

FINAL BILL REPORT

E3SHB 1001

C 199 L 07

Synopsis as Enacted

Brief Description: Combating auto theft.

Sponsors: By House Committee on Appropriations (originally sponsored by 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).

House Committee on Public Safety & Emergency Preparedness

House Committee on Human Services

House Committee on Appropriations

Senate Committee on Judiciary

Senate Committee on Ways & Means

Appropriations: 3/3/07 [DP3S].

Background:

Sentencing Reform Act and Scoring.

Under the Sentencing Reform Act (SRA), an offender convicted of a felony receives 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.

Vehicle Prowling.

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.

Motor Vehicle Theft.

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. Local sanctions consists of a maximum of 30 days in detention, 12 months of community supervision, 150 hours of community restitution, and a \$500 fine.

A person is guilty of theft (of a motor vehicle) in the second degree, if the person commits theft of a motor vehicle valued at \$1,500 or less. 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.

A person is guilty of possession of stolen property in the first degree if he or she possesses stolen property (or a vehicle) that 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.

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

Taking A Motor Vehicle Without Permission.

A person is guilty of taking a motor vehicle without permission in the first degree if the 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 that has as its objective 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 in the second degree occurs when a person intentionally takes a motor vehicle without permission or voluntarily rides in a vehicle knowing it was taken without permission.

Home Detention.

Home detention is a program of partial confinement available to offenders where 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 Act, 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 may apply.

Summary:

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 motor vehicle-related 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.

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

Motor Vehicle Theft.

A person is guilty of motor vehicle theft if the person commits theft of any motor vehicle regardless of the value of the vehicle. Theft of a motor vehicle is a seriousness level II, class B felony offense for adult offenders and a category B offense for juvenile offenders.

Possession of a Stolen Vehicle.

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

Taking a Motor Vehicle without Permission.

The crime of taking a motor vehicle without permission in the first degree is redefined and expanded to include when an offender engages in a conspiracy and solicits a juvenile to participate in the theft of the vehicle. Under the JJA, the offense of taking a motor vehicle without permission in the first degree is increased to 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, 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 adjudicated of a motor vehicle theft-related offense, the juvenile's disposition must include an evaluation to determine whether the juvenile is in need of treatment.

A juvenile offender adjudicated of an offense that involves theft of a motor vehicle or possession of a stolen motor vehicle is subject to the following mandatory minimum sentencing terms:

- Juveniles with no prior adjudications must be sentenced to: (1) a minimum of five days of home detention and 45 hours of community restitution, or (2) no home detention and 90 hours community restitution.
- Juveniles with one prior adjudication must be sentenced to a minimum of 10 days detention, 90 hours of community restitution, and a \$400 fine.
- Juveniles with two or more prior adjudications must be sentenced to a minimum of 15-36 weeks confinement, seven days home detention, four months supervision, 90 hours of community restitution, and a \$400 fine.

A juvenile offender adjudicated of the offense of 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 of home detention, 45 hours of community restitution, and a \$250 fine.
- Juveniles with one prior adjudication must be sentenced to a minimum of 10 days of detention, 90 hours of community restitution, and a \$400 fine.
- Juveniles with two or more prior adjudications must be sentenced to a minimum of 15-36 weeks of confinement, seven days of home detention, four months of supervision, 90 hours of community restitution, and a \$400 fine.

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

- Juveniles with no prior adjudications must be sentenced to: (1) a minimum of one day of home detention, one month of supervision, and 15 hours of community restitution, or (2) no home detention, one month of supervision, and 30 hours of community restitution.
- Juveniles with one prior adjudication must be sentenced to a minimum of one day detention, two days home detention, two months supervision, 30 hours of community restitution, and a \$150 fine.
- Juveniles with two or more prior adjudications must be sentenced to a minimum of three days detention, seven days home detention, three months supervision, 45 hours of community restitution, 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, lease-purchased, or loaned property.

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 jiggler 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 within the Washington Association of Sheriffs and Police Chiefs to review and make recommendations to the Legislature and the Governor regarding motor vehicle theft crimes in Washington. The WATPA consists of the following members, appointed by the Governor, and each serving staggered four-year terms:

- the Executive Director of the Washington Association of Sheriffs and Police Chiefs or the executive director's designee;
- 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 that the WATPA 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 WATPA may not exercise general authority peace officer powers while acting in their capacity as members 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 must 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 his or her official capacity on the WATPA, the member's employer, or any other entity that selected 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 as an appropriated account 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 activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement costs.

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 allocate moneys in the Account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including providing financial support:

- to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;
- to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;
- for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and
- for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

The costs of administration must not exceed 10 percent of the moneys in the Account in any one year so that the greatest possible portion of the moneys available to the WATPA are expended on combating motor vehicle theft.

Prior to awarding moneys from the WATPA Account for motor vehicle theft enforcement or prosecution efforts, the WATPA must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to administration, law enforcement, prosecutor, court, and offender confinement costs. 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 remitted to the State Treasurer for deposit in the WATPA Account.

Votes on Final Passage:

House	80	16	
Senate	47	0	(Senate amended)
House	83	15	(House concurred)

Effective: July 22, 2007