

# HOUSE BILL REPORT

## HB 1001

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to auto theft.

**Brief Description:** Combating auto theft.

**Sponsors:** Representatives Lovick, Priest, McCoy, Pearson, Kirby, Ross, Hunt, Skinner, Simpson, Newhouse, O'Brien, Armstrong, Ericks, Moeller, Miloscia, Grant, Sells, Green, Eickmeyer, Takko, Kelley, B. Sullivan, Hudgins, Cody, Haigh, Morrell, Chase, Ormsby, Kessler, Blake, Conway, Chandler, P. Sullivan, McDonald, Rodne, Haler, Jarrett, Roach, Walsh, Kristiansen, Wallace, McDermott, Condotta, VanDeWege, Dunshee, McCune, Kenney, Schual-Berke, Hinkle, Bailey, Lantz, Warnick, Upthegrove, Alexander, Campbell and Rolfes.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/10/07, 2/1/07 [DPS].

**Brief Summary of Substitute Bill**

- Increases auto theft-related penalties and triple scores prior offenses.
- Counts prior vehicle prowling offenses as prior convictions when calculating an offender's sentence.
- Subjects juvenile offenders to risk assessments, home detention, and increased penalties for the auto theft offenses.
- Creates new crimes to cover the making and possessing of motor vehicle theft tools.
- Establishes the Washington Auto Theft Prevention Authority (WATPA) to review motor vehicle crimes in Washington and analyze methods for combating the problem.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Imposes a \$10 surcharge on each traffic infraction issued in order to fund increased costs of incarceration and the WATPA.

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## HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

**Staff:** Yvonne Walker (786-7841).

### **Background:**

#### ***Sentencing Reform Act & Scoring***

Under the Sentencing Reform Act (SRA), an offender convicted of a felony has a standard sentence range that is based on the seriousness of the offense and the offender's felony convictions. The number of points an offender receives for current and prior felonies varies according to certain rules.

#### ***Motor Vehicle Theft***

*Theft 1:* A person is guilty of theft (of a motor vehicle) in the first degree, if such person commits theft of property or services that exceed \$1,500 in value other than a firearm. Theft in the first degree is ranked as a seriousness level II, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 90 days in jail. Under the Juvenile Justice Act (JJA), the offense is a category B offense and a first-time juvenile offender would receive a local sanction consisting of a maximum of 30 days in detention, 12 months of community supervision, 150 hours of community restitution, and a \$500 fine.

*Theft 2:* A person is guilty of theft (of a motor vehicle) in the second degree, if such person commits theft of a motor vehicle valued less than \$1,500. Theft in the second degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

#### ***Possession of a Stolen Vehicle***

*Possession of Stolen Property 1:* A person is guilty of possession of stolen property in the first degree if he or she possesses stolen property (or a vehicle) which exceeds \$1,500 in value. Possession of stolen property in the first degree is ranked as a seriousness level II, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 90 days in jail. Under the JJA, the offense is a category B offense and a first-time juvenile offender would receive a local sanction.

*Possession of Stolen Property 2:* A person is guilty of possession of stolen property in the second degree if he or she possesses stolen property (or a vehicle) valued less than \$1,500.

Possession of stolen property in the first degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

### ***Taking A Motor Vehicle Without Permission***

Taking A Motor Vehicle Without Permission 1: 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 ranked as a seriousness level V, class B felony offense under the SRA which, for a first-time adult offender has a standard sentence range of six to 12 months in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

Taking A Motor Vehicle Without Permission 2: 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 a second degree taking a motor vehicle without permission offense. Taking a motor vehicle without permission in the second degree is ranked as a seriousness level I, class C felony offense under the SRA which, for a first-time adult offender has a standard sentence range of zero to 60 days in jail. Under the JJA, the offense is a category C offense and a first-time juvenile offender would receive a local sanction.

### ***Vehicle Prowling***

Vehicle Prowling 2: A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property, he or she enters or remains unlawfully in a vehicle, other than a motor home, or a vessel. Vehicle prowling in the second degree 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. Generally, gross misdemeanor offenses do not count as part of an offender's score when calculating his or her standard sentence range.

### ***Home Detention***

Home detention is a program of partial confinement available to offenders whereby the offender is confined in a private residence subject to electronic surveillance. Generally it may not be imposed for offenders convicted of such offenses as a violent offense, drug offense, sex offense, or certain assault offenses.

### ***Theft of Rental, Leased, or Loaned Property***

Under the theft and robbery statute, a person who, with intent to deprive the owner, wrongfully obtains, exerts or gains unauthorized control over personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property. It is a seriousness level II, class B felony offense if the property is valued at \$1,500 or more. It is a seriousness level I, class C felony offense if the property is valued between \$250 and \$1,500. It is a gross misdemeanor offense if the property is valued at less than \$250.

The statute does not expressly include loaned property.

### ***Traffic Infractions***

Generally a traffic infraction is a non-criminal offense. The penalty for a traffic infraction may include a financial penalty or sanctions against the person's driver's license including suspension, revocation, or denial. The base penalty for a traffic infraction, ranging from \$37 to \$500, is established by court rule. In addition, other statutory penalties and fees can apply.

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### **Summary of Substitute Bill:**

The act known as the Elizabeth Nowak-Washington Auto Theft Prevention Act provides for increased penalties and triple scoring of prior motor vehicle-related offenses (theft, possession of a stolen vehicle, and taking a vehicle without permission). Home detention is established as an option for first-time adult offenders. Juvenile offenders are subject to risk assessments, home detention, and increased penalties for the same offenses. New crimes are created to cover the making and possession of motor vehicle theft tools. A Statewide Auto Theft Prevention Authority is created to study motor vehicle theft in Washington.

### ***Sentencing Reform Act & Scoring***

In the case of multiple prior convictions for the purpose of computing an offender's score, if the present conviction is for an offense involving motor vehicle theft, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree, an offender receives:

- one point for each prior conviction involving vehicle prowling; and
- three points for each prior adult and juvenile conviction involving theft of a motor vehicle, possession of a stolen vehicle, or taking a motor vehicle without permission in the first or second degree.

### ***Motor Vehicle Theft***

Separate statutory provisions are created to cover the crimes of motor vehicle theft and possession of a stolen vehicle and as a result, they are removed from the statutory provisions specifically relating to theft or possession of stolen property and services.

Motor Vehicle Theft: A person is guilty of motor vehicle theft offense if such person commits theft of any motor vehicle despite the value amount of the vehicle. Theft of a motor vehicle is punishable as a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

### ***Possession of a Stolen Vehicle***

Possession of a Stolen Vehicle: A person is guilty of possession of a stolen motor vehicle offense if he or she possesses a stolen vehicle despite the value amount of the vehicle. Possession of a stolen motor vehicle is punishable as a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

### ***Taking a Motor Vehicle***

Taking a Motor Vehicle without Permission 1 and 2: Under the JJA, the offense of taking a motor vehicle without permission in the first and second degree is a category B offense.

### ***Home Detention***

The eligibility for home detention is expanded to include adult offenders convicted of taking a motor vehicle without permission in the second degree, theft of a motor vehicle in the first degree, or possession of a stolen motor vehicle in the first degree, provided the offender has:

- no convictions for taking a motor vehicle without permission, theft of a motor vehicle, or possession of a stolen motor vehicle during the preceding five years;
- no more than two prior motor vehicle-related (theft, possession, or taking without permission) convictions;
- no violent convictions in the preceding two years;
- no more than two prior convictions for a violent offense in total;
- no prior escape charges; and
- fulfilled any other conditions of the home detention program.

### ***Juvenile Offenders***

In any case where a juvenile has been arrested for a motor vehicle theft-related offense, the juvenile must be given a risk assessment to determine whether the juvenile is in need of treatment.

A juvenile offender adjudicated of theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission in the first degree, is subject to the following mandatory minimum sentencing terms:

- juveniles with no prior adjudications must be sentenced to a minimum of five days home detention, 45 hours of community service, and a \$200 fine;
- juveniles with one prior adjudication shall be sentenced to a minimum of 10 days detention, 90 hours of community service, and a \$400 fine; and
- juveniles with two or more prior adjudications shall be sentenced to no less than 15-36 weeks confinement, seven days home detention, four months supervision, 90 hours of community service, and a \$400 fine.

A juvenile offender adjudicated of an offense involved taking a motor vehicle without permission in the second degree is subject to the following mandatory minimum sentencing terms:

- juveniles with no prior adjudications shall be sentenced to no less than one day home detention, one month supervision, 15 hours of community service, and a \$50 fine;

- juveniles with one prior adjudication shall be sentenced to no less than one day detention, two days home detention, two months supervision, 30 hours of community service, and a \$150 fine; and
- juveniles with two or more prior adjudications shall be sentenced to no less than three days detention, seven days home detention, three months supervision, 45 hours of community service, and a \$150 fine.

***Theft of Rental, Leased, or Loaned Property***

The statute relating to rental, leased, or lease-purchased property is expanded to include loaned property. A person who, with intent to deprive the owner, wrongfully obtains, exerts or gains unauthorized control over personal property that is loaned to the person, is guilty of theft of rental, leased, or lease-purchased loaned property. The same penalties apply.

***Making or Possession of Auto Theft Tools***

A person who makes, mends, uses, or possesses tools commonly used for the commission of vehicle theft is guilty of making or having vehicle theft tools, a gross misdemeanor offense. A motor vehicle theft tool includes, but is not limited to, the following: slim jim, false master key, master purpose key, altered or shaved key, trial or jiggle keys, slide hammer, lock puller, picklock, bit, nippers, and any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle theft.

***Washington Auto Theft Prevention Authority***

The Washington Auto Theft Prevention Authority (WATPA) is established to review and make recommendations to the Legislature and the Governor regarding motor vehicle theft in Washington. The WATPA consists of the following members, appointed by the Governor, and each serving staggered four-year terms:

- the Chief of the Washington State Patrol, or the chief's designee;
- two police chiefs;
- two sheriffs;
- one prosecuting attorney;
- a representative from the insurance industry who is responsible for writing property and casualty liability insurance in Washington;
- a representative from the automobile industry; and
- one member of the general public.

The WATPA must annually elect a chairperson and other such officers as it deems appropriate from its membership and it may obtain or contract for staff services, including an executive director, and any facilities and equipment as the authority requires to carry out its duties. The WATPA may also solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources to support its activities.

In preparing its recommendations, the WATPA must, at a minimum, review the following issues:

- determine the scope of the problem of motor vehicle theft, including particular areas of the state where the problem is the greatest;
- analyze the various methods of combating the problem of motor vehicle theft;

- develop and implement a plan of operation; and
- develop and implement a financial plan.

The WATPA must annually report its activities, findings, and recommendations during the preceding year to the Legislature by December 31.

The WATPA is not a law enforcement agency and may not gather, collect, or disseminate intelligence information for the purpose of investigating specific crimes or pursuing or capturing specific perpetrators. Members of the authority may not exercise general authority peace officer powers while acting in their capacity as members of the WATPA, unless the exercise of peace officer powers is necessary to prevent an imminent threat to persons or property.

The Governor may remove any member of the WATPA for cause including but not limited to: neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the members of the WATPA. Upon the death, resignation, or removal of a member, the Governor shall appoint a replacement to fill the remainder of the unexpired term.

Members of the WATPA who are not public employees must be compensated in accordance with the salaries and expense statute and must be reimbursed for travel expenses incurred in carrying out the duties of the WATPA.

Any member serving in their official capacity on the WATPA, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith.

***Washington Auto Theft Prevention Authority Account***

The WATPA Account (Account) is created in the custody of the State Treasurer. All receipts from gifts, grants, bequests, devises, specific traffic infraction surcharges, or other funds from public and private sources to support its activities must be deposited into the Account.

Expenditures from the Account may be used only for purposes of the WATPA and implementing this auto theft act under statute. The Account is subject to allotment procedures under the state budgeting, accounting, and reporting system statute but an appropriation is not required for expenditures. The WATPA must distribute moneys in the account as follows:

- 50 percent will go to the Department of Corrections, Juvenile Rehabilitation Administration, and counties and municipalities to fund increased costs of incarceration due to implementing the bill; and
- 50 percent will be used by the WATPA as follows:
  - 10 percent for administration of the WATPA; and

Of the remaining amount:

- 50 percent to counties for diversion programs targeted to youth involved in motor vehicle theft-related offenses in order to provide drug, alcohol, and mental health assessments and treatment as appropriate; and
- 50 percent for grants to be awarded by the WATPA to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent and prosecute motor vehicle theft-related offenses.

Moneys expended from the WATPA Account must be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

### ***Traffic Infractions***

In addition to any other penalties imposed by law, a person found to have committed a traffic infraction must be assessed a \$10 surcharge per infraction. Revenue from this fee must be deposited to the State Treasurer for deposit in the WATPA Account.

### **Substitute Bill Compared to Original Bill:**

The substitute bill cleans up the theft statute by making each of the auto theft-related crimes their own separate statute (instead of having them located in the general theft of property and possession of stolen property statutes), but maintains the same adult and juvenile penalties as were provided in the original bill.

The section that creates the new crimes relating to the making and possessing of motor vehicle theft tools is clarified as well as moved from the SRA statute to the statute relating to theft and robbery offenses.

A requirement is made that all members of the WATPA be appointed by the Governor. It is specified that one member of the WATPA must be a representative from the automobile industry (instead of from an automobile "dealer" industry or the automobile "repair" industry). A prohibition is made that members of the WATPA may not exercise general authority peace officer powers while acting in their capacity on the WATPA, unless it is necessary to prevent an imminent threat to persons or property. In addition, it is specified that the WATPA is prohibited from gathering or collecting any intelligence information for the purpose of investigating crimes.

The language in the original bill that imposed a 50 cent surcharge per insured automobile to fund the WATPA is eliminated and instead the substitute bill imposes a \$10 surcharge on each traffic infraction issued in the state. Revenue from the fee will be forwarded to the State Treasurer for deposit into the Account.

It is specified that the money deposited in the WATPA Account from the surcharge on traffic infractions will be used as follows:

- 50 percent will go to the Department of Corrections, Juvenile Rehabilitation Administration, and counties and municipalities to fund increased costs of incarceration due to implementing the bill; and
- 50 percent will be used by the WATPA as follows:
  - 10 percent for administration of the WATPA; and

Of the remaining amount:

- 50 percent to counties for diversion programs targeted to youth involved in motor vehicle theft-related offenses in order to provide drug, alcohol, and mental health assessments and treatment as appropriate; and
- 50 percent for grants to be awarded by the WATPA to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent and prosecute motor vehicle theft-related offenses.



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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Washington ranks fourth per capita in the nation for auto theft crimes. Auto theft crimes go hand-in-hand with other crimes such as identity theft, theft of property, methamphetamine, and even homeland security. We need a comprehensive approach to shine a light on the problem of auto theft.

Yakima County in particular recognizes that it has a large auto theft problem. Last year, Bobby Aguilar and Edgar F. Trevino-Mendoza became two innocent victims that lost their lives as the result of an offender trying to elude the police in a stolen vehicle.

In addition, many times law enforcement officers have been hesitant about arresting auto theft thieves because nothing happens to them. Under current law, the crime of Auto Theft 1 mainly deals with chop shops and Auto Theft 2 deals with joyriding. This bill will not necessarily change punishment for first-time offenders but it will punish those repeat offenders.

Under this bill, prior auto-theft related offenses will be triple scored which means that offenders will now serve a prison sentence faster than in the past. Juveniles will be assessed to determine if they have an alcohol or chemical dependency and they will also be subject to home detention, community service, and higher fines. In addition, an independent WATPA has been created in the bill which is based on an Arizona model. Statistics have shown that in Arizona, for every dollar that has been spent on the WATPA, \$12.73 is returned in property.

We need to treat car thefts in a serious manner. This bill provides a coordinated effort to reduce auto theft crimes and provides the funding to support it.

(In support with concerns) It is important to deal aggressively with auto theft crimes and the bill's sponsor may even want to consider increasing the penalty in the bill for first-time adult offenders.

Last year legislation was enacted that created a new fraud unit within the Office of the Insurance Commissioner with the goal of investigating and prosecuting more insurance fraud. A portion of their activities deal with auto insurance fraud. All of those activities are funded by the insurance industry through assessments.

However, the objection is to the portion of the bill that establishes a 50 cent surcharge every six months on auto insurance policies. This particular section of the bill affects insurance companies domiciled in Washington but operate business in other states. Each state has retaliatory taxes in statute. The consequence of these taxes is to impose taxes which are the

higher of that state's home state or the other state wherever they do business. This has a crippling competitive effect on Washington businesses doing business in other states. Other options for funding this bill should be considered.

There is also concerns about the section of the bill that relates to motor vehicle theft tools. The language should be clarified to ensure that the offense for possession of motor vehicle theft tools do not have the unintentional affect of making lock-out companies guilty of possessing such tools.

Lastly, it is hoped that the increased costs relating to incarceration are fully addressed in the bill.

(Opposed) None.

**Persons Testifying:** (In support) Representative Lovick, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; James McMahan and Don Pierce, Washington Association of Sheriffs and Police Chiefs; Norm Maleng, King County Prosecutor and Washington Association of Sheriffs and Police Chiefs; Mayor Dave Elder, City of Yakima; Ana Lucas Garcia; Ruby Aguilar; Maria Barajas; Juan Mendoza; Juan Hernandez; Chief Scott Smith, Mount Lake Terrace Police Department and Washington Association of Sheriffs and Police Chiefs; Bill Hanson, Washington State Fraternal Order of Police; and John H. Tierney, Tierney & Associates.

(In support with concerns) Mel Sorenson, Property Casualty Insurance, Allstate Insurance, and American Family; Jean Leonard, State Farm Insurance and Washington Insurers; Cliff Webster, American Insurance Association and Property Casualty Insurance; Stuart Halsan, Towing and Recovery Association of Washington; and Sophia Byrd McSherry, Association of Counties.

**Persons Signed In To Testify But Not Testifying:** Bob Quillian, Washington Association of Criminal Defense Attorneys and Washington Defenders Association.