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## Public Safety Committee

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### SSB 5634

**Brief Description:** Concerning aggregating counts of retail theft with special circumstances.

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

<p style="text-align: center;"><b>Brief Summary of Substitute Bill</b></p> <ul style="list-style-type: none"><li>• Authorizes a prosecutor to aggregate multiple violations of Retail Theft with Special Circumstances committed within 180 days into a single unit of prosecution with the combined value of the property determining the degree of the offense.</li></ul>
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**Hearing Date:** 3/23/17

**Staff:** Kelly Leonard (786-7147).

**Background:**

Sentencing. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. While there are exceptions, the classification of a crime generally determines the maximum term of confinement and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<i>Classification</i>	<i>Maximum Confinement</i>	<i>Maximum Fine</i>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

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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.*

When a person is convicted of a felony, the Sentencing Reform Act (SRA) applies and determines a specific range of sentence within the statutory maximum. Sentences for felony offenses are determined by reference to a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. An imposed sentence must be within the standard range, except when other sentencing policies apply or in exceptional circumstances. If a felony does not contain a seriousness level (referred to as an unranked felony), then the maximum sentence is 364 days.

Theft. A person commits Theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services;
- by deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services; or
- appropriates lost or misdelivered property or services of another with intent to deprive him or her of the property or services.

While there are exceptions for certain types of property and circumstances, the degree and classification of Theft is typically based upon the value of the property stolen as follows:

<i>Value of Property or Services Stolen</i>	<i>Degree Theft</i>	<i>Classification</i>	<i>Seriousness Level</i>
More than \$5,000	First Degree	Class B Felony	II
More than \$750, but not more than \$5,000	Second Degree	Class C Felony	I
Not more than \$750	Third Degree	Gross Misdemeanor	N/A

Retail Theft with Special Circumstances. A person is guilty of Retail Theft with Special Circumstances when he or she commits Theft in the first, second, or third degree, from a mercantile establishment with one of the following circumstances:

- to facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;
- the person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or
- the person committed theft at three or more separate and distinct mercantile establishments within a 180-day period.

The degree of the offense depends on degree of the underlying Theft offense.

<i>Related Theft Offense</i>	<i>Retail Theft with Special Circumstances</i>	
	<i>Classification</i>	<i>Seriousness Level</i>
Theft in the First Degree	Class B Felony	III
Theft in the Second Degree	Class C Felony	II
Theft in Third Degree	Class C Felony	Unranked

Unit of Prosecution and Aggregating Theft Offenses. Whenever any series of transactions would, as a result of property value, constitute Theft in third degree when considered separately, the transactions may be aggregated into one count and the sum of the value of all of the transactions determine the degree of the offense, as long as the series of transactions are part of a criminal episode or a common scheme or plan. "Criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

**Summary of Bill:**

In a prosecution of Retail Theft, a series of thefts committed by the same person from one or more mercantile establishments over a period of 180 days may be aggregated into one count. The sum of the value of all the property determine the degree of the offense.

When aggregating the offense for transactions occurring in different counties, the offense may be prosecuted in any county in which any one of the transactions occurred. An aggregated offense may not be prosecuted in more than one county.

A mercantile establishment whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property. In the event a request to aggregate the prosecution is declined, the prosecutor must promptly notify the mercantile establishment of the reasons for the decision.

**Appropriation:** None.

**Fiscal Note:** Available.

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