

SENATE BILL REPORT

SSB 5633

As Passed Senate, February 8, 2018

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: Law & Justice: 2/07/17, 2/16/17 [DPS].

Floor Activity:

Passed Senate: 3/08/17, 47-1; 2/08/18, 45-1.

Brief Summary of First Substitute Bill

- Amends the definition of theft to include concealing the property of another with the intent to deprive the other person permanently of its use or benefit.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5633 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

Background: Theft means to wrongfully obtain or exert unauthorized control over the property or services of another with the intent to deprive the person of the property or services. Wrongfully obtain or exert unauthorized control is generally defined as having the property of another in one's possession through the taking, secreting, or withholding of such property to the person's own use. The court has referred to this portion of the statute as defining theft by taking or assuming ownership of an item belonging to another. *State v. Britten*, 46 Wn. App. 571, 573-74, 731 P.2d 508 (1986); *State v. T.F.*, 2011 Wash. App. LEXIS 2563, 3-5 (Wash. Ct. App. Nov. 8, 2011).

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.

On at least two occasions, the court has confronted whether the concealing of an item in a department store constitutes a sufficient taking or assumption of ownership to constitute theft. In *Britten*, the appellant removed tags and concealed several pairs of pants underneath his own clothes. In *T.F.*, the appellant concealed a belt underneath her shirt. In both circumstances, the appellants were detained before leaving the store and therefore argued that the theft was not completed. In both cases, the court found the act of concealment was sufficient for a fact-finder to conclude that the appellant had assumed ownership over the item with an intent to deprive the department store of its property.

Some states have adopted a statutory presumption that merchandise found concealed upon a person which has not been purchased is prima facie evidence of intent to deprive a person or entity of its property. Concealment is a presumption of reasonable cause in Washington for a mercantile establishment to detain a person for questioning.

Summary of First Substitute Bill: The definition of theft is amended to include concealing the property of another with the intent to deprive the other person permanently of its use or benefit.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: In 2016, national retail chains estimate it lost \$45 billion dollars in stolen goods. Thirty-six states have concealment included in the definition of theft in some manner. People use retail theft as a way to make income. They often work together and stay ahead of the law by knowing exactly what they can and can't do. Typical theft behavior includes removing anti-theft devices from packages; taking expensive items out of a package and placing it in a less expensive product; staging items for later theft; and flooding the store with multiple perpetrators that cannot all be tracked at one time. Law enforcement or store security may watch activity but cannot do anything until the person actually leaves the store with the item. Once the person exits, it increases the probability of getting to a getaway car, increases the possibility of officer injury, and increases the possibility of a confrontation with store personnel. Many of these stores are national retail chains. Theft policies are based on the statutory law of a particular state, not case law. Adding concealment to the statute will allow stores to rely on the law in changing its policies. Law enforcement or loss prevention can then apprehend the person sooner and reduce the potential for violent interactions with law enforcement and store personnel.

OTHER: The language in this section of the definition should mirror other portions of the statute and include language to clarify that the person committing the theft is concealing the property "of another."

Persons Testifying: PRO: Senator Guy Palumbo, Prime Sponsor; Representative Morgan Irwin, 31st Leg. District; Mark Johnson, Washington Retail Association; Leah Ott, Redmond Police Department, Washington Retail Association; Robert Peterson, Redmond Police Department, Washington Retail Association.

OTHER: Ramona Brandes, Washington Association of Criminal Defense Lawyers, Washington Defender Association.

Persons Signed In To Testify But Not Testifying: PRO: Carolyn Layne, Washington Food Industry Association.

OTHER: No one.