
SENATE BILL 5225

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline and Hargrove

Read first time 01/16/09. Referred to Committee on Judiciary.

1 AN ACT Relating to crimes against property; amending RCW 9A.48.070,
2 9A.48.080, 9A.48.090, 9A.56.030, 9A.56.040, 9A.56.050, 9A.56.060,
3 9A.56.096, 9A.56.150, 9A.56.160, and 9A.56.170; reenacting and amending
4 RCW 9.94A.535; creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) An organized retail crime task force is
7 created for the purpose of monitoring the effects of raising the
8 monetary threshold amounts differentiating the various degrees of
9 property crimes in Washington state. The task force shall also examine
10 the impact of raising these values on (a) the retail industry; (b) the
11 district and municipal courts; and (c) the county and city offices of
12 the prosecuting attorney. In addition, the task force is directed to
13 identify any policies or procedures which would enhance the successful
14 investigation and prosecution of property crimes in Washington state.

15 (2) The task force shall consist of the following members:

16 (a) One member from each of the two largest caucuses of the house
17 of representatives, appointed by the speaker of the house of
18 representatives;

1 (b) One member from each of the two largest caucuses of the senate,
2 appointed by the president of the senate;

3 (c) One member appointed by the Washington association of
4 prosecuting attorneys;

5 (d) One member appointed by the Washington association of criminal
6 defense lawyers;

7 (e) One member appointed by the association of Washington cities;

8 (f) One member appointed by the association of Washington counties;

9 (g) One member appointed by the food industry association of
10 Washington representing retailers who own a single store or a chain
11 with less than one million five hundred thousand dollars in gross
12 revenues annually; and

13 (h) One member appointed by the Washington association of retailers
14 representing a retailer who owns a single store or a chain with one
15 million five hundred thousand dollars or more in gross revenues
16 annually.

17 The superior court judges association and the district and
18 municipal court judges association are each invited to select a judge
19 to be a member of the task force.

20 (3) The task force shall choose its chair from among its members
21 and may conduct meetings, select officers, and prescribe rules of
22 procedure.

23 (4) Staff for the task force will be provided by the house and
24 senate judiciary committees.

25 (5) Legislative members of the task force shall be reimbursed for
26 travel expenses in accordance with RCW 44.04.120. Nonlegislative
27 members are entitled to be reimbursed for travel expenses in accordance
28 with RCW 43.03.050 and 43.03.060.

29 (6) The task force is subject to the open public meetings act,
30 chapter 42.30 RCW.

31 (7) The task force shall report its findings and recommendations to
32 the appropriate committees of the legislature eighteen months after the
33 effective date of this section.

34 **Sec. 2.** RCW 9A.48.070 and 1983 1st ex.s. c 4 s 1 are each amended
35 to read as follows:

36 (1) A person is guilty of malicious mischief in the first degree if
37 he or she knowingly and maliciously:

1 (a) Causes physical damage to the property of another in an amount
2 exceeding (~~(one)~~) five thousand (~~(five hundred)~~) dollars;

3 (b) Causes an interruption or impairment of service rendered to the
4 public by physically damaging or tampering with an emergency vehicle or
5 property of the state, a political subdivision thereof, or a public
6 utility or mode of public transportation, power, or communication; or

7 (c) Causes an impairment of the safety, efficiency, or operation of
8 an aircraft by physically damaging or tampering with the aircraft or
9 aircraft equipment, fuel, lubricant, or parts.

10 (2) Malicious mischief in the first degree is a class B felony.

11 **Sec. 3.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read
12 as follows:

13 (1) A person is guilty of malicious mischief in the second degree
14 if he or she knowingly and maliciously:

15 (a) Causes physical damage to the property of another in an amount
16 exceeding (~~(two hundred fifty)~~) one thousand dollars; or

17 (b) Creates a substantial risk of interruption or impairment of
18 service rendered to the public, by physically damaging or tampering
19 with an emergency vehicle or property of the state, a political
20 subdivision thereof, or a public utility or mode of public
21 transportation, power, or communication.

22 (2) Malicious mischief in the second degree is a class C felony.

23 **Sec. 4.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read
24 as follows:

25 (1) A person is guilty of malicious mischief in the third degree if
26 he or she:

27 (a) Knowingly and maliciously causes physical damage to the
28 property of another, under circumstances not amounting to malicious
29 mischief in the first or second degree; or

30 (b) Writes, paints, or draws any inscription, figure, or mark of
31 any type on any public or private building or other structure or any
32 real or personal property owned by any other person unless the person
33 has obtained the express permission of the owner or operator of the
34 property, under circumstances not amounting to malicious mischief in
35 the first or second degree.

1 (2)((~~a~~)) Malicious mischief in the third degree ((~~under~~
2 ~~subsection (1)(a) of this section is a gross misdemeanor if the damage~~
3 ~~to the property is in an amount exceeding fifty dollars.~~

4 ~~(b) Malicious mischief in the third degree under subsection (1)(a)~~
5 ~~of this section is a misdemeanor if the damage to the property is fifty~~
6 ~~dollars or less.~~

7 ~~(c) Malicious mischief in the third degree under subsection (1)(b)~~
8 ~~of this section)) is a gross misdemeanor.~~

9 **Sec. 5.** RCW 9A.56.030 and 2007 c 199 s 3 are each amended to read
10 as follows:

11 (1) A person is guilty of theft in the first degree if he or she
12 commits theft of:

13 (a) Property or services which exceed(s) ((~~one~~)) five thousand
14 ((~~five hundred~~)) dollars in value other than a firearm as defined in
15 RCW 9.41.010;

16 (b) Property of any value, other than a firearm as defined in RCW
17 9.41.010 or a motor vehicle, taken from the person of another; or

18 (c) A search and rescue dog, as defined in RCW 9.91.175, while the
19 search and rescue dog is on duty.

20 (2) Theft in the first degree is a class B felony.

21 **Sec. 6.** RCW 9A.56.040 and 2007 c 199 s 4 are each amended to read
22 as follows:

23 (1) A person is guilty of theft in the second degree if he or she
24 commits theft of:

25 (a) Property or services which exceed(s) ((~~two hundred fifty~~)) one
26 thousand dollars in value but does not exceed ((~~one~~)) five thousand
27 ((~~five hundred~~)) dollars in value, other than a firearm as defined in
28 RCW 9.41.010 or a motor vehicle; or

29 (b) A public record, writing, or instrument kept, filed, or
30 deposited according to law with or in the keeping of any public office
31 or public servant; or

32 (c) An access device.

33 (2) Theft in the second degree is a class C felony.

34 **Sec. 7.** RCW 9A.56.050 and 1998 c 236 s 4 are each amended to read
35 as follows:

1 (1) A person is guilty of theft in the third degree if he or she
2 commits theft of property or services which (a) does not exceed (~~two~~
3 ~~hundred and fifty~~) one thousand dollars in value, or (b) includes ten
4 or more merchandise pallets, or ten or more beverage crates, or a
5 combination of ten or more merchandise pallets and beverage crates.

6 (2) Theft in the third degree is a gross misdemeanor.

7 **Sec. 8.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read
8 as follows:

9 (1) Any person who shall with intent to defraud, make, or draw, or
10 utter, or deliver to another person any check, or draft, on a bank or
11 other depository for the payment of money, knowing at the time of such
12 drawing, or delivery, that he or she has not sufficient funds in, or
13 credit with (~~said~~) the bank or other depository, to meet (~~said~~) the
14 check or draft, in full upon its presentation, (~~shall be~~) is guilty
15 of unlawful issuance of bank check. The word "credit" as used herein
16 shall be construed to mean an arrangement or understanding with the
17 bank or other depository for the payment of such check or draft, and
18 the uttering or delivery of such a check or draft to another person
19 without such fund or credit to meet the same shall be prima facie
20 evidence of an intent to defraud.

21 (2) Any person who shall with intent to defraud, make, or draw, or
22 utter, or deliver to another person any check, or draft on a bank or
23 other depository for the payment of money and who issues a stop-payment
24 order directing the bank or depository on which the check is drawn not
25 to honor (~~said~~) the check, and who fails to make payment of money in
26 the amount of the check or draft or otherwise arrange a settlement
27 agreed upon by the holder of the check within twenty days of issuing
28 (~~said~~) the check or draft (~~shall be~~) is guilty of unlawful issuance
29 of a bank check.

30 (3) When any series of transactions which constitute unlawful
31 issuance of a bank check would, when considered separately, constitute
32 unlawful issuance of a bank check in an amount of (~~two hundred fifty~~)
33 one thousand dollars or less because of value, and the series of
34 transactions are a part of a common scheme or plan, the transactions
35 may be aggregated in one count and the sum of the value of all of the
36 transactions shall be the value considered in determining whether the

1 unlawful issuance of a bank check is to be punished as a class C felony
2 or a gross misdemeanor.

3 (4) Unlawful issuance of a bank check in an amount greater than
4 (~~two hundred fifty~~) one thousand dollars is a class C felony.

5 (5) Unlawful issuance of a bank check in an amount of (~~two hundred~~
6 ~~fifty~~) one thousand dollars or less is a gross misdemeanor and shall
7 be punished as follows:

8 (a) The court shall order the defendant to make full restitution;

9 (b) The defendant need not be imprisoned, but the court shall
10 impose a minimum fine of five hundred dollars. Of the fine imposed, at
11 least fifty dollars shall not be suspended or deferred. Upon
12 conviction for a second offense within any twelve-month period, the
13 court may suspend or defer only that portion of the fine which is in
14 excess of five hundred dollars.

15 **Sec. 9.** RCW 9A.56.096 and 2007 c 199 s 17 are each amended to read
16 as follows:

17 (1) A person who, with intent to deprive the owner or owner's
18 agent, wrongfully obtains, or exerts unauthorized control over, or by
19 color or aid of deception gains control of personal property that is
20 rented, leased, or loaned by written agreement to the person, is guilty
21 of theft of rental, leased, lease-purchased, or loaned property.

22 (2) The finder of fact may presume intent to deprive if the finder
23 of fact finds either of the following:

24 (a) That the person who rented or leased the property failed to
25 return or make arrangements acceptable to the owner of the property or
26 the owner's agent to return the property to the owner or the owner's
27 agent within seventy-two hours after receipt of proper notice following
28 the due date of the rental, lease, lease-purchase, or loan agreement;
29 or

30 (b) That the renter, lessee, or borrower presented identification
31 to the owner or the owner's agent that was materially false,
32 fictitious, or not current with respect to name, address, place of
33 employment, or other appropriate items.

34 (3) As used in subsection (2) of this section, "proper notice"
35 consists of a written demand by the owner or the owner's agent made
36 after the due date of the rental, lease, lease-purchase, or loan
37 period, mailed by certified or registered mail to the renter, lessee,

1 or borrower at: (a) The address the renter, lessee, or borrower gave
2 when the contract was made; or (b) the renter, lessee, or borrower's
3 last known address if later furnished in writing by the renter, lessee,
4 borrower, or the agent of the renter, lessee, or borrower.

5 (4) The replacement value of the property obtained must be utilized
6 in determining the amount involved in the theft of rental, leased,
7 lease-purchased, or loaned property.

8 (5)(a) Theft of rental, leased, lease-purchased, or loaned property
9 is a class B felony if the rental, leased, lease-purchased, or loaned
10 property is valued at ~~((one))~~ five thousand ~~((five hundred))~~ dollars or
11 more.

12 (b) Theft of rental, leased, lease-purchased, or loaned property is
13 a class C felony if the rental, leased, lease-purchased, or loaned
14 property is valued at ~~((two hundred fifty))~~ one thousand dollars or
15 more but less than ~~((one))~~ five thousand ~~((five hundred))~~ dollars.

16 (c) Theft of rental, leased, lease-purchased, or loaned property is
17 a gross misdemeanor if the rental, leased, lease-purchased, or loaned
18 property is valued at less than ~~((two hundred fifty))~~ one thousand
19 dollars.

20 (6) This section applies to rental agreements that provide that the
21 renter may return the property any time within the rental period and
22 pay only for the time the renter actually retained the property, in
23 addition to any minimum rental fee, to lease agreements, to lease-
24 purchase agreements as defined under RCW 63.19.010, and to vehicles
25 loaned to prospective purchasers borrowing a vehicle by written
26 agreement from a motor vehicle dealer licensed under chapter 46.70 RCW.
27 This section does not apply to rental or leasing of real property under
28 the residential landlord-tenant act, chapter 59.18 RCW.

29 **Sec. 10.** RCW 9A.56.150 and 2007 c 199 s 6 are each amended to read
30 as follows:

31 (1) A person is guilty of possessing stolen property in the first
32 degree if he or she possesses stolen property, other than a firearm as
33 defined in RCW 9.41.010 or a motor vehicle, which exceeds ~~((one))~~ five
34 thousand ~~((five hundred))~~ dollars in value.

35 (2) Possessing stolen property in the first degree is a class B
36 felony.

1 **Sec. 11.** RCW 9A.56.160 and 2007 c 199 s 7 are each amended to read
2 as follows:

3 (1) A person is guilty of possessing stolen property in the second
4 degree if:

5 (a) He or she possesses stolen property, other than a firearm as
6 defined in RCW 9.41.010 or a motor vehicle, which exceeds ((two hundred
7 fifty)) one thousand dollars in value but does not exceed ((one)) five
8 thousand ((five hundred)) dollars in value; or

9 (b) He or she possesses a stolen public record, writing or
10 instrument kept, filed, or deposited according to law; or

11 (c) He or she possesses a stolen access device.

12 (2) Possessing stolen property in the second degree is a class C
13 felony.

14 **Sec. 12.** RCW 9A.56.170 and 1998 c 236 s 2 are each amended to read
15 as follows:

16 (1) A person is guilty of possessing stolen property in the third
17 degree if he or she possesses (a) stolen property which does not exceed
18 ((two hundred fifty)) one thousand dollars in value, or (b) ten or more
19 stolen merchandise pallets, or ten or more stolen beverage crates, or
20 a combination of ten or more stolen merchandise pallets and beverage
21 crates.

22 (2) Possessing stolen property in the third degree is a gross
23 misdemeanor.

24 **Sec. 13.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are
25 each reenacted and amended to read as follows:

26 The court may impose a sentence outside the standard sentence range
27 for an offense if it finds, considering the purpose of this chapter,
28 that there are substantial and compelling reasons justifying an
29 exceptional sentence. Facts supporting aggravated sentences, other
30 than the fact of a prior conviction, shall be determined pursuant to
31 the provisions of RCW 9.94A.537.

32 Whenever a sentence outside the standard sentence range is imposed,
33 the court shall set forth the reasons for its decision in written
34 findings of fact and conclusions of law. A sentence outside the
35 standard sentence range shall be a determinate sentence.

1 If the sentencing court finds that an exceptional sentence outside
2 the standard sentence range should be imposed, the sentence is subject
3 to review only as provided for in RCW 9.94A.585(4).

4 A departure from the standards in RCW 9.94A.589 (1) and (2)
5 governing whether sentences are to be served consecutively or
6 concurrently is an exceptional sentence subject to the limitations in
7 this section, and may be appealed by the offender or the state as set
8 forth in RCW 9.94A.585 (2) through (6).

9 (1) Mitigating Circumstances - Court to Consider

10 The court may impose an exceptional sentence below the standard
11 range if it finds that mitigating circumstances are established by a
12 preponderance of the evidence. The following are illustrative only and
13 are not intended to be exclusive reasons for exceptional sentences.

14 (a) To a significant degree, the victim was an initiator, willing
15 participant, aggressor, or provoker of the incident.

16 (b) Before detection, the defendant compensated, or made a good
17 faith effort to compensate, the victim of the criminal conduct for any
18 damage or injury sustained.

19 (c) The defendant committed the crime under duress, coercion,
20 threat, or compulsion insufficient to constitute a complete defense but
21 which significantly affected his or her conduct.

22 (d) The defendant, with no apparent predisposition to do so, was
23 induced by others to participate in the crime.

24 (e) The defendant's capacity to appreciate the wrongfulness of his
25 or her conduct, or to conform his or her conduct to the requirements of
26 the law, was significantly impaired. Voluntary use of drugs or alcohol
27 is excluded.

28 (f) The offense was principally accomplished by another person and
29 the defendant manifested extreme caution or sincere concern for the
30 safety or well-being of the victim.

31 (g) The operation of the multiple offense policy of RCW 9.94A.589
32 results in a presumptive sentence that is clearly excessive in light of
33 the purpose of this chapter, as expressed in RCW 9.94A.010.

34 (h) The defendant or the defendant's children suffered a continuing
35 pattern of physical or sexual abuse by the victim of the offense and
36 the offense is a response to that abuse.

37 (2) Aggravating Circumstances - Considered and Imposed by the Court

1 The trial court may impose an aggravated exceptional sentence
2 without a finding of fact by a jury under the following circumstances:

3 (a) The defendant and the state both stipulate that justice is best
4 served by the imposition of an exceptional sentence outside the
5 standard range, and the court finds the exceptional sentence to be
6 consistent with and in furtherance of the interests of justice and the
7 purposes of the sentencing reform act.

8 (b) The defendant's prior unscored misdemeanor or prior unscored
9 foreign criminal history results in a presumptive sentence that is
10 clearly too lenient in light of the purpose of this chapter, as
11 expressed in RCW 9.94A.010.

12 (c) The defendant has committed multiple current offenses and the
13 defendant's high offender score results in some of the current offenses
14 going unpunished.

15 (d) The failure to consider the defendant's prior criminal history
16 which was omitted from the offender score calculation pursuant to RCW
17 9.94A.525 results in a presumptive sentence that is clearly too
18 lenient.

19 (3) Aggravating Circumstances - Considered by a Jury -Imposed by
20 the Court

21 Except for circumstances listed in subsection (2) of this section,
22 the following circumstances are an exclusive list of factors that can
23 support a sentence above the standard range. Such facts should be
24 determined by procedures specified in RCW 9.94A.537.

25 (a) The defendant's conduct during the commission of the current
26 offense manifested deliberate cruelty to the victim.

27 (b) The defendant knew or should have known that the victim of the
28 current offense was particularly vulnerable or incapable of resistance.

29 (c) The current offense was a violent offense, and the defendant
30 knew that the victim of the current offense was pregnant.

31 (d) The current offense was a major economic offense or series of
32 offenses, so identified by a consideration of any of the following
33 factors:

34 (i) The current offense involved multiple victims or multiple
35 incidents per victim;

36 (ii) The current offense involved attempted or actual monetary loss
37 substantially greater than typical for the offense;

1 (iii) The current offense involved a high degree of sophistication
2 or planning or occurred over a lengthy period of time; or

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

6 (e) The current offense was a major violation of the Uniform
7 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
8 trafficking in controlled substances, which was more onerous than the
9 typical offense of its statutory definition: The presence of ANY of
10 the following may identify a current offense as a major VUCSA:

11 (i) The current offense involved at least three separate
12 transactions in which controlled substances were sold, transferred, or
13 possessed with intent to do so;

14 (ii) The current offense involved an attempted or actual sale or
15 transfer of controlled substances in quantities substantially larger
16 than for personal use;

17 (iii) The current offense involved the manufacture of controlled
18 substances for use by other parties;

19 (iv) The circumstances of the current offense reveal the offender
20 to have occupied a high position in the drug distribution hierarchy;

21 (v) The current offense involved a high degree of sophistication or
22 planning, occurred over a lengthy period of time, or involved a broad
23 geographic area of disbursement; or

24 (vi) The offender used his or her position or status to facilitate
25 the commission of the current offense, including positions of trust,
26 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
27 other medical professional).

28 (f) The current offense included a finding of sexual motivation
29 pursuant to RCW 9.94A.835.

30 (g) The offense was part of an ongoing pattern of sexual abuse of
31 the same victim under the age of eighteen years manifested by multiple
32 incidents over a prolonged period of time.

33 (h) The current offense involved domestic violence, as defined in
34 RCW 10.99.020, and one or more of the following was present:

35 (i) The offense was part of an ongoing pattern of psychological,
36 physical, or sexual abuse of the victim manifested by multiple
37 incidents over a prolonged period of time;

1 (ii) The offense occurred within sight or sound of the victim's or
2 the offender's minor children under the age of eighteen years; or

3 (iii) The offender's conduct during the commission of the current
4 offense manifested deliberate cruelty or intimidation of the victim.

5 (i) The offense resulted in the pregnancy of a child victim of
6 rape.

7 (j) The defendant knew that the victim of the current offense was
8 a youth who was not residing with a legal custodian and the defendant
9 established or promoted the relationship for the primary purpose of
10 victimization.

11 (k) The offense was committed with the intent to obstruct or impair
12 human or animal health care or agricultural or forestry research or
13 commercial production.

14 (l) The current offense is trafficking in the first degree or
15 trafficking in the second degree and any victim was a minor at the time
16 of the offense.

17 (m) The offense involved a high degree of sophistication or
18 planning.

19 (n) The defendant used his or her position of trust, confidence, or
20 fiduciary responsibility to facilitate the commission of the current
21 offense.

22 (o) The defendant committed a current sex offense, has a history of
23 sex offenses, and is not amenable to treatment.

24 (p) The offense involved an invasion of the victim's privacy.

25 (q) The defendant demonstrated or displayed an egregious lack of
26 remorse.

27 (r) The offense involved a destructive and foreseeable impact on
28 persons other than the victim.

29 (s) The defendant committed the offense to obtain or maintain his
30 or her membership or to advance his or her position in the hierarchy of
31 an organization, association, or identifiable group.

32 (t) The defendant committed the current offense shortly after being
33 released from incarceration.

34 (u) The current offense is a burglary and the victim of the
35 burglary was present in the building or residence when the crime was
36 committed.

37 (v) The offense was committed against a law enforcement officer who
38 was performing his or her official duties at the time of the offense,

1 the offender knew that the victim was a law enforcement officer, and
2 the victim's status as a law enforcement officer is not an element of
3 the offense.

4 (w) The defendant committed the offense against a victim who was
5 acting as a good samaritan.

6 (x) The defendant committed the offense against a public official
7 or officer of the court in retaliation of the public official's
8 performance of his or her duty to the criminal justice system.

9 (y) The victim's injuries substantially exceed the level of bodily
10 harm necessary to satisfy the elements of the offense. This aggravator
11 is not an exception to RCW 9.94A.530(2).

12 (z)(i)(A) The current offense is theft in the first degree, theft
13 in the second degree, possession of stolen property in the first
14 degree, or possession of stolen property in the second degree; (B) the
15 stolen property involved is metal property; and (C) the property damage
16 to the victim caused in the course of the theft of metal property is
17 more than three times the value of the stolen metal property, or the
18 theft of the metal property creates a public hazard.

19 (ii) For purposes of this subsection, "metal property" means
20 commercial metal property, private metal property, or nonferrous metal
21 property, as defined in RCW 19.290.010.

22 (aa) The defendant committed the offense with the intent to
23 directly or indirectly cause any benefit, aggrandizement, gain, profit,
24 or other advantage to or for a criminal street gang as defined in RCW
25 9.94A.030, its reputation, influence, or membership.

26 (bb) The offense was for a single or aggregated series of offenses
27 constituting theft, unlawful issuance of a check or draft, or forgery
28 with a total monetary value over two hundred thousand dollars.

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