

FINAL BILL REPORT

SB 5635

C 224 L 17
Synopsis as Enacted

Brief Description: Concerning retail theft with special circumstances.

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

Senate Committee on Law & Justice
House Committee on Public Safety
House Committee on Appropriations

Background: Retail theft with special circumstances is theft from a mercantile establishment with one of the following special 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.

Retail theft with special circumstances in the first degree involves theft of property worth \$5,000 or more. It is a Class B felony ranked at Level III on the sentencing grid—1-3 months for a first offense and/or a \$20,000 fine. A person is guilty of retail theft with special circumstances in the second degree if the property is worth \$750 to \$4,999. Retail theft with special circumstances in the second degree is a Class C felony ranked at Level II on the sentencing grid—0-90 days for a first offense and/or up to a \$10,000 fine. Retail theft with special circumstances in the third degree involves theft of property worth under \$750. It is an unranked Class C felony—0-364 days for a first offense and/or up to a \$10,000 fine.

In *State v. Larsen*, the Washington Supreme Court held that an ordinary pair of pliers was not a tool designed to overcome security systems. The court held that, to be a violation, the tools are limited to those created, whether by the defendant or a manufacturer, with the specialized purpose of overcoming security systems. Subsequently in *State v. Wade*, the Division III Court of Appeals held that a series of arranged magnets along a key, used to unlock security cabinets, satisfied this requirement.

Summary: Retail theft with special circumstances can be committed using any implement, article, item, or device used, under circumstances indicating the intent to use them, to

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overcome security systems. The item does not have to be specifically designed for that purpose.

Multiple violations of Retail Theft with Special Circumstances committed within 180 days into a single unit of prosecution may be aggregated with the combined value of the property determining the degree of the offense.

Votes on Final Passage:

Senate	47	2	
House	98	0	(House amended)
Senate	47	1	(Senate concurred)

Effective: July 23, 2017