, thefts committed by the same person in different counties that have been aggregated may be prosecuted in any county in which one of the thefts occurred.

### III. Criminal Profiteering

Theft with the Intent to Resell and Organized Retail Theft are added to the definition of "criminal profiteering" under the CPA.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Testimony For:** Organized retail theft is a serious problem in this state and it is growing. Organized retail theft is not the same as traditional shoplifting. These criminals are bold, violent, and extremely organized. These thefts are responsible for the majority of merchandise lost in retail establishments. These criminals are aware of the different state laws. When a state gets tough on these criminals, they move on to other states. Anti-theft devices are ineffective in stopping organized retail theft. This type of crime can lead to health problems if stolen food is stored in an unsafe manner. The ability to aggregate value and to prosecute these crimes across county lines will help prosecutors bring charges against these criminals. This state should send a message that organized retail theft is not allowed in this state.

**Testimony Against:** None.

**Persons Testifying:** (In support) Cliff Finch, Washington Food Industries; Jason Moulton and Chris Emery, Safeway; Bill Young, Market Place Stores; Ryan Clevenger, Haggen, Top Foods; David McBride, Quality Food Center; Mark Johnson, Washington Retail Association; Julee Kraus, Nordstrom; and Shannon Humphrey, Walgreens.

(In support with amendments) Tom McBride, Washington Association of Prosecuting Attorneys.

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