

# HOUSE BILL REPORT

## SSB 5633

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to changing the definition of theft.

**Brief Description:** Changing the definition of theft.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Palumbo, Rossi, Angel, Pedersen, O'Ban, Wilson, Zeiger and Padden).

**Brief History:**

**Committee Activity:**

Public Safety: 3/23/17, 3/28/17 [DP].

**Brief Summary of Substitute Bill**

- Amends the definition of "theft" for purposes of theft-related offenses to include concealing the property of another intending to deprive the other person of its use or benefit.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Omeara Harrington (786-7136).

**Background:**

Theft.

For purposes of the chapter in the criminal code relating to crimes of Theft and related offenses, "theft" includes any of the following conduct:

- to wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services;

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*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.*

- by color or aid of deception, to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
- to appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

Generally, the punishment for Theft offenses is in accordance with the value of the property or services at issue. Theft in the first degree, a class B felony offense, occurs when a person commits Theft of property or services valued in excess of \$5,000. Theft in the second degree, a class C felony offense, occurs when a person commits theft of property or services valued in excess of \$750, but not exceeding \$5,000. Theft in the third degree, a gross misdemeanor offense, occurs when a person commits Theft of property or services valued less than \$750.

The statutory definition of "theft" is used to establish numerous additional crimes. Examples of other crimes that rely on the statutory definition of theft include, but are not limited to: Theft of a Motor Vehicle, Theft of a Firearm, Possessing Stolen Property, Theft with Intent to Resell, and Organized Retail Theft.

#### Attempt.

A person may be found guilty of the separate crime of Attempt if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime. An attempt to commit a crime is generally classified at one level lower than a completed offense.

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

In addition to the existing definition of theft, theft also includes concealing property of another intending that the concealment will deprive the other person permanently of its use or benefit.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) Many states have included concealment in theft statutes. Having similar verbiage in the law would provide clarification for citizens and officers, and for retailers in developing loss prevention policies. Retailers estimate a collective \$45 billion in theft losses per year. Organized retail crime is occurring frequently and is often related to narcotics and other illegal enterprises. Often, one person goes inside a store, conceals an item to avoid

detection, and loss prevention detects the activity and calls law enforcement. When law enforcement arrives, a lookout placed outside the store notifies the person inside the store, then the person inside the store discards the item and leaves. These theft rings typically involve multiple stores. Crimes of theft can be aggregated, but attempted theft cannot. Other shoplifters have identified techniques to circumvent anti-theft devices by covering them with foil, putting an item in another item's packaging, or using other methods. Detecting theft in grocery stores has become more difficult now that people may refuse bags for environmental reasons, because leaving the store with unbagged groceries used to be the indication that the items had not been purchased.

Not being able to stop a person in the course of committing a theft before they leave the store creates officer safety and use of force problems. Often, there are violent incidents that escalate to robbery at the point that the person is leaving the store. In other instances, the person will drop the product at the door, including expensive fragile items that break. The change in this bill will not be used to prosecute accidents, as establishing intent would involve an assessment of the totality of the circumstances and whether or not the conduct is reasonable. It is not reasonable for a person to put an item down his or her pants and continue shopping, to put an item in a foil bag, or take the tags off of an item. Loss prevention officers are specifically trained to look for conduct that indicates an intent to commit theft.

(Opposed) None.

(Other) Law enforcement feels it cannot proceed in these circumstances, but this proposal is codifying conduct that the courts have already recognized as criminal. There is a concern in that the language does not mirror the language in existing law and creates unintended collateral consequences related to immigration law. Removing the word "permanently" would align the language with other definitions of theft. Alternatively, using the phrase "materially interfere with another's use or benefit" would address the conduct while avoiding the collateral consequences.

**Persons Testifying:** (In support) Robert Peterson and Leah Ott, Redmond Police Department; Mark Johnson, Washington Retail Association; James Estes, The Markets, LLC; and Carolyn Logue, Washington Food Industry Association.

(Other) Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.