

SENATE BILL REPORT

SB 5632

As Amended by House, April 11, 2017

Title: An act relating to organized retail theft.

Brief Description: Modifying organized retail theft provisions.

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

Brief History:

Committee Activity: Law & Justice: 2/07/17, 2/16/17 [DP, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/06/17, 27-22.

Passed House: 4/11/17, 95-2.

Brief Summary of Bill

- Adds an additional way to commit organized retail theft with at least six accomplices and where the person makes or receives at least one electronic communication seeking participation in the theft.
- Allows the thefts committed by the principal and accomplices to be aggregated into one count.
- Determines the degree of theft by the value of all the property stolen.
- Makes the first offense of organized retail theft a gross misdemeanor for stolen property with a cumulative value of at least \$750.
- Makes the second and any subsequent offenses of organized retail theft a Class C felony for stolen property with a cumulative value of at least \$750.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Angel and Wilson.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille.

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Frockt.

Staff: Tim Ford (786-7423)

Background: A new form of theft, commonly referred to as a flash mob or flash rob, is becoming more prevalent across the United States. When this occurs, a large group of people flood a retail store and steal goods. Because of the mass number of people that enter the store at once, the retail staff usually cannot do anything to prevent or stop the theft. Many businesses have suffered monetary loss and property damage as a result of this type of organized retail theft. These stores include kiosks, convenient stores, grocery stores, high-end boutiques, and large department stores. Social media and other forms of electronic communication are a way in which people organize this type of theft.

Under current law, a person can be charged with organized retail theft if the person: (1) commits theft of property with a value of at least \$750 from a mercantile establishment with an accomplice; (2) possesses stolen property with a value of at least \$750 from a mercantile establishment with an accomplice; or (3) commits theft of property with a cumulative value of at least \$750 from one or more mercantile establishments within a period of 180 days.

Organized retail theft in the first degree, which is a Class B felony, requires that the property stolen or possessed has a value of \$5,000 or more. Organized retail theft in the second degree, which is a Class C felony, requires that the property stolen or possessed has a value of at least \$750 but less than \$5,000. A series of organized retail thefts from one or more mercantile establishments committed by the same person over a period of 180 days may be aggregated into one count, and the sum of the value of all the property must be the value considered in determining the degree of the organized retail theft involved. The mercantile establishment whose property was stolen can request that the charge is aggregated with other thefts of property.

Summary of Bill: A person can be charged with organized retail theft if the person commits theft of property with a cumulative value of at least \$750 from a mercantile establishment with at least six accomplices and the person makes or receives at least one electronic communication seeking participation in the theft in the course of planning or committing the theft. Electronic communication is defined as the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. This includes, but is not limited to, electronic mail, internet-based communication, pager service, and electronic text messaging.

When this type of organized retail theft occurs, thefts committed by the principal and accomplices may be aggregated into one count and the value of all the property must be the value considered in determining the degree of organized retail theft involved.

A first offense of organized retail theft in which the person commits theft of property with a cumulative value of at least \$750 from a mercantile establishment with at least six accomplices and makes or receives at least one electronic communication seeking participation in the theft or the course of planning or committing the theft constitutes a gross misdemeanor. A second or subsequent offense of organized retail theft in which the person commits theft of property with a cumulative value of at least \$750 from a mercantile

establishment with at least six accomplices and makes or receives at least one electronic communication seeking participation in the theft or in the course of planning or committing the theft constitutes a Class C felony.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: A flash mob robbery is when a gang of six or more thieves descend upon a retail establishment and rob them blind. These crimes are organized using social media. The leader of the flash mob will designate a specific time and place for the crime to occur. These are premeditated criminal activities. Washington State is not immune from flash mob robberies. In August 2014, at 12:30 in the morning, 40 flash mob robbers stormed a 7-Eleven in Federal Way on Pacific Highway overwhelming the one clerk that was on duty. They destroyed property, stole merchandise, and shoved and threw a beverage at the clerk. Moments later the same gang hit a nearby Shell Gas Station Convenience Store causing damage, threatening the clerk, and stealing merchandise.

Grocery store theft can overwhelm staff and put them in physical danger. The key to deterring flash robberies is the aggregation of the value of the items stolen. It is time we send a clear and strong message to current and would be criminals that flash mob robberies will not be tolerated and that if they commit one there will be serious consequences. This bill will be a deterrent for future crimes of this type.

OTHER: The language of the bill is overbroad. In the section for the aggregation of the value of items stolen, language should be included to specify that only thefts which are in furtherance of the conspiracy may be aggregated. Some thefts may be unrelated to a flash rob and should not be aggregated.

Persons Testifying: PRO: Mark Johnson, WA Retail Association; Carolyn Logue, WA Food Industry Association.

OTHER: Ramona Brandes, WA Criminal Defense Lawyers, WA Defenders Association.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Limits the new means to commit organized retail theft to a circumstance where a person makes or sends an electronic communication seeking participation in the theft—rather than where a person makes or receives an electronic communication.
- Removes the provision that makes a conviction for organized retail theft under the new means—with six accomplices and an electronic communication—a gross misdemeanor on the first offense and a class C felony on the second or subsequent offense, thereby

classifying the new means based on current law in accordance with the value of the property stolen or possessed.