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**SUBSTITUTE SENATE BILL 5022**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Sheldon, and Carrell)

READ FIRST TIME 01/22/13.

1       AN ACT Relating to changing retail theft with extenuating  
2 circumstances to retail theft with special circumstances; amending RCW  
3 9A.56.360; reenacting and amending RCW 9.94A.515; prescribing  
4 penalties; and providing an effective date.

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

6       **Sec. 1.** RCW 9A.56.360 and 2006 c 277 s 3 are each amended to read  
7 as follows:

8       (1) A person commits retail theft with ~~((extenuating))~~ special  
9 circumstances if he or she commits theft of property from a mercantile  
10 establishment with one of the following ~~((extenuating))~~ special  
11 circumstances:

12       (a) To facilitate the theft, the person leaves the mercantile  
13 establishment through a designated emergency exit;

14       (b) The person was, at the time of the theft, in possession of an  
15 item, article, implement, or device designed to overcome security  
16 systems including, but not limited to, lined bags or tag removers; or

17       (c) The person committed theft at three or more separate and  
18 distinct mercantile establishments within a one hundred eighty-day  
19 period.

1 (2) A person is guilty of retail theft with (~~extenuating~~) special  
2 circumstances in the first degree if the theft involved constitutes  
3 theft in the first degree. Retail theft with (~~extenuating~~) special  
4 circumstances in the first degree is a class B felony.

5 (3) A person is guilty of retail theft with (~~extenuating~~) special  
6 circumstances in the second degree if the theft involved constitutes  
7 theft in the second degree. Retail theft with (~~extenuating~~) special  
8 circumstances in the second degree is a class C felony.

9 (4) A person is guilty of retail theft with (~~extenuating~~) special  
10 circumstances in the third degree if the theft involved constitutes  
11 theft in the third degree. Retail theft with (~~extenuating~~) special  
12 circumstances in the third degree is a class C felony.

13 **Sec. 2.** RCW 9.94A.515 and 2012 c 176 s 3 and 2012 c 162 s 1 are  
14 each reenacted and amended to read as follows:  
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TABLE 2

CRIMES INCLUDED WITHIN

EACH SERIOUSNESS LEVEL

19	XVI	Aggravated Murder 1 (RCW
20		10.95.020)
21	XV	Homicide by abuse (RCW 9A.32.055)
22		Malicious explosion 1 (RCW
23		70.74.280(1))
24		Murder 1 (RCW 9A.32.030)
25	XIV	Murder 2 (RCW 9A.32.050)
26		Trafficking 1 (RCW 9A.40.100(1))
27	XIII	Malicious explosion 2 (RCW
28		70.74.280(2))
29		Malicious placement of an explosive 1
30		(RCW 70.74.270(1))
31	XII	Assault 1 (RCW 9A.36.011)
32		Assault of a Child 1 (RCW 9A.36.120)
33		Malicious placement of an imitation
34		device 1 (RCW 70.74.272(1)(a))

1 Promoting Commercial Sexual Abuse  
2 of a Minor (RCW 9.68A.101)  
3 Rape 1 (RCW 9A.44.040)  
4 Rape of a Child 1 (RCW 9A.44.073)  
5 Trafficking 2 (RCW 9A.40.100(2))  
6 XI Manslaughter 1 (RCW 9A.32.060)  
7 Rape 2 (RCW 9A.44.050)  
8 Rape of a Child 2 (RCW 9A.44.076)  
9 Vehicular Homicide, by being under  
10 the influence of intoxicating liquor  
11 or any drug (RCW 46.61.520)  
12 X Child Molestation 1 (RCW 9A.44.083)  
13 Criminal Mistreatment 1 (RCW  
14 9A.42.020)  
15 Indecent Liberties (with forcible  
16 compulsion) (RCW  
17 9A.44.100(1)(a))  
18 Kidnapping 1 (RCW 9A.40.020)  
19 Leading Organized Crime (RCW  
20 9A.82.060(1)(a))  
21 Malicious explosion 3 (RCW  
22 70.74.280(3))  
23 Sexually Violent Predator Escape  
24 (RCW 9A.76.115)  
25 IX Abandonment of Dependent Person 1  
26 (RCW 9A.42.060)  
27 Assault of a Child 2 (RCW 9A.36.130)  
28 Explosive devices prohibited (RCW  
29 70.74.180)  
30 Hit and Run--Death (RCW  
31 46.52.020(4)(a))  
32 Homicide by Watercraft, by being  
33 under the influence of intoxicating  
34 liquor or any drug (RCW  
35 79A.60.050)  
36 Inciting Criminal Profiteering (RCW  
37 9A.82.060(1)(b))

1 Malicious placement of an explosive 2  
2 (RCW 70.74.270(2))  
3 Robbery 1 (RCW 9A.56.200)  
4 Sexual Exploitation (RCW 9.68A.040)  
5 VIII Arson 1 (RCW 9A.48.020)  
6 Commercial Sexual Abuse of a Minor  
7 (RCW 9.68A.100)  
8 Homicide by Watercraft, by the  
9 operation of any vessel in a  
10 reckless manner (RCW  
11 79A.60.050)  
12 Manslaughter 2 (RCW 9A.32.070)  
13 Promoting Prostitution 1 (RCW  
14 9A.88.070)  
15 Theft of Ammonia (RCW 69.55.010)  
16 Vehicular Homicide, by the operation  
17 of any vehicle in a reckless manner  
18 (RCW 46.61.520)  
19 VII Burglary 1 (RCW 9A.52.020)  
20 Child Molestation 2 (RCW 9A.44.086)  
21 Civil Disorder Training (RCW  
22 9A.48.120)  
23 Dealing in depictions of minor engaged  
24 in sexually explicit conduct 1  
25 (RCW 9.68A.050(1))  
26 Drive-by Shooting (RCW 9A.36.045)  
27 Homicide by Watercraft, by disregard  
28 for the safety of others (RCW  
29 79A.60.050)  
30 Indecent Liberties (without forcible  
31 compulsion) (RCW 9A.44.100(1)  
32 (b) and (c))  
33 Introducing Contraband 1 (RCW  
34 9A.76.140)  
35 Malicious placement of an explosive 3  
36 (RCW 70.74.270(3))

1 Negligently Causing Death By Use of a  
2 Signal Preemption Device (RCW  
3 46.37.675)  
4 Sending, bringing into state depictions  
5 of minor engaged in sexually  
6 explicit conduct 1 (RCW  
7 9.68A.060(1))  
8 Unlawful Possession of a Firearm in  
9 the first degree (RCW 9.41.040(1))  
10 Use of a Machine Gun in Commission  
11 of a Felony (RCW 9.41.225)  
12 Vehicular Homicide, by disregard for  
13 the safety of others (RCW  
14 46.61.520)  
15 VI Bail Jumping with Murder 1 (RCW  
16 9A.76.170(3)(a))  
17 Bribery (RCW 9A.68.010)  
18 Incest 1 (RCW 9A.64.020(1))  
19 Intimidating a Judge (RCW 9A.72.160)  
20 Intimidating a Juror/Witness (RCW  
21 9A.72.110, 9A.72.130)  
22 Malicious placement of an imitation  
23 device 2 (RCW 70.74.272(1)(b))  
24 Possession of Depictions of a Minor  
25 Engaged in Sexually Explicit  
26 Conduct 1 (RCW 9.68A.070(1))  
27 Rape of a Child 3 (RCW 9A.44.079)  
28 Theft of a Firearm (RCW 9A.56.300)  
29 Unlawful Storage of Ammonia (RCW  
30 69.55.020)  
31 V Abandonment of Dependent Person 2  
32 (RCW 9A.42.070)  
33 Advancing money or property for  
34 extortionate extension of credit  
35 (RCW 9A.82.030)  
36 Bail Jumping with class A Felony  
37 (RCW 9A.76.170(3)(b))

1 Child Molestation 3 (RCW 9A.44.089)  
2 Criminal Mistreatment 2 (RCW  
3 9A.42.030)  
4 Custodial Sexual Misconduct 1 (RCW  
5 9A.44.160)  
6 Dealing in Depictions of Minor  
7 Engaged in Sexually Explicit  
8 Conduct 2 (RCW 9.68A.050(2))  
9 Domestic Violence Court Order  
10 Violation (RCW 10.99.040,  
11 10.99.050, 26.09.300, 26.10.220,  
12 26.26.138, 26.50.110, 26.52.070,  
13 or 74.34.145)  
14 Driving While Under the Influence  
15 (RCW 46.61.502(6))  
16 Extortion 1 (RCW 9A.56.120)  
17 Extortionate Extension of Credit (RCW  
18 9A.82.020)  
19 Extortionate Means to Collect  
20 Extensions of Credit (RCW  
21 9A.82.040)  
22 Incest 2 (RCW 9A.64.020(2))  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Perjury 1 (RCW 9A.72.020)  
25 Persistent prison misbehavior (RCW  
26 9.94.070)  
27 Physical Control of a Vehicle While  
28 Under the Influence (RCW  
29 46.61.504(6))  
30 Possession of a Stolen Firearm (RCW  
31 9A.56.310)  
32 Rape 3 (RCW 9A.44.060)  
33 Rendering Criminal Assistance 1  
34 (RCW 9A.76.070)

1 Sending, Bringing into State Depictions  
2 of Minor Engaged in Sexually  
3 Explicit Conduct 2 (RCW  
4 9.68A.060(2))  
5 Sexual Misconduct with a Minor 1  
6 (RCW 9A.44.093)  
7 Sexually Violating Human Remains  
8 (RCW 9A.44.105)  
9 Stalking (RCW 9A.46.110)  
10 Taking Motor Vehicle Without  
11 Permission 1 (RCW 9A.56.070)  
12 IV Arson 2 (RCW 9A.48.030)  
13 Assault 2 (RCW 9A.36.021)  
14 Assault 3 (of a Peace Officer with a  
15 Projectile Stun Gun) (RCW  
16 9A.36.031(1)(h))  
17 Assault by Watercraft (RCW  
18 79A.60.060)  
19 Bribing a Witness/Bribe Received by  
20 Witness (RCW 9A.72.090,  
21 9A.72.100)  
22 Cheating 1 (RCW 9.46.1961)  
23 Commercial Bribery (RCW 9A.68.060)  
24 Counterfeiting (RCW 9.16.035(4))  
25 Endangerment with a Controlled  
26 Substance (RCW 9A.42.100)  
27 Escape 1 (RCW 9A.76.110)  
28 Hit and Run--Injury (RCW  
29 46.52.020(4)(b))  
30 Hit and Run with Vessel--Injury  
31 Accident (RCW 79A.60.200(3))  
32 Identity Theft 1 (RCW 9.35.020(2))  
33 Indecent Exposure to Person Under  
34 Age Fourteen (subsequent sex  
35 offense) (RCW 9A.88.010)  
36 Influencing Outcome of Sporting Event  
37 (RCW 9A.82.070)

1 Malicious Harassment (RCW  
2 9A.36.080)  
3 Possession of Depictions of a Minor  
4 Engaged in Sexually Explicit  
5 Conduct 2 (RCW 9.68A.070(2))  
6 Residential Burglary (RCW  
7 9A.52.025)  
8 Robbery 2 (RCW 9A.56.210)  
9 Theft of Livestock 1 (RCW 9A.56.080)  
10 Threats to Bomb (RCW 9.61.160)  
11 Trafficking in Stolen Property 1 (RCW  
12 9A.82.050)  
13 Unlawful factoring of a credit card or  
14 payment card transaction (RCW  
15 9A.56.290(4)(b))  
16 Unlawful transaction of health  
17 coverage as a health care service  
18 contractor (RCW 48.44.016(3))  
19 Unlawful transaction of health  
20 coverage as a health maintenance  
21 organization (RCW 48.46.033(3))  
22 Unlawful transaction of insurance  
23 business (RCW 48.15.023(3))  
24 Unlicensed practice as an insurance  
25 professional (RCW 48.17.063(2))  
26 Use of Proceeds of Criminal  
27 Profiteering (RCW 9A.82.080 (1)  
28 and (2))  
29 Vehicular Assault, by being under the  
30 influence of intoxicating liquor or  
31 any drug, or by the operation or  
32 driving of a vehicle in a reckless  
33 manner (RCW 46.61.522)  
34 Viewing of Depictions of a Minor  
35 Engaged in Sexually Explicit  
36 Conduct 1 (RCW 9.68A.075(1))



1 Willful Failure to Return from  
2 Furlough (RCW 72.66.060)  
3 III Animal Cruelty 1 (Sexual Conduct or  
4 Contact) (RCW 16.52.205(3))  
5 Assault 3 (Except Assault 3 of a Peace  
6 Officer With a Projectile Stun  
7 Gun) (RCW 9A.36.031 except  
8 subsection (1)(h))  
9 Assault of a Child 3 (RCW 9A.36.140)  
10 Bail Jumping with class B or C Felony  
11 (RCW 9A.76.170(3)(c))  
12 Burglary 2 (RCW 9A.52.030)  
13 Communication with a Minor for  
14 Immoral Purposes (RCW  
15 9.68A.090)  
16 Criminal Gang Intimidation (RCW  
17 9A.46.120)  
18 Custodial Assault (RCW 9A.36.100)  
19 Cyberstalking (subsequent conviction  
20 or threat of death) (RCW  
21 9.61.260(3))  
22 Escape 2 (RCW 9A.76.120)  
23 Extortion 2 (RCW 9A.56.130)  
24 Harassment (RCW 9A.46.020)  
25 Intimidating a Public Servant (RCW  
26 9A.76.180)  
27 Introducing Contraband 2 (RCW  
28 9A.76.150)  
29 Malicious Injury to Railroad Property  
30 (RCW 81.60.070)  
31 Mortgage Fraud (RCW 19.144.080)  
32 Negligently Causing Substantial Bodily  
33 Harm By Use of a Signal  
34 Preemption Device (RCW  
35 46.37.674)  
36 Organized Retail Theft 1 (RCW  
37 9A.56.350(2))

1 Perjury 2 (RCW 9A.72.030)  
2 Possession of Incendiary Device (RCW  
3 9.40.120)  
4 Possession of Machine Gun or Short-  
5 Barreled Shotgun or Rifle (RCW  
6 9.41.190)  
7 Promoting Prostitution 2 (RCW  
8 9A.88.080)  
9 Retail Theft with (~~Extenuating~~)  
10 Special Circumstances 1 (RCW  
11 9A.56.360(2))  
12 Securities Act violation (RCW  
13 21.20.400)  
14 Tampering with a Witness (RCW  
15 9A.72.120)  
16 Telephone Harassment (subsequent  
17 conviction or threat of death)  
18 (RCW 9.61.230(2))  
19 Theft of Livestock 2 (RCW 9A.56.083)  
20 Theft with the Intent to Resell 1 (RCW  
21 9A.56.340(2))  
22 Trafficking in Stolen Property 2 (RCW  
23 9A.82.055)  
24 Unlawful Hunting of Big Game 1  
25 (RCW 77.15.410(3)(b))  
26 Unlawful Imprisonment (RCW  
27 9A.40.040)  
28 Unlawful possession of firearm in the  
29 second degree (RCW 9.41.040(2))  
30 Unlawful Taking of Endangered Fish  
31 or Wildlife 1 (RCW  
32 77.15.120(3)(b))  
33 Unlawful Trafficking in Fish, Shellfish,  
34 or Wildlife 1 (RCW  
35 77.15.260(3)(b))  
36 Unlawful Use of a Nondesignated  
37 Vessel (RCW 77.15.530(4))

1 Vehicular Assault, by the operation or  
2 driving of a vehicle with disregard  
3 for the safety of others (RCW  
4 46.61.522)  
5 Willful Failure to Return from Work  
6 Release (RCW 72.65.070)  
7 II Commercial Fishing Without a License  
8 1 (RCW 77.15.500(3)(b))  
9 Computer Trespass 1 (RCW  
10 9A.52.110)  
11 Counterfeiting (RCW 9.16.035(3))  
12 Engaging in Fish Dealing Activity  
13 Unlicensed 1 (RCW 77.15.620(3))  
14 Escape from Community Custody  
15 (RCW 72.09.310)  
16 Failure to Register as a Sex Offender  
17 (second or subsequent offense)  
18 (RCW 9A.44.132)  
19 Health Care False Claims (RCW  
20 48.80.030)  
21 Identity Theft 2 (RCW 9.35.020(3))  
22 Improperly Obtaining Financial  
23 Information (RCW 9.35.010)  
24 Malicious Mischief 1 (RCW  
25 9A.48.070)  
26 Organized Retail Theft 2 (RCW  
27 9A.56.350(3))  
28 Possession of Stolen Property 1 (RCW  
29 9A.56.150)  
30 Possession of a Stolen Vehicle (RCW  
31 9A.56.068)  
32 Retail Theft with (~~Extenuating~~)  
33 Special Circumstances 2 (RCW  
34 9A.56.360(3))  
35 Theft 1 (RCW 9A.56.030)  
36 Theft of a Motor Vehicle (RCW  
37 9A.56.065)

1 Theft of Rental, Leased, or Lease-  
2 purchased Property (valued at one  
3 thousand five hundred dollars or  
4 more) (RCW 9A.56.096(5)(a))  
5 Theft with the Intent to Resell 2 (RCW  
6 9A.56.340(3))  
7 Trafficking in Insurance Claims (RCW  
8 48.30A.015)  
9 Unlawful factoring of a credit card or  
10 payment card transaction (RCW  
11 9A.56.290(4)(a))  
12 Unlawful Participation of Non-Indians  
13 in Indian Fishery (RCW  
14 77.15.570(2))  
15 Unlawful Practice of Law (RCW  
16 2.48.180)  
17 Unlicensed Practice of a Profession or  
18 Business (RCW 18.130.190(7))  
19 Unlawful Purchase or Use of a License  
20 (RCW 77.15.650(3)(b))  
21 Unlawful Trafficking in Fish, Shellfish,  
22 or Wildlife 2 (RCW  
23 77.15.260(3)(a))  
24 Voyeurism (RCW 9A.44.115)  
25 I Attempting to Elude a Pursuing Police  
26 Vehicle (RCW 46.61.024)  
27 False Verification for Welfare (RCW  
28 74.08.055)  
29 Forgery (RCW 9A.60.020)  
30 Fraudulent Creation or Revocation of a  
31 Mental Health Advance Directive  
32 (RCW 9A.60.060)  
33 Malicious Mischief 2 (RCW  
34 9A.48.080)  
35 Mineral Trespass (RCW 78.44.330)  
36 Possession of Stolen Property 2 (RCW  
37 9A.56.160)

1 Reckless Burning 1 (RCW 9A.48.040)  
2 Spotlighting Big Game 1 (RCW  
3 77.15.450(3)(b))  
4 Suspension of Department Privileges 1  
5 (RCW 77.15.670(3)(b))  
6 Taking Motor Vehicle Without  
7 Permission 2 (RCW 9A.56.075)  
8 Theft 2 (RCW 9A.56.040)  
9 Theft of Rental, Leased, or Lease-  
10 purchased Property (valued at two  
11 hundred fifty dollars or more but  
12 less than one thousand five  
13 hundred dollars) (RCW  
14 9A.56.096(5)(b))  
15 Transaction of insurance business  
16 beyond the scope of licensure  
17 (RCW 48.17.063)  
18 Unlawful Fish and Shellfish Catch  
19 Accounting (RCW  
20 77.15.630(3)(b))  
21 Unlawful Issuance of Checks or Drafts  
22 (RCW 9A.56.060)  
23 Unlawful Possession of Fictitious  
24 Identification (RCW 9A.56.320)  
25 Unlawful Possession of Instruments of  
26 Financial Fraud (RCW 9A.56.320)  
27 Unlawful Possession of Payment  
28 Instruments (RCW 9A.56.320)  
29 Unlawful Possession of a Personal  
30 Identification Device (RCW  
31 9A.56.320)  
32 Unlawful Production of Payment  
33 Instruments (RCW 9A.56.320)  
34 Unlawful Release of Deleterious Exotic  
35 Wildlife (RCW 77.15.250(2)(b))  
36 Unlawful Trafficking in Food Stamps  
37 (RCW 9.91.142)

1 Unlawful Use of Food Stamps (RCW  
2 9.91.144)  
3 Unlawful Use of Net to Take Fish 1  
4 (RCW 77.15.580(3)(b))  
5 Unlawful Use of Prohibited Aquatic  
6 Animal Species (RCW  
7 77.15.253(3))  
8 Vehicle Prowl 1 (RCW 9A.52.095)  
9 Violating Commercial Fishing Area or  
10 Time 1 (RCW 77.15.550(3)(b))

11 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2014.

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