

SENATE BILL REPORT

SB 6406

As Reported by Senate Committee On:
Law & Justice, January 23, 2020

Title: An act relating to firearms.

Brief Description: Concerning firearms. [**Revised for 1st Substitute:** Concerning firearm theft.]

Sponsors: Senators Wilson, L., Holy, Becker, Padden, Wagoner, Muzzall, Short, Schoesler, Warnick, Ericksen, Braun, Brown, Honeyford, O'Ban and Rivers.

Brief History:

Committee Activity: Law & Justice: 1/20/20, 1/23/20 [DPS].

Brief Summary of First Substitute Bill

- Creates theft of a firearm from a residence, store, shop, sales outlet, or vehicle as a new class B felony offense.
- Places theft of a firearm from a residence, store, shop sales outlet, or vehicle at seriousness level VII for sentencing with a standard range from 15 to 20 months in prison.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6406 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Under current law, a person commits theft by:

- wrongfully obtaining unauthorized control, or using deception to obtain control, over the property or services of another or the value thereof, with intent to deprive them of the property or service; or
- appropriating lost or misdelivered property or services of another or the value thereof, with intent to deprive them of the property or service.

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.

It is a defense to theft if the property or service was appropriated openly and avowedly under a good faith claim of title even though the claim is untenable or the property consists of merchandise pallets received by a pallet recycler or repairer in the ordinary course of business. Theft is classified as first, second, or third degree depending on the value of the property or services or the number or type of stolen property or services. Current law also lists other specific theft crimes, for example, unlawful issuance of checks; theft of a motor vehicle; theft of livestock; theft of rental, leased, or loaned property; theft of subscription television services; and theft of a shopping cart.

The crime of theft of a firearm was first enacted in 1994 as part of legislation focusing on violence reduction programs. It was amended to its current form in 1995 by Initiative 159, called the "Hard Time for Armed Crime" initiative. The initiative's amendments made each firearm taken a separate offense, applicable regardless of the firearm's value, and used the same elements and applied the same defenses as theft under current statute. The initiative also applied the definition of firearm to mean a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. Firearm does not mean a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely for use in construction. The crime was reclassified from a class C felony to a class B felony.

A class B felony carries a maximum penalty of up to ten years in prison, or a fine up to \$20,000 or both. The sentencing grid places theft of a firearm at level VI. The standard sentence for level VI crimes ranges from one year plus one day to fourteen months in prison.

The U.S. Department of Justice (DOJ) issued a report in 2019 titled *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*. DOJ's report highlighted these findings:

- about 29 percent of state and 36 percent of federal prisoners serving time for a violent offense possessed a gun during the offense;
- among prisoners who possessed a gun during their offense, 90 percent did not obtain it from a retail source;
- about one in five state and federal prisoners who possessed a firearm during their offense obtained it intending to use it during the crime; and
- among state prisoners who possessed a gun during their offense, 27 percent killed someone with it, another 12 percent injured someone, 7 percent fired the gun but did not injure anyone, and 54 percent did not fire.

Summary of Bill (First Substitute): Theft of a firearm from a residence, store, shop, sales outlet, or vehicle is a class B felony offense. It includes the same elements as theft of a firearm which is likewise a class B felony. For sentencing purposes, theft of a firearm from a residence, store, shop, sales outlet, or vehicle is placed in seriousness level VII. The standard sentence for level VII crimes ranges from 15 to 20 months in prison.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Revises the title to indicate the firearm theft subject.

- Adds theft of a firearm from a vehicle to the crime.
- Uses the definition of “vehicle” in RCW 46.04.670.

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: Instead of focusing on the good citizens who own guns, this bill focuses on the criminals, those who steal, sell, or use guns for criminal purposes. The penalty could reasonably be increased. The scope of the bill could include other forms of theft, for example theft from a motor vehicle. Many criminals commit their crimes repeatedly, are arrested, and then released back onto the streets. This bill has the appropriate focus, on the criminals rather than on the law abiding citizens who own firearms. The bill will help give tools to prosecutors at the state level rather than having to look to federal level prosecution for crimes involving illegally obtained firearms. Criminals must be the focus of law enforcement's efforts. Does anyone disagree with penalizing someone for stealing a gun? This bill should be expanded to include thefts of guns from other types of stores, for example, theft of a gun from a shopkeeper who keeps one behind the counter for their own protection. Or, it could include theft of a gun from other personal property, like a car, for someone who has to live in one and needs to protect themselves. This bill does not add burdensome regulations. We need to strengthen the system, as this bill does. Many systemic failures in the criminal justice system need to be remedied. The criminal misuse of firearms, and theft crimes in general, need to be more aggressively prosecuted. As gun owners, we do not want firearms used in a reckless manner.

CON: We already have plenty of laws on the books to address this problem. I do not support this bill because it does not address some very important issues today such as the dramatic increase in suicide. We need to ask why so many people choose to leave the world. It does not address the capitalistic system that enslaves us all.

Persons Testifying: PRO: Senator Lynda Wilson, Prime Sponsor; Daniel Mitchell, Sporting Systems; Christine Price; Curtis Bingham, WAGuns; James Barrick, WAGuns; Jerry Bentler, citizen; David Westhaver, citizen; Ira Moser, citizen.

CON: Adam Davison, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Sharyn Hinchcliffe, Pink Pistols Seattle/Tacoma; Mike Silvers; Dennis Dunleavy, citizen; Tony Payauys, citizen; Jane Milhans, citizen; Brian Keelean, Washington State Rifle and Pistol Association; Mike Badgley, citizen; Mario Reillo, citizen; Philip Shave, citizen; Van Byington, American Citizen.

CON: Jerin Tilson, citizen.