

SENATE BILL REPORT

ESSB 5225

As Passed Senate, March 5, 2009

Title: An act relating to crimes against property.

Brief Description: Concerning crimes against property.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline and Hargrove).

Brief History:

Committee Activity: Judiciary: 2/03/09, 2/20/09 [DPS, w/oRec].

Passed Senate: 3/05/09, 31-16.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5225 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Hargrove, Kohl-Welles and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Roach.

Staff: Lidia Mori (786-7755)

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 he or she 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.

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.

Theft in the first degree is committed when a person commits theft of property or services which 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 he or she 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 he or she, with an accomplice, commits theft of property from a mercantile establishment and the value of the property is at least \$250. If the property stolen has a value of at least \$1,500, it is organized retail theft in the first degree, a class B felony. If the value of the stolen property is at least \$250 but less than \$1,500, it is organized retail theft in the second degree, a class C felony.

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 his or her 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 Engrossed Substitute 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. A person is guilty of organized retail theft in the second degree, a class C felony, if that person, with an accomplice, commits theft of property from a mercantile establishment and the value of the property is at least \$750 but less than \$5,000. If the property stolen has a value of at least \$5,000, it is organized retail theft in the first degree, a class B felony.

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.

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) whether civil immunity should be granted for retailers who create a database of individuals suspected of theft and deliver the database to law enforcement; 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 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 his or her own use without payment of a purchase price is \$2,850 plus an additional penalty of not less than \$100 nor more than \$638.

This act applies to crimes committed on or after September 1, 2009.

Appropriation: None

Fiscal Note: Requested on January 26, 2009.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In the past 34 years, the only thing that hasn't increased since 1975 are the felony threshold levels. It's counter intuitive, but a serious theft case in district court is going to be treated much more seriously than it would be in superior court. There is no community supervision in superior court. District court can sentence up to one year in jail, give a suspended sentence with conditions, and pull the person back into court to see if the conditions have been met, for up to two years. This bill would modernize the state statute and allow the local courts to deal with the local shoplifters in their area, and mete out appropriate punishments. Would not affect the city in Seattle because they are already prosecuting up to \$1,000 as gross misdemeanor in district court. Practically speaking, in Kitsap County it's very rare to bring a felony case for less than \$1,000. But that's not what the law says. The economic realities are clear, this is a truth in sentencing practice, it's fair. In Kitsap County, they are prosecuting misdemeanor and gross misdemeanors in district courts. Not much would be shifted down to the cities in Kitsap County. Current practice is that most of these cases are being handled in the district and municipal courts now. Maybe there should be an index factor included so the legislature doesn't have to revisit these monetary levels again.

CON: We are opposed to the raising of \$250 to \$1,000. This is a substantial amount of product to lose for a grocery store. There should be some time line for the Attorney General getting involved aggregating and prosecuting. The lower end of the penalty when a person takes goods without paying should be \$100. The \$1,000 level should be \$750. Prosecutors and courts should have to review a defendant's criminal history before imposing sentence. The Legislature should be the one to determine what should be a felony. The task force in

the bill is looking at the impact of raising these levels yet they are raised in the bill. This will increase our costs, the fiscal note shows \$3 million from last year. This will increase costs by raising the number of cases from superior to district courts. Municipal courts didn't get an increase in funding like district courts did in King County.

OTHER: There would be a shift in Snohomish County of cases into district court. The effects on some counties have not been considered.

Persons Testifying: PRO: Dan Satterberg, King County Prosecuting Attorney; Russ Hauge, Kitsap County Prosecuting Attorney; Bob Cooper, Washington Defender Association, Washington Assn of Criminal Defense Lawyers; Judge Mike Lambo, Municipal and District Court Judges Association, Kirkland Municipal Court.

CON: Holly Chisa, NW Grocery Association; Doug Levy, City of Everett; Tammy Fellin, Association of Washington Cities.

OTHER: Mark Johnson, Washington Retail Association; Carolyn Logue, Washington Food Industry; Steve Gano, Wal-Mart; Lana Weinmann, Office of the Attorney General.