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**Ways & Means Committee**

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**SB 6167**

**Brief Description:** Concerning crimes against property.

**Sponsors:** Senators Kline, Regala and Hargrove.

**Brief Summary of Bill**

- Creates an organized retail crime task force.
- Directs the Sentencing Guidelines Commission to review the monetary threshold amounts differentiating property crimes in the state.
- Increases the dollar threshold values and some fines related to the property crimes of malicious mischief, theft, unlawful issuance of checks or drafts, theft of rental, leased, or loaned property, organized retail theft, and possessing stolen property.

**Hearing Date:** 4/25/09

**Staff:** Alex MacBain (786-7288) and Lara Zarowsky (786-7123)

**Background:**

The monetary amounts differentiating the various degrees of property crimes in this state were established in 1975 when the Washington Criminal Code was adopted. They have never been adjusted. For comparison purposes, \$250 in 1975 is equivalent to approximately \$954 in 2007, and \$1,500 in 1975 is equivalent to approximately \$5,721 in 2007. The consumer price index calculator currently contains data up to 2007.

A person is guilty of malicious mischief in the first degree, a class B felony, if that person knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$1,500. Malicious mischief in the second degree, a class C felony, is committed when a person knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$250. Malicious mischief in the third degree is a gross misdemeanor if the damage to the property is more than \$50 and it is a misdemeanor if the damage is \$50 or less. Theft in the first degree is committed when a person commits theft of property or services which

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exceed \$1,500 in value. Theft in the first degree is a class B felony. A person is guilty of theft in the second degree if that person commits theft of property or services which exceed \$250 in value but does not exceed \$1,500. Theft in the second degree is a class C felony. Theft in the third degree is committed when a person commits theft of property or services which does not exceed \$250 in value. Theft in the third degree is a gross misdemeanor.

A person is guilty of organized retail theft if that person, with an accomplice, commits theft of property from a mercantile establishment and the value of the property is at least \$250. It is organized retail theft in the first degree, a class B felony, if the property stolen has a value of at least \$1,500. It is organized retail theft in the second degree, a class C felony, if the value of the stolen property is at least \$250 but less than \$1,500.

A person who takes possession of goods that are offered for sale by any store without the consent of the owner or seller and with the intention of converting the goods to that person's own use without having paid a purchase price is liable, in addition to actual damages, for a penalty in the amount of the retail value of the goods, not to exceed \$1,000; plus an additional penalty of not less than \$100 nor more than \$200.

A court may impose a sentence above or below the standard range based upon aggravating or mitigating factors. Aggravating factors posing questions of fact must be submitted to a jury and proved beyond a reasonable doubt.

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

Theft, possession of stolen property, and malicious mischief in the first degree occur if the crimes involve property valued at over \$5,000. Theft, possession of stolen property, and malicious mischief in the second degree occur if the crimes involve property that exceeds \$750 but does not exceed \$5,000. Theft, possession of stolen property, and malicious mischief in the third degree occur if the crimes involve property valued at up to \$750. Unlawful issuance of a bank check is a gross misdemeanor if it was for \$750 or less and a class C felony if it is for an amount greater than \$750. Upon conviction for the misdemeanor crime of unlawful issuance of a bank check, the court shall impose upon the defendant a fine of up to \$1,125. Of the fine imposed, at least \$375, or an amount equal to 150% of the amount of the check, whichever is greater, may not be suspended or deferred.

A person is guilty of organized retail theft if that person, with an accomplice, commits theft of property or possesses stolen property from a mercantile establishment and the value of the property is at least \$750 but less than \$5,000, or commits theft of property with a cumulative value of at least \$750 from one or more mercantile establishments within a period up to 180 days. It is organized retail theft in the first degree, a class B felony, if the property stolen has a value of at least \$5,000.

A mercantile establishment that has property alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile is aware. If the prosecuting jurisdiction declines the request to aggregate, it must promptly advise the mercantile establishment and provide the reasons for such decision. Merchants who create a database of individuals who have been apprehended, assessed a civil penalty, or convicted, are not subject to

civil fines or penalties for sharing the database with other merchants, law enforcement officials, or legal professionals.

An organized retail crime task force is created to monitor the effects of raising the monetary threshold amounts used to define the various degrees of property crimes in Washington. The task force will examine the following: (1) the impact of raising the monetary values differentiating property crimes on the retail industry, the district and municipal courts, and the county and city offices of the prosecuting attorney; (2) the best methods for apportionment and sharing of costs for prosecution when multiple jurisdictions are involved; and (3) policies or procedures which would enhance investigation and prosecution of property crimes in Washington. The membership of the task force is specified in the bill and the members are not reimbursed for travel expenses. The task force is subject to the Open Public Meetings Act. The task force findings and recommendations are reported to the appropriate committees of the Legislature.

The Sentencing Guidelines Commission is directed to review the monetary threshold amounts differentiating the various degrees of property crimes in Washington to determine whether such amounts should be modified. It will report its recommendations to the Legislature by November 1, 2014, and every five years thereafter.

In addition to actual damages, the maximum penalty to the owner or seller of goods that are possessed by a person with the intention of converting the goods to that person's own use without payment of a purchase price is \$2,850 plus an additional penalty of not more than \$650. In addition to actual damages, the maximum penalty owed by the parent or legal guardian of an unemancipated minor who possessed with the intention of converting the goods to the minor's own use without payment of a purchase price is \$1,425 plus an additional penalty of not more than \$650.

The provisions of the bill are prospective and apply to crimes committed on or after September 1, 2009.

**Appropriation:** None.

**Fiscal Note:** Requested on April 21, 2009.

**Effective Date:** The act applies to crimes committed on or after September 1, 2009.