

# HOUSE BILL REPORT

## SB 5635

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### As Passed House - Amended:

April 10, 2017

**Title:** An act relating to retail theft with special circumstances.

**Brief Description:** Concerning retail theft with special circumstances.

**Sponsors:** Senators Padden, Pedersen, Angel, Palumbo, O'Ban, Wilson, Rossi and Zeiger.

### Brief History:

#### Committee Activity:

Public Safety: 3/23/17, 3/27/17 [DPA];

Appropriations: 4/1/17, 4/4/17 [DPA(PS)].

#### Floor Activity:

Passed House - Amended: 4/10/17, 98-0.

### Brief Summary of Bill (As Amended by House)

- Modifies the offense of Retail Theft with Special Circumstances to include when a person uses a device, under circumstances indicating an intent to use or employ it, to overcome a security system.
- 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.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass as amended. 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:** Kelly Leonard (786-7147).

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### HOUSE COMMITTEE ON APPROPRIATIONS

*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.*

**Majority Report:** Do pass as amended by Committee on Public Safety. Signed by 32 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

**Staff:** Rachele Harris (786-7137).

**Background:**

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 the degree of the underlying Theft offense. A conviction of Retail Theft with Special Circumstances subjects a person to harsher penalties than standard Theft offenses.

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

The offense of Retail Theft with Special Circumstances is modified in the context of overcoming security systems. The special circumstance applies when the person was, at the time of the theft, in possession of an item, article, implement, or device used, under circumstances evincing an intent to use or employ, or designed to overcome security systems, including, but not limited to, lined bags or tag removers.

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

**Staff Summary of Public Testimony (Public Safety):**

(In support) The bill addresses a recent State Supreme Court (Court) decision, *State v. Larsen* (2015), where the Court held that the Retail Theft with Special Circumstances offense only covers tools designed to overcome security systems, thereby excluding other tools not designed but otherwise used for overcoming those same systems. In the particular case, the defendant uses a pair of pliers, and the Court held that the statute does not apply. Therefore, as currently written, Retail Theft with Special Circumstances does not include most circumstances where thieves use devices to overcome security systems. Common tools include magnets, foil, and pliers, all of which can be used to defeat antitheft measures in retail stores. The statute should not be limited to devices specifically designed to overcome measures, as those types of devices are typically only designed by the manufacturer of antitheft technology and used by the retail stores.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill will act as a deterrent for sophisticated criminals. These criminals use devices to accomplish their theft that are not officially counted as theft devices by the courts. This bill corrects this problem so that any device used, such as pliers, can count in prosecuting the offense.

(Opposed) None.

**Persons Testifying (Public Safety):** Mark Johnson, Washington Retail Association; Carolyn Logue, Washington Food Industry Association; Robert Peterson and Leah Ott, Redmond Police Department.

**Persons Testifying (Appropriations):** Carolyn Logue, Washington Retail Association; and Holli Johnson, Washington Food Industry.

**Persons Signed In To Testify But Not Testifying (Public Safety):** None.

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