

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2858

60th Legislature
2008 Regular Session

Passed by the House March 12, 2008
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 11, 2008
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2858** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2858

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Morrell, Warnick, Campbell, Hurst, Newhouse, O'Brien, Green, Kelley, and Conway)

READ FIRST TIME 02/04/08.

1 AN ACT Relating to expanding metal property provisions; amending
2 RCW 19.290.010, 19.290.020, 19.290.030, 19.290.040, 19.290.050,
3 19.290.060, 19.290.070, 19.290.090, and 9.94A.535; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 19.290.010 and 2007 c 377 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

17 (3) "Commercial metal property" means: Utility access covers;
18 street light poles and fixtures; road and bridge guardrails; highway or
19 street signs; water meter covers; traffic directional and control

1 signs; traffic light signals; any metal property marked with the name
2 of a commercial enterprise, including but not limited to a telephone,
3 commercial mobile radio services, cable, electric, water, natural gas,
4 or other utility, or railroad; unused or undamaged building
5 construction materials consisting of copper pipe, tubing, or wiring, or
6 aluminum wire, siding, downspouts, or gutters; aluminum or stainless
7 steel fence panels made from one inch tubing, forty-two inches high
8 with four-inch gaps; aluminum decking, bleachers, or risers; historical
9 markers; statue plaques; grave markers and funeral vases; or
10 agricultural irrigation wheels, sprinkler heads, and pipes.

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

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

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

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

21 ((+7)) (8) "Scrap metal business" means a scrap metal supplier,
22 scrap metal recycling center, and scrap metal processor.

23 ((+8)) (9) "Scrap metal processor" means a person with a current
24 business license that conducts business from a permanent location, that
25 is engaged in the business of purchasing or receiving private metal
26 property, nonferrous metal property, and commercial metal property for
27 the purpose of altering the metal in preparation for its use as
28 feedstock in the manufacture of new products, and that maintains a
29 hydraulic bailer, shearing device, or shredding device for recycling.

30 ((+9)) (10) "Scrap metal recycling center" means a person with a
31 current business license that is engaged in the business of purchasing
32 or receiving private metal property, nonferrous metal property, and
33 commercial metal property for the purpose of aggregation and sale to
34 another scrap metal business and that maintains a fixed place of
35 business within the state.

36 ((+10)) (11) "Scrap metal supplier" means a person with a current
37 business license that is engaged in the business of purchasing or
38 receiving private metal property or nonferrous metal property for the

1 purpose of aggregation and sale to a scrap metal recycling center or
2 scrap metal processor and that does not maintain a fixed business
3 location in the state.

4 ~~((11))~~ (12) "Transaction" means a pledge, or the purchase of, or
5 the trade of any item of private metal property or nonferrous metal
6 property by a scrap metal business from a member of the general public.
7 "Transaction" does not include donations or the purchase or receipt of
8 private metal property or nonferrous metal property by a scrap metal
9 business from a commercial enterprise, from another scrap metal
10 business, or from a duly authorized employee or agent of the commercial
11 enterprise or scrap metal business.

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

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

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

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

22 (c) The name of the employee representing the scrap metal business
23 in the transaction;

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

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

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

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

34 (h) A description of the predominant types of private metal
35 property or nonferrous metal property subject to the transaction,
36 including the property's classification code as provided in the

1 institute of scrap recycling industries scrap specifications circular,
2 2006, and weight, quantity, or volume.

3 (2) For every transaction that involves private metal property or
4 nonferrous metal property, every scrap metal business doing business in
5 the state shall require the person with whom a transaction is being
6 made to sign a declaration. The declaration may be included as part of
7 the transactional record required under subsection (1) of this section,
8 or on a receipt for the transaction. The declaration must state
9 substantially the following:

10 "I, the undersigned, affirm under penalty of law that the property
11 that is subject to this transaction is not to the best of my knowledge
12 stolen property."

13 The declaration must be signed and dated by the person with whom
14 the transaction is being made. An employee of the scrap metal business
15 must witness the signing and dating of the declaration and sign the
16 declaration accordingly before any transaction may be consummated.

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

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

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

30 (2) No scrap metal business may purchase or receive private metal
31 property or commercial metal property unless the seller: (a) Has a
32 commercial account with the scrap metal business; (b) can prove
33 ownership of the property by producing written documentation that the
34 seller is the owner of the property; or (c) can produce written
35 documentation that the seller is an employee or agent authorized to
36 sell the property on behalf of a commercial enterprise.

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

5 (4) No transaction involving private metal property or nonferrous
6 metal property valued at greater than thirty dollars may be made in
7 cash or with any person who does not provide a street address under the
8 requirements of RCW 19.290.020. For transactions valued at greater
9 than thirty dollars, the person with whom the transaction is being made
10 may only be paid by a nontransferable check, mailed by the scrap metal
11 business to a street address provided under RCW 19.290.020, no earlier
12 than ten days after the transaction was made. A transaction occurs on
13 the date provided in the record required under RCW 19.290.020.

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

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

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

22 (a) The full name of the commercial enterprise or commercial
23 account;

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

26 (c) The full name of the person employed by the commercial
27 enterprise who is authorized to deliver private metal property,
28 nonferrous metal property, and commercial metal property to the scrap
29 metal business.

30 (2) The record maintained by a scrap metal business for a
31 commercial account must document every purchase or receipt of private
32 metal property, nonferrous metal property, and commercial metal
33 property from the commercial enterprise. The documentation must
34 include, at a minimum, the following information:

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

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

3 (c) The signature of the person delivering the property to the
4 scrap metal business.

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

7 (1) Upon request by any commissioned law enforcement officer of the
8 state or any of its political subdivisions, every scrap metal business
9 shall furnish a full, true, and correct transcript of the records from
10 the purchase or receipt of private metal property, nonferrous metal
11 property, and commercial metal property involving a specific
12 individual, vehicle, or item of private metal property, nonferrous
13 metal property, or commercial metal property. This information may be
14 transmitted within a specified time of not less than two business days
15 to the applicable law enforcement agency electronically, by facsimile
16 transmission, or by modem or similar device, or by delivery of computer
17 disk subject to the requirements of, and approval by, the chief of
18 police or the county's chief law enforcement officer.

19 (2) If the scrap metal business has good cause to believe that any
20 private metal property, nonferrous metal property, or commercial metal
21 property in his or her possession has been previously lost or stolen,
22 the scrap metal business shall promptly report that fact to the
23 applicable commissioned law enforcement officer of the state, the chief
24 of police, or the county's chief law enforcement officer, together with
25 the name of the owner, if known, and the date when and the name of the
26 person from whom it was received.

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

29 (1) Following notification, either verbally or in writing, from a
30 commissioned law enforcement officer of the state or any of its
31 political subdivisions that an item of private metal property,
32 nonferrous metal property, or commercial metal property has been
33 reported as stolen, a scrap metal business shall hold that property
34 intact and safe from alteration, damage, or commingling, and shall
35 place an identifying tag or other suitable identification upon the

1 property. The scrap metal business shall hold the property for a
2 period of time as directed by the applicable law enforcement agency up
3 to a maximum of ten business days.

4 (2) A commissioned law enforcement officer of the state or any of
5 its political subdivisions shall not place on hold any item of private
6 metal property, nonferrous metal property, or commercial metal property
7 unless that law enforcement agency reasonably suspects that the
8 property is a lost or stolen item. Any hold that is placed on the
9 property must be removed within ten business days after the property on
10 hold is determined not to be stolen or lost and the property must be
11 returned to the owner or released.

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

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

15 (1) Any person to deliberately remove, alter, or obliterate any
16 manufacturer's make, model, or serial number, personal identification
17 number, or identifying marks engraved or etched upon an item of private
18 metal property, nonferrous metal property, or commercial metal property
19 in order to deceive a scrap metal business;

20 (2) Any scrap metal business to enter into a transaction to
21 purchase or receive any private metal property, nonferrous metal
22 property, or commercial metal property where the manufacturer's make,
23 model, or serial number, personal identification number, or identifying
24 marks engraved or etched upon the property have been deliberately and
25 conspicuously removed, altered, or obliterated;

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

29 (4) Any scrap metal business to enter into a transaction to
30 purchase or receive private metal property, nonferrous metal property,
31 or commercial metal property from any person under the age of eighteen
32 years or any person who is discernibly under the influence of
33 intoxicating liquor or drugs;

34 (5) Any scrap metal business to enter into a transaction to
35 purchase or receive private metal property, nonferrous metal property,
36 or commercial metal property with anyone whom the scrap metal business
37 has been informed by a law enforcement agency to have been convicted of

1 a crime involving drugs, burglary, robbery, theft, or possession of or
2 receiving stolen property, manufacturing, delivering, or possessing
3 with intent to deliver methamphetamine, or possession of ephedrine or
4 any of its salts or isomers or salts of isomers, pseudoephedrine or any
5 of its salts or isomers or salts of isomers, or anhydrous ammonia with
6 intent to manufacture methamphetamine within the past ten years whether
7 the person is acting in his or her own behalf or as the agent of
8 another;

9 (6) Any person to sign the declaration required under RCW
10 19.290.020 knowing that the private metal property or nonferrous metal
11 property subject to the transaction is stolen. The signature of a
12 person on the declaration required under RCW 19.290.020 constitutes
13 evidence of intent to defraud a scrap metal business if that person is
14 found to have known that the private metal property or nonferrous metal
15 property subject to the transaction was stolen;

16 (7) Any scrap metal business to possess private metal property or
17 commercial metal property that was not lawfully purchased or received
18 under the requirements of this chapter; or

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

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

24 The provisions of this chapter do not apply to transactions
25 conducted by the following:

26 (1) Motor vehicle dealers licensed under chapter 46.70 RCW;

27 (2) Metal from the components of vehicles acquired by vehicle
28 wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW, and
29 acquired in accordance with those laws;

30 (3) Persons in the business of operating an automotive repair
31 facility as defined under RCW 46.71.011; and

32 (4) Persons in the business of buying or selling empty food and
33 beverage containers, including metal food and beverage containers.

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

36 The court may impose a sentence outside the standard sentence range

1 for an offense if it finds, considering the purpose of this chapter,
2 that there are substantial and compelling reasons justifying an
3 exceptional sentence. Facts supporting aggravated sentences, other
4 than the fact of a prior conviction, shall be determined pursuant to
5 the provisions of RCW 9.94A.537.

6 Whenever a sentence outside the standard sentence range is imposed,
7 the court shall set forth the reasons for its decision in written
8 findings of fact and conclusions of law. A sentence outside the
9 standard sentence range shall be a determinate sentence.

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

13 A departure from the standards in RCW 9.94A.589 (1) and (2)
14 governing whether sentences are to be served consecutively or
15 concurrently is an exceptional sentence subject to the limitations in
16 this section, and may be appealed by the offender or the state as set
17 forth in RCW 9.94A.585 (2) through (6).

18 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

33 (e) The defendant's capacity to appreciate the wrongfulness of his
34 or her conduct, or to conform his or her conduct to the requirements of
35 the law, was significantly impaired. Voluntary use of drugs or alcohol
36 is excluded.

37 (f) The offense was principally accomplished by another person and

1 the defendant manifested extreme caution or sincere concern for the
2 safety or well-being of the victim.

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

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

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

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

12 (a) The defendant and the state both stipulate that justice is best
13 served by the imposition of an exceptional sentence outside the
14 standard range, and the court finds the exceptional sentence to be
15 consistent with and in furtherance of the interests of justice and the
16 purposes of the sentencing reform act.

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

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

24 (d) The failure to consider the defendant's prior criminal history
25 which was omitted from the offender score calculation pursuant to RCW
26 9.94A.525 results in a presumptive sentence that is clearly too
27 lenient.

28 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
29 the Court

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

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

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

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

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

6 (i) The current offense involved multiple victims or multiple
7 incidents per victim;

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

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

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

15 (e) The current offense was a major violation of the Uniform
16 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
17 trafficking in controlled substances, which was more onerous than the
18 typical offense of its statutory definition: The presence of ANY of
19 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

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

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

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

13 (i) The offense resulted in the pregnancy of a child victim of
14 rape.

15 (j) The defendant knew that the victim of the current offense was
16 a youth who was not residing with a legal custodian and the defendant
17 established or promoted the relationship for the primary purpose of
18 victimization.

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

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

25 (m) The offense involved a high degree of sophistication or
26 planning.

27 (n) The defendant used his or her position of trust, confidence, or
28 fiduciary responsibility to facilitate the commission of the current
29 offense.

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

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

33 (q) The defendant demonstrated or displayed an egregious lack of
34 remorse.

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

37 (s) The defendant committed the offense to obtain or maintain his

1 or her membership or to advance his or her position in the hierarchy of
2 an organization, association, or identifiable group.

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

5 (u) The current offense is a burglary and the victim of the
6 burglary was present in the building or residence when the crime was
7 committed.

8 (v) The offense was committed against a law enforcement officer who
9 was performing his or her official duties at the time of the offense,
10 the offender knew that the victim was a law enforcement officer, and
11 the victim's status as a law enforcement officer is not an element of
12 the offense.

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

15 (x) The defendant committed the offense against a public official
16 or officer of the court in retaliation of the public official's
17 performance of his or her duty to the criminal justice system.

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

21 (z)(i)(A) The current offense is theft in the first degree, theft
22 in the second degree, possession of stolen property in the first
23 degree, or possession of stolen property in the second degree; (B) the
24 stolen property involved is metal property; and (C) the property damage
25 to the victim caused in the course of the theft of metal property is
26 more than three times the value of the stolen metal property, or the
27 theft of the metal property creates a public hazard.

28 (ii) For purposes of this subsection, "metal property" means
29 commercial metal property, private metal property, or nonferrous metal
30 property, as defined in RCW 19.290.010.

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