

HOUSE BILL REPORT

HB 1966

As Passed Legislature

Title: An act relating to classifying identity theft as a crime against persons.

Brief Description: Classifying identity theft as a crime against persons.

Sponsors: By Representatives Ericks, O'Brien, Lovick, Strow, Haler, Takko, Morrell, Nixon, Campbell, McIntire, Conway, Santos, Chase and Moeller.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/24/05 [DP];

Appropriations: 3/3/05, 3/5/05 [DP].

Floor Activity:

Passed House: 3/10/05, 94-0.

Floor Activity:

Passed House: 1/13/06, 96-0.

Passed Senate: 3/3/06, 49-0.

Passed Legislature.

Brief Summary of Bill

- Adds identity theft in the first and second degree to the list of designated "crimes against persons" within the prosecuting standards and guidelines section of the Sentencing Reform Act.

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; Kagi, Kirby and Strow.

Staff: Kathryn Leathers (786-7114).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney,

Kessler, Linville, McDermott, McIntire, Miloscia, Pearson, Priest, Schual-Berke, Talcott and Walsh.

Staff: Bernard Dean (786-7130).

Background:

In general, crimes are classified by statute as felonies, misdemeanors and gross misdemeanors. Felonies are further classified by statute as class A, class B or class C felonies, and these designations determine imprisonment and monetary penalties. If an act is prohibited by statute but no penalty for the violation is specifically imposed, the crime is deemed a misdemeanor.

Crimes may be further designated by statute as crimes against persons or crimes against property. If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, may be subject to community placement or community custody, and cannot qualify to earn up to 50 percent of earned release time.

Identity theft in the first or second degree is not designated by statute as either a crime against persons or a property crime.

Identity theft in the first degree is a class B felony, seriousness level of IV. Identity theft in the first degree is committed when a person knowingly:

- obtains, possesses, uses, or transfers a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime; and
- obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of \$1,500 in value.

Identity theft in the second degree is a class C felony, seriousness level of II. Identity theft in the second degree is committed when a person knowingly:

- obtains, possesses, uses, or transfers a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime; and
- obtains an aggregate total of credit, money, goods, services, or anything else of value of less than \$1,500; or
- when no credit, money, goods, services, or anything of value is obtained.

Identity theft is not committed when a person obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

The Sentencing Reform Act (SRA) includes guidelines for prosecutors to use when determining whether or not to prosecute a felony. The guidelines distinguish between two categories of crimes: crimes against persons and crimes against property/other crimes. Specific crimes are listed under each category of crimes. For example, the guidelines include the following crimes in the crimes against persons category: murder, assault, rape, first and second degree robbery, first degree arson, first and second degree extortion, and stalking. The

crimes against property/other crimes category includes such crimes as: first and second degree theft, first and second degree possession of stolen property, first and second degree malicious mischief, and escape from community custody.

Under these guidelines, a prosecuting attorney may decline to prosecute any crime, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law. Additional guidelines are provided regarding the decision to file and prosecute a crime. For example:

- crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder; and
- property crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

The courts have ruled that the SRA's prosecuting guidelines are merely a set of guidelines for purposes of making felony filing and prosecuting decisions, and that the guidelines do not establish whether a specific crime is, in fact, a crime against persons or a crime against property. If a crime is not designated by statute as either a crime against persons or a property crime, the courts will conduct this independent analysis on a case-by-case basis.

Summary of Bill:

Identity theft in the first and second degree are categorized as "crimes against persons" within the prosecuting standards and guidelines section of the SRA.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Testimony For: (Criminal Justice & Corrections) The crime of identity theft is the same as kidnapping – it is an electronic kidnapping of a person. It is not properly regarded in the legal system as a crime against a person. It is a crime about persons, not property. Currently, identity theft crimes are handled by the civil prosecuting units. Many identity theft crimes are not even prosecuted, but when they are, they seem to be given little priority and it can take years to be adjudicated. This is a terrible crime because it takes years and years for a person to recover from the damage. Often, a person is forced to investigate the matter for himself or herself because the police do not have the funds to support proper investigations or they do not consider it to be a priority.

In 2004, there were 10 million identity theft victims. Even infants have had their identities stolen, and start out their lives with false criminal records before they can walk, speak or

defend themselves. There is a strong connection between identity theft and methamphetamine. Identity theft has risen to epidemic levels in Washington, and it is the fastest growing crime in the United States. One in every six persons will be a victim of identity theft. This crime is costing individuals, businesses, and the government millions of dollars per year. Costs are passed on to consumers when businesses increase the price of goods and when insurance companies raise their rates in order to absorb their own costs associated with identity theft. The cost to fund this bill is far outweighed by the savings it will provide to everyone. As it stands now, victims are victimized twice – once by the perpetrator and again by the justice system. The majority of Washington residents want tougher laws for this crime, and this bill will do that.

Testimony For: (Appropriations) None.

Testimony Against: (Criminal Justice & Corrections) None.

Testimony Against: (Appropriations) None.

Persons Testifying: (Criminal Justice & Corrections) Representative Ericks, prime sponsor; Sandy Guinn; John Brooke; Ben Lindekusel, Evergreen Hospital; and Alton McDonald, National Action Network.

Persons Testifying: (Appropriations) None.

Persons Signed In To Testify But Not Testifying: (Criminal Justice & Corrections) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.