

HOUSE BILL REPORT

HB 2822

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to taking a motor vehicle without permission.

Brief Description: Modifying provisions relating to taking a motor vehicle without permission.

Sponsors: Representatives Priest, Haler, Orcutt, Campbell, Ericksen, Woods, Alexander, Talcott, Kristiansen, Holmquist, Rodne, Serben, Roach, Buri, Skinner, Schindler, Hinkle, Jarrett, McDonald, P. Sullivan, Simpson, Walsh, Tom, Armstrong, McCune, Shabro and Dunn.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/24/06, 1/27/06 [DPS].

Brief Summary of Substitute Bill

- Establishes mandatory minimum penalties for adult offenders convicted of taking a motor vehicle without permission.
- Makes the possession of shaved keys a gross misdemeanor offense.
- Appropriates \$7 million to the Washington State Patrol (WSP) for establishing and operating three regional auto theft task forces.
- Appropriates \$3 million to the WSP for establishing and operating pro-action auto theft swat units.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill 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: Yvonne Walker (786-7841).

Background:

A person is guilty of taking a motor vehicle without permission in the first degree, if such person intentionally takes a motor vehicle without permission and he or she:

- alters the vehicle to change its appearance or identification numbers;
- removes parts from the vehicle with the intent to sell the parts;
- exports or attempts to export the vehicle out-of-state or out of the country for profit;
- intends to sell the vehicle; or
- is engaged in a conspiracy, the object of which is the theft of motor vehicles for sale to others for profit.

Taking a motor vehicle without permission in the first degree is a class B felony which carries a maximum term of 10 years of incarceration, or a fine of up to \$20,000, or both. It is ranked as a seriousness level V crime under the Sentencing Reform Act (SRA) which, for a first-time adult offender has a standard sentence range of six to 12 months.

A person who intentionally takes a motor vehicle without permission or voluntarily rides in a vehicle knowing it was taken without permission, is guilty of second degree taking a motor vehicle without permission offense. Taking a motor vehicle without permission in the second degree is a class C felony offense which carries a maximum term of five years of incarceration, or a fine of up to \$10,000, or both. It is ranked as a seriousness level I crime under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days.

Summary of Substitute Bill:

An offender convicted of taking a motor vehicle without permission is subject to mandatory minimum sentencing terms.

First degree taking a motor vehicle without permission

An adult offender convicted of first degree taking a motor vehicle without permission who has no prior criminal vehicle theft history, must be sentenced to a minimum term of:

- not less than 200 days of total confinement;
- not less than 90 days of community custody;
- not less than 45 hours of community restitution; and
- a fine of not less than \$150.

An adult offender with one prior criminal vehicle theft conviction, must be sentenced to a minimum term of:

- not less than 380 days of total confinement;
- not less than 120 days of community custody;
- not less than 60 hours of community restitution; and
- a fine of not less than \$200.

An adult offender with two or more prior criminal vehicle theft convictions, must be sentenced to a minimum term of:

- not less than 480 days of total confinement;

- not less than 180 days of community custody;
- not less than 90 hours of community restitution; and
- a fine of not less than \$250.

Second degree taking a motor vehicle without permission

An adult offender convicted of second degree taking a motor vehicle without permission who has no prior criminal vehicle theft history, must be sentenced to a minimum term of:

- not less than 20 days of total confinement;
- not less than 60 days of community custody;
- not less than 30 hours of community restitution; and
- a fine of not less than \$100.

An adult offender with one prior criminal vehicle theft conviction, must be sentenced to a minimum term of:

- not less than 30 days of total confinement;
- not less than 90 days of community custody;
- not less than 45 hours of community restitution; and
- a fine of not less than \$150.

An adult offender with two or more prior criminal vehicle theft convictions, must be sentenced to a minimum term of:

- not less than 80 days of total confinement;
- not less than 120 days of community custody;
- not less than 60 hours of community restitution; and
- a fine of not less than \$200.

The mandatory minimum terms cannot be modified and the convicted offender is not eligible for community custody, earned release time, furlough, home detention, partial confinement, work crews, work release, or any other form of early release.

Possession of Shaved Keys

A person who makes, mends or possesses any shaved key commonly used for the commission of vehicle theft is guilty of possession of shaved keys. The offense of possession of shaved keys is a gross misdemeanor offense. A gross misdemeanor offense is punishable by imprisonment of not more than one year in jail, or by a fine of not more than \$5,000, or both.

Regional Auto Theft Task Forces

The sum of \$7 million is appropriated for the Fiscal Year ending June 30, 2007, from the General Fund to the WSP for the purpose of establishing and operating three regional auto theft task forces.

Auto Theft Swat Units

The sum of \$3 million is appropriated for the Fiscal Year ending June 30, 2007, from the General Fund to the WSP for the purpose of establishing and operating pro-action auto theft swat units in Washington.

Substitute Bill Compared to Original Bill:

The two presumptions created in the original bill are eliminated that stated (1) when a person has in his or her possession, or under his or her control, two or more stolen vehicles, it is presumed that he or she knew that the vehicles were stolen; and (2) when a person has been found in possession of a stolen vehicle on two previous occasions, or has been found with a stolen vehicle under his or her control on two previous occasions, he or she is presumed to know that the third and subsequent vehicles in his or her possession, or under his or her control, are stolen. In addition, all provisions that established mandatory minimum penalties for juvenile offenders convicted of taking a motor vehicle without permission were also eliminated.

Appropriation: The sum of \$7 million is appropriated for the Fiscal Year ending June 30, 2007, from the General Fund to the WSP for the purpose of establishing and operating three regional auto theft task forces.

The sum of \$3 million is appropriated for the Fiscal Year ending June 30, 2007, from the General Fund to the WSP for the purpose of establishing and operating pro-action auto theft swat units in Washington.

Fiscal Note: Available.

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

Testimony For: Auto theft has reached epidemic proportions. This bill addresses four issues: (1) shaved keys, (2) mandatory minimum sentences for auto theft, (3) prima facie evidence, and (4) provides additional funding for auto theft forces. It is time that we do something significant in regards to auto theft. Mount Lake Terrace alone had an 87 percent increase in auto thefts last year.

Many of the cases that are solved are found to have been done by repeat offenders. As a result, it is often frustrating when auto theft cases are not prosecuted. However, it is understood that there are a backlog of felony cases that prosecutors are responsible for and there is a lack of funding to prosecute these cases. Coordination between local law enforcement jurisdictions is critical.

Testimony Against: The mandatory presumptions releases the state of its burden of proof. These presumptions are also subject to a constitutional challenge in the future. There is also opposition regarding the bill in that it prohibits a person from being eligible for some other alternative to incarceration sentence such as work release. Sentencing the offender to direct incarceration does not allow them to be employed in order to pay back their restitution.

Persons Testifying: (In support) Representative Priest, prime sponsor; Chief Scott Smith, Mount Lake Terrace Police Department; and Brian J. Wilson, Federal Way Police Department.

(Opposed) Sarah Yatsko, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.