

SHB 2858 - S COMM AMD
By Committee on Judiciary

ADOPTED AS AMENDED 03/04/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.290.010 and 2007 c 377 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Commercial account" means a relationship between a scrap metal
8 business and a commercial enterprise that is ongoing and properly
9 documented under RCW 19.290.030.

10 (2) "Commercial enterprise" means a corporation, partnership,
11 limited liability company, association, state agency, political
12 subdivision of the state, public corporation, or any other legal or
13 commercial entity.

14 (3) "Commercial metal property" means: Utility access covers;
15 street light poles and fixtures; road and bridge guardrails; highway or
16 street signs; water meter covers; traffic directional and control
17 signs; traffic light signals; any metal property marked with the name
18 of a commercial enterprise, including but not limited to a telephone,
19 commercial mobile radio services, cable, electric, water, natural gas,
20 or other utility, or railroad; unused or undamaged building
21 construction materials consisting of copper pipe, tubing, or wiring, or
22 aluminum wire, siding, downspouts, or gutters; aluminum or stainless
23 steel fence panels made from one inch tubing, forty-two inches high
24 with four-inch gaps; aluminum decking, bleachers, or risers; historical
25 markers; statue plaques; grave markers and funeral vases; or
26 agricultural irrigation wheels, sprinkler heads, and pipes.

27 (4) "Nonferrous metal property" means metal property for which the
28 value of the metal property is derived from the property's content of
29 copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.
30 "Nonferrous metal property" does not include precious metals.

1 (5) "Precious metals" means gold, silver, and platinum.

2 (6) "Private metal property" means catalytic converters, either
3 singly or in bundles, bales, or bulk, that have been removed from
4 vehicles for sale as a specific commodity.

5 (7) "Record" means a paper, electronic, or other method of storing
6 information.

7 (~~(7)~~) (8) "Scrap metal business" means a scrap metal supplier,
8 scrap metal recycling center, and scrap metal processor.

9 (~~(8)~~) (9) "Scrap metal processor" means a person with a current
10 business license that conducts business from a permanent location, that
11 is engaged in the business of purchasing or receiving private metal
12 property, nonferrous metal property, and commercial metal property for
13 the purpose of altering the metal in preparation for its use as
14 feedstock in the manufacture of new products, and that maintains a
15 hydraulic bailer, shearing device, or shredding device for recycling.

16 (~~(9)~~) (10) "Scrap metal recycling center" means a person with a
17 current business license that is engaged in the business of purchasing
18 or receiving private metal property, nonferrous metal property, and
19 commercial metal property for the purpose of aggregation and sale to
20 another scrap metal business and that maintains a fixed place of
21 business within the state.

22 (~~(10)~~) (11) "Scrap metal supplier" means a person with a current
23 business license that is engaged in the business of purchasing or
24 receiving private metal property or nonferrous metal property for the
25 purpose of aggregation and sale to a scrap metal recycling center or
26 scrap metal processor and that does not maintain a fixed business
27 location in the state.

28 (~~(11)~~) (12) "Transaction" means a pledge, or the purchase of, or
29 the trade of any item of private metal property or nonferrous metal
30 property by a scrap metal business from a member of the general public.
31 "Transaction" does not include donations or the purchase or receipt of
32 private metal property or nonferrous metal property by a scrap metal
33 business from a commercial enterprise, from another scrap metal
34 business, or from a duly authorized employee or agent of the commercial
35 enterprise or scrap metal business.

36 **Sec. 2.** RCW 19.290.020 and 2007 c 377 s 2 are each amended to read
37 as follows:

1 (1) At the time of a transaction, every scrap metal business doing
2 business in this state shall produce wherever that business is
3 conducted an accurate and legible record of each transaction involving
4 private metal property or nonferrous metal property. This record must
5 be written in the English language, documented on a standardized form
6 or in electronic form, and contain the following information:

7 (a) The signature of the person with whom the transaction is made;

8 (b) The time, date, location, and value of the transaction;

9 (c) The name of the employee representing the scrap metal business
10 in the transaction;

11 (d) The name, street address, and telephone number of the person
12 with whom the transaction is made;

13 (e) The license plate number and state of issuance of the license
14 plate on the motor vehicle used to deliver the private metal property
15 or nonferrous metal property subject to the transaction;

16 (f) A description of the motor vehicle used to deliver the private
17 metal property or nonferrous metal property subject to the transaction;

18 (g) The current driver's license number or other government-issued
19 picture identification card number of the seller or a copy of the
20 seller's government-issued picture identification card; and

21 (h) A description of the predominant types of private metal
22 property or nonferrous metal property subject to the transaction,
23 including the property's classification code as provided in the
24 institute of scrap recycling industries scrap specifications circular,
25 2006, and weight, quantity, or volume.

26 (2) For every transaction that involves private metal property or
27 nonferrous metal property, every scrap metal business doing business in
28 the state shall require the person with whom a transaction is being
29 made to sign a declaration. The declaration may be included as part of
30 the transactional record required under subsection (1) of this section,
31 or on a receipt for the transaction. The declaration must state
32 substantially the following:

33 "I, the undersigned, affirm under penalty of law that the property
34 that is subject to this transaction is not to the best of my knowledge
35 stolen property."

36 The declaration must be signed and dated by the person with whom
37 the transaction is being made. An employee of the scrap metal business

1 must witness the signing and dating of the declaration and sign the
2 declaration accordingly before any transaction may be consummated.

3 (3) The record and declaration required under this section must be
4 open to the inspection of any commissioned law enforcement officer of
5 the state or any of its political subdivisions at all times during the
6 ordinary hours of business, or at reasonable times if ordinary hours of
7 business are not kept, and must be maintained wherever that business is
8 conducted for one year following the date of the transaction.

9 **Sec. 3.** RCW 19.290.030 and 2007 c 377 s 3 are each amended to read
10 as follows:

11 (1) No scrap metal business may enter into a transaction to
12 purchase or receive private metal property or nonferrous metal property
13 from any person who cannot produce at least one piece of current
14 government-issued picture identification, including a valid driver's
15 license or identification card issued by any state.

16 (2) No scrap metal business may purchase or receive private metal
17 property or commercial metal property unless the seller: (a) Has a
18 commercial account with the scrap metal business; (b) can prove
19 ownership of the property by producing written documentation that the
20 seller is the owner of the property; or (c) can produce written
21 documentation that the seller is an employee or agent authorized to
22 sell the property on behalf of a commercial enterprise.

23 (3) No scrap metal business may enter into a transaction to
24 purchase or receive metallic wire that was burned in whole or in part
25 to remove insulation unless the seller can produce written proof to the
26 scrap metal business that the wire was lawfully burned.

27 (4) No transaction involving private metal property or nonferrous
28 metal property valued at greater than thirty dollars may be made in
29 cash or with any person who does not provide a street address under the
30 requirements of RCW 19.290.020. For transactions valued at greater
31 than thirty dollars, the person with whom the transaction is being made
32 may only be paid by a nontransferable check, mailed by the scrap metal
33 business to a street address provided under RCW 19.290.020, no earlier
34 than ten days after the transaction was made. A transaction occurs on
35 the date provided in the record required under RCW 19.290.020.

36 (5) No scrap metal business may purchase or receive beer kegs from
37 anyone except a manufacturer of beer kegs or licensed brewery.

1 **Sec. 4.** RCW 19.290.040 and 2007 c 377 s 4 are each amended to read
2 as follows:

3 (1) Every scrap metal business must create and maintain a permanent
4 record with a commercial enterprise, including another scrap metal
5 business, in order to establish a commercial account. That record, at
6 a minimum, must include the following information:

7 (a) The full name of the commercial enterprise or commercial
8 account;

9 (b) The business address and telephone number of the commercial
10 enterprise or commercial account; and

11 (c) The full name of the person employed by the commercial
12 enterprise who is authorized to deliver private metal property,
13 nonferrous metal property, and commercial metal property to the scrap
14 metal business.

15 (2) The record maintained by a scrap metal business for a
16 commercial account must document every purchase or receipt of private
17 metal property, nonferrous metal property, and commercial metal
18 property from the commercial enterprise. The documentation must
19 include, at a minimum, the following information:

20 (a) The time, date, and value of the property being purchased or
21 received;

22 (b) A description of the predominant types of property being
23 purchased or received; and

24 (c) The signature of the person delivering the property to the
25 scrap metal business.

26 **Sec. 5.** RCW 19.290.050 and 2007 c 377 s 5 are each amended to read
27 as follows:

28 (1) Upon request by any commissioned law enforcement officer of the
29 state or any of its political subdivisions, every scrap metal business
30 shall furnish a full, true, and correct transcript of the records from
31 the purchase or receipt of private metal property, nonferrous metal
32 property, and commercial metal property involving a specific
33 individual, vehicle, or item of private metal property, nonferrous
34 metal property, or commercial metal property. This information may be
35 transmitted within a specified time of not less than two business days
36 to the applicable law enforcement agency electronically, by facsimile

1 transmission, or by modem or similar device, or by delivery of computer
2 disk subject to the requirements of, and approval by, the chief of
3 police or the county's chief law enforcement officer.

4 (2) If the scrap metal business has good cause to believe that any
5 private metal property, nonferrous metal property, or commercial metal
6 property in his or her possession has been previously lost or stolen,
7 the scrap metal business shall promptly report that fact to the
8 applicable commissioned law enforcement officer of the state, the chief
9 of police, or the county's chief law enforcement officer, together with
10 the name of the owner, if known, and the date when and the name of the
11 person from whom it was received.

12 **Sec. 6.** RCW 19.290.060 and 2007 c 377 s 6 are each amended to read
13 as follows:

14 (1) Following notification, either verbally or in writing, from a
15 commissioned law enforcement officer of the state or any of its
16 political subdivisions that an item of private metal property,
17 nonferrous metal property, or commercial metal property has been
18 reported as stolen, a scrap metal business shall hold that property
19 intact and safe from alteration, damage, or commingling, and shall
20 place an identifying tag or other suitable identification upon the
21 property. The scrap metal business shall hold the property for a
22 period of time as directed by the applicable law enforcement agency up
23 to a maximum of ten business days.

24 (2) A commissioned law enforcement officer of the state or any of
25 its political subdivisions shall not place on hold any item of private
26 metal property, nonferrous metal property, or commercial metal property
27 unless that law enforcement agency reasonably suspects that the
28 property is a lost or stolen item. Any hold that is placed on the
29 property must be removed within ten business days after the property on
30 hold is determined not to be stolen or lost and the property must be
31 returned to the owner or released.

32 **Sec. 7.** RCW 19.290.070 and 2007 c 377 s 7 are each amended to read
33 as follows:

34 It is a gross misdemeanor under chapter 9A.20 RCW for:

35 (1) Any person to deliberately remove, alter, or obliterate any
36 manufacturer's make, model, or serial number, personal identification

1 number, or identifying marks engraved or etched upon an item of private
2 metal property, nonferrous metal property, or commercial metal property
3 in order to deceive a scrap metal business;

4 (2) Any scrap metal business to enter into a transaction to
5 purchase or receive any private metal property, nonferrous metal
6 property, or commercial metal property where the manufacturer's make,
7 model, or serial number, personal identification number, or identifying
8 marks engraved or etched upon the property have been deliberately and
9 conspicuously removed, altered, or obliterated;

10 (3) Any person to knowingly make, cause, or allow to be made any
11 false entry or misstatement of any material matter in any book, record,
12 or writing required to be kept under this chapter;

13 (4) Any scrap metal business to enter into a transaction to
14 purchase or receive private metal property, nonferrous metal property,
15 or commercial metal property from any person under the age of eighteen
16 years or any person who is discernibly under the influence of
17 intoxicating liquor or drugs;

18 (5) Any scrap metal business to enter into a transaction to
19 purchase or receive private metal property, nonferrous metal property,
20 or commercial metal property with anyone whom the scrap metal business
21 has been informed by a law enforcement agency to have been convicted of
22 a crime involving drugs, burglary, robbery, theft, or possession of or
23 receiving stolen property, manufacturing, delivering, or possessing
24 with intent to deliver methamphetamine, or possession of ephedrine or
25 any of its salts or isomers or salts of isomers, pseudoephedrine or any
26 of its salts or isomers or salts of isomers, or anhydrous ammonia with
27 intent to manufacture methamphetamine within the past ten years whether
28 the person is acting in his or her own behalf or as the agent of
29 another;

30 (6) Any person to sign the declaration required under RCW
31 19.290.020 knowing that the private metal property or nonferrous metal
32 property subject to the transaction is stolen. The signature of a
33 person on the declaration required under RCW 19.290.020 constitutes
34 evidence of intent to defraud a scrap metal business if that person is
35 found to have known that the private metal property or nonferrous metal
36 property subject to the transaction was stolen;

37 (7) Any scrap metal business to possess private metal property or

1 commercial metal property that was not lawfully purchased or received
2 under the requirements of this chapter; or

3 (8) Any scrap metal business to engage in a series of transactions
4 valued at less than thirty dollars with the same seller for the
5 purposes of avoiding the requirements of RCW 19.290.030(4).

6 **Sec. 8.** RCW 19.290.090 and 2007 c 377 s 9 are each amended to read
7 as follows:

8 The provisions of this chapter do not apply to transactions
9 conducted by the following:

- 10 (1) Motor vehicle dealers licensed under chapter 46.70 RCW;
- 11 (2) Metal and other materials from vehicles acquired by vehicle
12 wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW, and
13 acquired in accordance with those laws;
- 14 (3) Persons in the business of operating an automotive repair
15 facility as defined under RCW 46.71.011; and
- 16 (4) Persons in the business of buying or selling empty food and
17 beverage containers, including metal food and beverage containers.

18 **Sec. 9.** RCW 9.94A.535 and 2007 c 377 s 10 are each amended to read
19 as follows:

20 The court may impose a sentence outside the standard sentence range
21 for an offense if it finds, considering the purpose of this chapter,
22 that there are substantial and compelling reasons justifying an
23 exceptional sentence. Facts supporting aggravated sentences, other
24 than the fact of a prior conviction, shall be determined pursuant to
25 the provisions of RCW 9.94A.537.

26 Whenever a sentence outside the standard sentence range is imposed,
27 the court shall set forth the reasons for its decision in written
28 findings of fact and conclusions of law. A sentence outside the
29 standard sentence range shall be a determinate sentence.

30 If the sentencing court finds that an exceptional sentence outside
31 the standard sentence range should be imposed, the sentence is subject
32 to review only as provided for in RCW 9.94A.585(4).

33 A departure from the standards in RCW 9.94A.589 (1) and (2)
34 governing whether sentences are to be served consecutively or
35 concurrently is an exceptional sentence subject to the limitations in

1 this section, and may be appealed by the offender or the state as set
2 forth in RCW 9.94A.585 (2) through (6).

3 (1) Mitigating Circumstances - Court to Consider

4 The court may impose an exceptional sentence below the standard
5 range if it finds that mitigating circumstances are established by a
6 preponderance of the evidence. The following are illustrative only and
7 are not intended to be exclusive reasons for exceptional sentences.

8 (a) To a significant degree, the victim was an initiator, willing
9 participant, aggressor, or provoker of the incident.

10 (b) Before detection, the defendant compensated, or made a good
11 faith effort to compensate, the victim of the criminal conduct for any
12 damage or injury sustained.

13 (c) The defendant committed the crime under duress, coercion,
14 threat, or compulsion insufficient to constitute a complete defense but
15 which significantly affected his or her conduct.

16 (d) The defendant, with no apparent predisposition to do so, was
17 induced by others to participate in the crime.

18 (e) The defendant's capacity to appreciate the wrongfulness of his
19 or her conduct, or to conform his or her conduct to the requirements of
20 the law, was significantly impaired. Voluntary use of drugs or alcohol
21 is excluded.

22 (f) The offense was principally accomplished by another person and
23 the defendant manifested extreme caution or sincere concern for the
24 safety or well-being of the victim.

25 (g) The operation of the multiple offense policy of RCW 9.94A.589
26 results in a presumptive sentence that is clearly excessive in light of
27 the purpose of this chapter, as expressed in RCW 9.94A.010.

28 (h) The defendant or the defendant's children suffered a continuing
29 pattern of physical or sexual abuse by the victim of the offense and
30 the offense is a response to that abuse.

31 (2) Aggravating Circumstances - Considered and Imposed by the Court

32 The trial court may impose an aggravated exceptional sentence
33 without a finding of fact by a jury under the following circumstances:

34 (a) The defendant and the state both stipulate that justice is best
35 served by the imposition of an exceptional sentence outside the
36 standard range, and the court finds the exceptional sentence to be
37 consistent with and in furtherance of the interests of justice and the
38 purposes of the sentencing reform act.

1 (b) The defendant's prior unscored misdemeanor or prior unscored
2 foreign criminal history results in a presumptive sentence that is
3 clearly too lenient in light of the purpose of this chapter, as
4 expressed in RCW 9.94A.010.

5 (c) The defendant has committed multiple current offenses and the
6 defendant's high offender score results in some of the current offenses
7 going unpunished.

8 (d) The failure to consider the defendant's prior criminal history
9 which was omitted from the offender score calculation pursuant to RCW
10 9.94A.525 results in a presumptive sentence that is clearly too
11 lenient.

12 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
13 the Court

14 Except for circumstances listed in subsection (2) of this section,
15 the following circumstances are an exclusive list of factors that can
16 support a sentence above the standard range. Such facts should be
17 determined by procedures specified in RCW 9.94A.537.

18 (a) The defendant's conduct during the commission of the current
19 offense manifested deliberate cruelty to the victim.

20 (b) The defendant knew or should have known that the victim of the
21 current offense was particularly vulnerable or incapable of resistance.

22 (c) The current offense was a violent offense, and the defendant
23 knew that the victim of the current offense was pregnant.

24 (d) The current offense was a major economic offense or series of
25 offenses, so identified by a consideration of any of the following
26 factors:

27 (i) The current offense involved multiple victims or multiple
28 incidents per victim;

29 (ii) The current offense involved attempted or actual monetary loss
30 substantially greater than typical for the offense;

31 (iii) The current offense involved a high degree of sophistication
32 or planning or occurred over a lengthy period of time; or

33 (iv) The defendant used his or her position of trust, confidence,
34 or fiduciary responsibility to facilitate the commission of the current
35 offense.

36 (e) The current offense was a major violation of the Uniform
37 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to

1 trafficking in controlled substances, which was more onerous than the
2 typical offense of its statutory definition: The presence of ANY of
3 the following may identify a current offense as a major VUCSA:

4 (i) The current offense involved at least three separate
5 transactions in which controlled substances were sold, transferred, or
6 possessed with intent to do so;

7 (ii) The current offense involved an attempted or actual sale or
8 transfer of controlled substances in quantities substantially larger
9 than for personal use;

10 (iii) The current offense involved the manufacture of controlled
11 substances for use by other parties;

12 (iv) The circumstances of the current offense reveal the offender
13 to have occupied a high position in the drug distribution hierarchy;

14 (v) The current offense involved a high degree of sophistication or
15 planning, occurred over a lengthy period of time, or involved a broad
16 geographic area of disbursement; or

17 (vi) The offender used his or her position or status to facilitate
18 the commission of the current offense, including positions of trust,
19 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
20 other medical professional).

21 (f) The current offense included a finding of sexual motivation
22 pursuant to RCW 9.94A.835.

23 (g) The offense was part of an ongoing pattern of sexual abuse of
24 the same victim under the age of eighteen years manifested by multiple
25 incidents over a prolonged period of time.

26 (h) The current offense involved domestic violence, as defined in
27 RCW 10.99.020, and one or more of the following was present:

28 (i) The offense was part of an ongoing pattern of psychological,
29 physical, or sexual abuse of the victim manifested by multiple
30 incidents over a prolonged period of time;

31 (ii) The offense occurred within sight or sound of the victim's or
32 the offender's minor children under the age of eighteen years; or

33 (iii) The offender's conduct during the commission of the current
34 offense manifested deliberate cruelty or intimidation of the victim.

35 (i) The offense resulted in the pregnancy of a child victim of
36 rape.

37 (j) The defendant knew that the victim of the current offense was

1 a youth who was not residing with a legal custodian and the defendant
2 established or promoted the relationship for the primary purpose of
3 victimization.

4 (k) The offense was committed with the intent to obstruct or impair
5 human or animal health care or agricultural or forestry research or
6 commercial production.

7 (l) The current offense is trafficking in the first degree or
8 trafficking in the second degree and any victim was a minor at the time
9 of the offense.

10 (m) The offense involved a high degree of sophistication or
11 planning.

12 (n) The defendant used his or her position of trust, confidence, or
13 fiduciary responsibility to facilitate the commission of the current
14 offense.

15 (o) The defendant committed a current sex offense, has a history of
16 sex offenses, and is not amenable to treatment.

17 (p) The offense involved an invasion of the victim's privacy.

18 (q) The defendant demonstrated or displayed an egregious lack of
19 remorse.

20 (r) The offense involved a destructive and foreseeable impact on
21 persons other than the victim.

22 (s) The defendant committed the offense to obtain or maintain his
23 or her membership or to advance his or her position in the hierarchy of
24 an organization, association, or identifiable group.

25 (t) The defendant committed the current offense shortly after being
26 released from incarceration.

27 (u) The current offense is a burglary and the victim of the
28 burglary was present in the building or residence when the crime was
29 committed.

30 (v) The offense was committed against a law enforcement officer who
31 was performing his or her official duties at the time of the offense,
32 the offender knew that the victim was a law enforcement officer, and
33 the victim's status as a law enforcement officer is not an element of
34 the offense.

35 (w) The defendant committed the offense against a victim who was
36 acting as a good samaritan.

37 (x) The defendant committed the offense against a public official

1 or officer of the court in retaliation of the public official's
2 performance of his or her duty to the criminal justice system.

3 (y) The victim's injuries substantially exceed the level of bodily
4 harm necessary to satisfy the elements of the offense. This aggravator
5 is not an exception to RCW 9.94A.530(2).

6 (z)(i)(A) The current offense is theft in the first degree, theft
7 in the second degree, possession of stolen property in the first
8 degree, or possession of stolen property in the second degree; (B) the
9 stolen property involved is metal property; and (C) the property damage
10 to the victim caused in the course of the theft of metal property is
11 more than three times the value of the stolen metal property, or the
12 theft of the metal property creates a public hazard.

13 (ii) For purposes of this subsection, "metal property" means
14 commercial metal property, private metal property, or nonferrous metal
15 property, as defined in RCW 19.290.010."

SHB 2858 - S COMM AMD
By Committee on Judiciary

ADOPTED AS AMENDED 03/04/2008

16 On page 1, line 1 of the title, after "provisions;" strike the
17 remainder of the title and insert "amending RCW 19.290.010, 19.290.020,
18 19.290.030, 19.290.040, 19.290.050, 19.290.060, 19.290.070, 19.290.090,
19 and 9.94A.535; and prescribing penalties."

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