

ESSB 5312 - H AMD TO PSEP COMM AMD (H-3210.1/07) **536**
By Representative Armstrong

WITHDRAWN 04/04/2007

1 On page 8, after line 6 of the amendment, insert the following:

2 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.94A
3 RCW to read as follows:

4 (1) In a prosecution for theft in the first or second degree, the
5 prosecution may file a special allegation of disproportionate impact
6 when sufficient admissible evidence exists, which, when considered with
7 the most plausible, reasonably foreseeable defense that could be raised
8 under the evidence, would justify a finding by a reasonable and
9 objective fact-finder that the damage to the victim greatly exceeds the
10 value of the stolen property.

11 (2) Once a special allegation has been made under this section, the
12 state has the burden to prove beyond a reasonable doubt that the damage
13 to the victim greatly exceeds the value of the stolen property. If a
14 jury is had, the jury shall, if it finds the defendant guilty, also
15 find a special verdict as to whether the damage to the victim greatly
16 exceeds the value of the stolen property. If no jury is had, the court
17 shall make a finding of fact as to whether the damage to the victim
18 greatly exceeds the value of the stolen property.

19 (3) For the purposes of this section, damage to the victim greatly
20 exceeds the value of the stolen property when the replacement cost of
21 the stolen item is more than three times the value of the stolen item,
22 or the theft of the item creates a public hazard.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW
24 to read as follows:

25 (1) In a prosecution for possessing stolen property in the first or
26 second degree, the prosecution may file a special allegation of
27 disproportionate impact when sufficient admissible evidence exists,
28 which, when considered with the most plausible, reasonably foreseeable
29 defense that could be raised under the evidence, would justify a

1 finding by a reasonable and objective fact-finder that the damage to
2 the victim from whom the property was stolen greatly exceeds the value
3 of the stolen property.

4 (2) Once a special allegation has been made under this section, the
5 state has the burden to prove beyond a reasonable doubt that the damage
6 to the victim from whom the property was stolen greatly exceeds the
7 value of the stolen property. If a jury is had, the jury shall, if it
8 finds the defendant guilty, also find a special verdict as to whether
9 the damage to the victim from whom the property was stolen greatly
10 exceeds the value of the stolen property. If no jury is had, the court
11 shall make a finding of fact as to whether the damage to the victim
12 from whom the property was stolen greatly exceeds the value of the
13 stolen property.

14 (3) For the purposes of this section, damage to the victim from
15 whom the property was stolen greatly exceeds the value of the stolen
16 property when the replacement cost of the stolen item is more than
17 three times the value of the stolen item, or the theft of the item
18 creates a public hazard.

19 **Sec. 12.** RCW 9.94A.515 and 2006 c 277 s 6, 2006 c 228 s 9, 2006 c
20 191 s 2, 2006 c 139 s 2, 2006 c 128 s 3, and 2006 c 73 s 12 are each
21 reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Malicious placement of an imitation
6 device 1 (RCW 70.74.272(1)(a))
7 Rape 1 (RCW 9A.44.040)
8 Rape of a Child 1 (RCW 9A.44.073)
9 Trafficking 2 (RCW 9A.40.100(2))
10 XI Manslaughter 1 (RCW 9A.32.060)
11 Rape 2 (RCW 9A.44.050)
12 Rape of a Child 2 (RCW 9A.44.076)
13 X Child Molestation 1 (RCW 9A.44.083)
14 Indecent Liberties (with forcible
15 compulsion) (RCW
16 9A.44.100(1)(a))
17 Kidnapping 1 (RCW 9A.40.020)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Malicious explosion 3 (RCW
21 70.74.280(3))
22 Sexually Violent Predator Escape
23 (RCW 9A.76.115)
24 IX Abandonment of Dependent Person 1
25 (RCW 9A.42.060)
26 Assault of a Child 2 (RCW 9A.36.130)
27 Criminal Mistreatment 1 (RCW
28 9A.42.020)
29 Explosive devices prohibited (RCW
30 70.74.180)
31 Hit and Run--Death (RCW
32 46.52.020(4)(a))
33 Homicide by Watercraft, by being
34 under the influence of intoxicating
35 liquor or any drug (RCW
36 79A.60.050)

1 Inciting Criminal Profiteering (RCW
2 9A.82.060(1)(b))
3 Malicious placement of an explosive 2
4 (RCW 70.74.270(2))
5 Robbery 1 (RCW 9A.56.200)
6 Sexual Exploitation (RCW 9.68A.040)
7 Vehicular Homicide, by being under
8 the influence of intoxicating liquor
9 or any drug (RCW 46.61.520)
10 VIII Arson 1 (RCW 9A.48.020)
11 Homicide by Watercraft, by the
12 operation of any vessel in a
13 reckless manner (RCW
14 79A.60.050)
15 Manslaughter 2 (RCW 9A.32.070)
16 Promoting Prostitution 1 (RCW
17 9A.88.070)
18 Theft of Ammonia (RCW 69.55.010)
19 Vehicular Homicide, by the operation
20 of any vehicle in a reckless manner
21 (RCW 46.61.520)
22 VII Burglary 1 (RCW 9A.52.020)
23 Child Molestation 2 (RCW 9A.44.086)
24 Civil Disorder Training (RCW
25 9A.48.120)
26 Dealing in depictions of minor engaged
27 in sexually explicit conduct (RCW
28 9.68A.050)
29 Drive-by Shooting (RCW 9A.36.045)
30 Homicide by Watercraft, by disregard
31 for the safety of others (RCW
32 79A.60.050)
33 Indecent Liberties (without forcible
34 compulsion) (RCW 9A.44.100(1)
35 (b) and (c))
36 Introducing Contraband 1 (RCW
37 9A.76.140)

1 Malicious placement of an explosive 3
2 (RCW 70.74.270(3))
3 Negligently Causing Death By Use of a
4 Signal Preemption Device (RCW
5 46.37.675)
6 Sending, bringing into state depictions
7 of minor engaged in sexually
8 explicit conduct (RCW 9.68A.060)
9 Unlawful Possession of a Firearm in
10 the first degree (RCW 9.41.040(1))
11 Use of a Machine Gun in Commission
12 of a Felony (RCW 9.41.225)
13 Vehicular Homicide, by disregard for
14 the safety of others (RCW
15 46.61.520)
16 VI Bail Jumping with Murder 1 (RCW
17 9A.76.170(3)(a))
18 Bribery (RCW 9A.68.010)
19 Incest 1 (RCW 9A.64.020(1))
20 Intimidating a Judge (RCW 9A.72.160)
21 Intimidating a Juror/Witness (RCW
22 9A.72.110, 9A.72.130)
23 Malicious placement of an imitation
24 device 2 (RCW 70.74.272(1)(b))
25 Possession of Depictions of a Minor
26 Engaged in Sexually Explicit
27 Conduct (RCW 9.68A.070)
28 Possession of Stolen Property 1 (with a
29 finding of disproportionate impact
30 under section 11 of this act) (RCW
31 9A.56.150)
32 Rape of a Child 3 (RCW 9A.44.079)
33 Theft 1 (with a finding of
34 disproportionate impact under
35 section 10 of this act) (RCW
36 9A.56.030)
37 Theft of a Firearm (RCW 9A.56.300)

1 Unlawful Storage of Ammonia (RCW
2 69.55.020)
3 V Abandonment of Dependent Person 2
4 (RCW 9A.42.070)
5 Advancing money or property for
6 extortionate extension of credit
7 (RCW 9A.82.030)
8 Bail Jumping with class A Felony
9 (RCW 9A.76.170(3)(b))
10 Child Molestation 3 (RCW 9A.44.089)
11 Criminal Mistreatment 2 (RCW
12 9A.42.030)
13 Custodial Sexual Misconduct 1 (RCW
14 9A.44.160)
15 Domestic Violence Court Order
16 Violation (RCW 10.99.040,
17 10.99.050, 26.09.300, 26.10.220,
18 26.26.138, 26.50.110, 26.52.070,
19 or 74.34.145)
20 Driving While Under the Influence
21 (RCW 46.61.502(6))
22 Extortion 1 (RCW 9A.56.120)
23 Extortionate Extension of Credit (RCW
24 9A.82.020)
25 Extortionate Means to Collect
26 Extensions of Credit (RCW
27 9A.82.040)
28 Incest 2 (RCW 9A.64.020(2))
29 Kidnapping 2 (RCW 9A.40.030)
30 Perjury 1 (RCW 9A.72.020)
31 Persistent prison misbehavior (RCW
32 9.94.070)
33 Physical Control of a Vehicle While
34 Under the Influence (RCW
35 46.61.504(6))
36 Possession of a Stolen Firearm (RCW
37 9A.56.310)

1 Hit and Run with Vessel--Injury
2 Accident (RCW 79A.60.200(3))
3 Identity Theft 1 (RCW 9.35.020(2))
4 Indecent Exposure to Person Under
5 Age Fourteen (subsequent sex
6 offense) (RCW 9A.88.010)
7 Influencing Outcome of Sporting Event
8 (RCW 9A.82.070)
9 Malicious Harassment (RCW
10 9A.36.080)
11 Residential Burglary (RCW
12 9A.52.025)
13 Robbery 2 (RCW 9A.56.210)
14 Theft of Livestock 1 (RCW 9A.56.080)
15 Threats to Bomb (RCW 9.61.160)
16 Trafficking in Stolen Property 1 (RCW
17 9A.82.050)
18 Unlawful factoring of a credit card or
19 payment card transaction (RCW
20 9A.56.290(4)(b))
21 Unlawful transaction of health
22 coverage as a health care service
23 contractor (RCW 48.44.016(3))
24 Unlawful transaction of health
25 coverage as a health maintenance
26 organization (RCW 48.46.033(3))
27 Unlawful transaction of insurance
28 business (RCW 48.15.023(3))
29 Unlicensed practice as an insurance
30 professional (RCW 48.17.063(3))
31 Use of Proceeds of Criminal
32 Profiteering (RCW 9A.82.080 (1)
33 and (2))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)
6 Willful Failure to Return from
7 Furlough (RCW 72.66.060)
8 III Animal Cruelty 1 (Sexual Conduct or
9 Contact) (RCW 16.52.205(3))
10 Assault 3 (Except Assault 3 of a Peace
11 Officer With a Projectile Stun
12 Gun) (RCW 9A.36.031 except
13 subsection (1)(h))
14 Assault of a Child 3 (RCW 9A.36.140)
15 Bail Jumping with class B or C Felony
16 (RCW 9A.76.170(3)(c))
17 Burglary 2 (RCW 9A.52.030)
18 Communication with a Minor for
19 Immoral Purposes (RCW
20 9.68A.090)
21 Criminal Gang Intimidation (RCW
22 9A.46.120)
23 Custodial Assault (RCW 9A.36.100)
24 Cyberstalking (subsequent conviction
25 or threat of death) (RCW
26 9.61.260(3))
27 Escape 2 (RCW 9A.76.120)
28 Extortion 2 (RCW 9A.56.130)
29 Harassment (RCW 9A.46.020)
30 Intimidating a Public Servant (RCW
31 9A.76.180)
32 Introducing Contraband 2 (RCW
33 9A.76.150)
34 Malicious Injury to Railroad Property
35 (RCW 81.60.070)

1 Negligently Causing Substantial Bodily
2 Harm By Use of a Signal
3 Preemption Device (RCW
4 46.37.674)
5 Organized Retail Theft 1 (RCW
6 9A.56.350(2))
7 Patronizing a Juvenile Prostitute (RCW
8 9.68A.100)
9 Perjury 2 (RCW 9A.72.030)
10 Possession of Incendiary Device (RCW
11 9.40.120)
12 Possession of Machine Gun or Short-
13 Barreled Shotgun or Rifle (RCW
14 9.41.190)
15 Promoting Prostitution 2 (RCW
16 9A.88.080)
17 (~~[[Retail]]~~) Retail Theft with
18 Extenuating Circumstances 1
19 (RCW 9A.56.360(2))
20 Securities Act violation (RCW
21 21.20.400)
22 Tampering with a Witness (RCW
23 9A.72.120)
24 Telephone Harassment (subsequent
25 conviction or threat of death)
26 (RCW 9.61.230(2))
27 Theft of Livestock 2 (RCW 9A.56.083)
28 Theft with the Intent to Resell 1 (RCW
29 9A.56.340(2))
30 Trafficking in Stolen Property 2 (RCW
31 9A.82.055)
32 Unlawful Imprisonment (RCW
33 9A.40.040)
34 Unlawful possession of firearm in the
35 second degree (RCW 9.41.040(2))

1 Vehicular Assault, by the operation or
2 driving of a vehicle with disregard
3 for the safety of others (RCW
4 46.61.522)
5 Willful Failure to Return from Work
6 Release (RCW 72.65.070)
7 II Computer Trespass 1 (RCW
8 9A.52.110)
9 Counterfeiting (RCW 9.16.035(3))
10 Escape from Community Custody
11 (RCW 72.09.310)
12 Failure to Register as a Sex Offender
13 (second or subsequent offense)
14 (RCW 9A.44.130(10)(a))
15 Health Care False Claims (RCW
16 48.80.030)
17 Identity Theft 2 (RCW 9.35.020(3))
18 Improperly Obtaining Financial
19 Information (RCW 9.35.010)
20 Malicious Mischief 1 (RCW
21 9A.48.070)
22 Organized Retail Theft 2 (RCW
23 9A.56.350(3))
24 Possession of Stolen Property 1
25 (without a finding of
26 disproportionate impact under
27 section 11 of this act) (RCW
28 9A.56.150)
29 (~~(Retail)~~) Retail Theft with
30 Extenuating Circumstances 2
31 (RCW 9A.56.360(3))
32 Theft 1 (without a finding of
33 disproportionate impact under
34 section 10 of this act) (RCW
35 9A.56.030)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at one
3 thousand five hundred dollars or
4 more) (RCW 9A.56.096(5)(a))
5 Theft with the Intent to Resell 2 (RCW
6 9A.56.340(3))
7 Trafficking in Insurance Claims (RCW
8 48.30A.015)
9 Unlawful factoring of a credit card or
10 payment card transaction (RCW
11 9A.56.290(4)(a))
12 Unlawful Practice of Law (RCW
13 2.48.180)
14 Unlicensed Practice of a Profession or
15 Business (RCW 18.130.190(7))
16 Voyeurism (RCW 9A.44.115)
17 I Attempting to Elude a Pursuing Police
18 Vehicle (RCW 46.61.024)
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forgery (RCW 9A.60.020)
22 Fraudulent Creation or Revocation of a
23 Mental Health Advance Directive
24 (RCW 9A.60.060)
25 Malicious Mischief 2 (RCW
26 9A.48.080)
27 Mineral Trespass (RCW 78.44.330)
28 Possession of Stolen Property 2
29 (without a finding of
30 disproportionate impact under
31 section 11 of this act) (RCW
32 9A.56.160)
33 Reckless Burning 1 (RCW 9A.48.040)
34 Taking Motor Vehicle Without
35 Permission 2 (RCW 9A.56.075)

1 Theft 2 (without a finding of
2 disproportionate impact under
3 section 10 of this act) (RCW
4 9A.56.040)
5 Theft of Rental, Leased, or Lease-
6 purchased Property (valued at two
7 hundred fifty dollars or more but
8 less than one thousand five
9 hundred dollars) (RCW
10 9A.56.096(5)(b))
11 Transaction of insurance business
12 beyond the scope of licensure
13 (RCW 48.17.063(4))
14 Unlawful Issuance of Checks or Drafts
15 (RCW 9A.56.060)
16 Unlawful Possession of Fictitious
17 Identification (RCW 9A.56.320)
18 Unlawful Possession of Instruments of
19 Financial Fraud (RCW 9A.56.320)
20 Unlawful Possession of Payment
21 Instruments (RCW 9A.56.320)
22 Unlawful Possession of a Personal
23 Identification Device (RCW
24 9A.56.320)
25 Unlawful Production of Payment
26 Instruments (RCW 9A.56.320)
27 Unlawful Trafficking in Food Stamps
28 (RCW 9.91.142)
29 Unlawful Use of Food Stamps (RCW
30 9.91.144)
31 Vehicle Prowl 1 (RCW 9A.52.095)"

32 Renumber the remaining sections consecutively, correct any internal
33 references accordingly, and correct the title.

EFFECT: Allows the prosecution to file a special allegation of

disproportionate impact in prosecutions for Theft 1, Theft 2, Possession of Stolen Property 1, or Possession of Stolen Property 2. Requires the prosecution, after it files the special allegation, to prove beyond a reasonable doubt that the replacement costs of the stolen item is greater than three times the value of the stolen property or that the theft of the item creates a public hazard. Ranks Theft 1 and Possession of Stolen Property 1 at seriousness level VI when a special allegation of disproportionate impact has been proven. Ranks Theft 2 and Possession of Stolen Property 2 at seriousness level V when a special allegation of disproportionate impact has been proven.

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