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**SUBSTITUTE HOUSE BILL 2323**

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**State of Washington                      52nd Legislature                      1992 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Ludwig, Wineberry, Locke and Riley)

Read first time 01/15/92.

1            AN ACT Relating to redefining certain property crimes; amending RCW  
2 9A.56.010, 9A.56.030, 9A.56.040, 9A.56.050, 9A.56.060, 9A.56.150,  
3 9A.56.160, 9A.56.170, 3.50.320, 3.50.330, 3.66.067, 3.66.068, and  
4 9.95.210; adding a new section to chapter 9A.20 RCW; creating a new  
5 section; and prescribing penalties.

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

7            **Sec. 1.** RCW 9A.56.010 and 1987 c 140 s 1 are each amended to read  
8 as follows:

9            The following definitions are applicable in this chapter unless the  
10 context otherwise requires:

11            (1) "Appropriate lost or misdelivered property or services" means  
12 obtaining or exerting control over the property or services of another  
13 which the actor knows to have been lost or mislaid, or to have been

1 delivered under a mistake as to identity of the recipient or as to the  
2 nature or amount of the property;

3 (2) "By color or aid of deception" means that the deception  
4 operated to bring about the obtaining of the property or services; it  
5 is not necessary that deception be the sole means of obtaining the  
6 property or services;

7 (3) "Access device" means any card, plate, code, account number, or  
8 other means of account access that can be used alone or in conjunction  
9 with another access device to obtain money, goods, services, or  
10 anything else of value, or that can be used to initiate a transfer of  
11 funds, other than a transfer originated solely by paper instrument;

12 (4) "Deception" occurs when an actor knowingly:

13 (a) Creates or confirms another's false impression which the actor  
14 knows to be false; or

15 (b) Fails to correct another's impression which the actor  
16 previously has created or confirmed; or

17 (c) Prevents another from acquiring information material to the  
18 disposition of the property involved; or

19 (d) Transfers or encumbers property without disclosing a lien,  
20 adverse claim, or other legal impediment to the enjoyment of the  
21 property, whether that impediment is or is not valid, or is or is not  
22 a matter of official record; or

23 (e) Promises performance which the actor does not intend to perform  
24 or knows will not be performed.

25 (5) "Deprive" in addition to its common meaning means to make  
26 unauthorized use or an unauthorized copy of records, information, data,  
27 trade secrets, or computer programs;

28 (6) "Obtain control over" in addition to its common meaning, means:

1 (a) In relation to property, to bring about a transfer or purported  
2 transfer to the obtainer or another of a legally recognized interest in  
3 the property; or

4 (b) In relation to labor or service, to secure performance thereof  
5 for the benefits of the obtainer or another;

6 (7) "Wrongfully obtains" or "exerts unauthorized control" means:

7 (a) To take the property or services of another;

8 (b) Having any property or services in one's possession, custody or  
9 control as bailee, factor, pledgee, servant, attorney, agent, employee,  
10 trustee, executor, administrator, guardian, or officer of any person,  
11 estate, association, or corporation, or as a public officer, or person  
12 authorized by agreement or competent authority to take or hold such  
13 possession, custody, or control, to secrete, withhold, or appropriate  
14 the same to his or her own use or to the use of any person other than  
15 the true owner or person entitled thereto; or

16 (c) Having any property or services in one's possession, custody,  
17 or control as partner, to secrete, withhold, or appropriate the same to  
18 his or her use or to the use of any person other than the true owner or  
19 person entitled thereto, where such use is unauthorized by the  
20 partnership agreement;

21 (8) "Owner" means a person, other than the actor, who has  
22 possession of or any other interest in the property or services  
23 involved, and without whose consent the actor has no authority to exert  
24 control over the property or services;

25 (9) "Receive" includes, but is not limited to, acquiring title,  
26 possession, control, or a security interest, or any other interest in  
27 the property;

28 (10) "Services" includes, but is not limited to, labor,  
29 professional services, transportation services, electronic computer  
30 services, the supplying of hotel accommodations, restaurant services,

1 entertainment, the supplying of equipment for use, and the supplying of  
2 commodities of a public utility nature such as gas, electricity, steam,  
3 and water;

4 (11) "Stolen" means obtained by theft, robbery, or extortion;

5 (12) Value. (~~((a) "Value" means the market value of the property~~  
6 ~~or services at the time and in the approximate area of the criminal~~  
7 ~~act.~~

8 ~~(b))~~ "Value" means as follows:

9 (a) Value of services means the fair market value of the services  
10 at the time and in the approximate area of the criminal act.

11 (b) Value of personal property, other than motor vehicles, means  
12 the "replacement cost" of the property as that term is defined in this  
13 subsection. If the property is less than five years old, the  
14 "replacement cost" is the retail value of new property of similar  
15 quality. If the property is more than five years old the "replacement  
16 cost" is the fair market value of the property. Value of motor  
17 vehicles is the fair market value of the motor vehicle whether the  
18 vehicle is more or less than five years old. The replacement cost and  
19 fair market value shall be determined by reference to the prevailing  
20 cost or value of the property at the time and in the approximate area  
21 of the criminal act.

22 (c) Whether or not they have been issued or delivered, written  
23 instruments, except those having a readily ascertained market value,  
24 shall be evaluated as follows:

25 (i) The value of an instrument constituting an evidence of debt,  
26 such as a check, draft, or promissory note, shall be deemed the amount  
27 due or collectible thereon or thereby, that figure ordinarily being the  
28 face amount of the indebtedness less any portion thereof which has been  
29 satisfied;

1 (ii) The value of a ticket or equivalent instrument which evidences  
2 a right to receive transportation, entertainment, or other service  
3 shall be deemed the price stated thereon, if any; and if no price is  
4 stated thereon, the value shall be deemed the price of such ticket or  
5 equivalent instrument which the issuer charged the general public;

6 (iii) The value of any other instrument that creates, releases,  
7 discharges, or otherwise affects any valuable legal right, privilege,  
8 or obligation shall be deemed the greatest amount of economic loss  
9 which the owner of the instrument might reasonably suffer by virtue of  
10 the loss of the instrument.

11 ~~((e))~~ (d) Whenever any series of transactions which constitute  
12 theft, would, when considered separately, constitute theft in the third  
13 degree because of value, and said series of transactions are a part of  
14 a common scheme or plan, then the transactions may be aggregated in one  
15 count and the sum of the value of all said transactions shall be the  
16 value considered in determining the degree of theft involved.

17 ~~((d))~~ (e) Whenever any person is charged with possessing stolen  
18 property and such person has unlawfully in his or her possession at the  
19 same time the stolen property of more than one person, then the stolen  
20 property possessed may be aggregated in one count and the sum of the  
21 value of all said stolen property shall be the value considered in  
22 determining the degree of theft involved.

23 ~~((e))~~ (f) Property or services having value that cannot be  
24 ascertained pursuant to the standards set forth above shall be deemed  
25 to be of a value not exceeding ~~((two hundred and fifty))~~ five hundred  
26 dollars;

27 (13) "Shopping cart" means a basket mounted on wheels or similar  
28 container generally used in a retail establishment by a customer for  
29 the purpose of transporting goods of any kind;

1 (14) "Parking area" means a parking lot or other property provided  
2 by retailers for use by a customer for parking an automobile or other  
3 vehicle.

4 **Sec. 2.** RCW 9A.56.030 and 1975 1st ex.s. c 260 s 9A.56.030 are  
5 each amended to read as follows:

6 (1) A person is guilty of theft in the first degree if ((he)) the  
7 person commits theft of:

8 (a) Property or services which exceed(s) (~~one thousand five~~  
9 ~~hundred~~) two thousand five hundred dollars in value; or

10 (b) Property of any value taken from the person of another.

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

12 **Sec. 3.** RCW 9A.56.040 and 1987 c 140 s 2 are each amended to read  
13 as follows:

14 (1) A person is guilty of theft in the second degree if ((he)) the  
15 person commits theft of:

16 (a) Property or services which exceed(s) (~~two hundred and fifty~~)  
17 five hundred dollars in value, but does not exceed (~~one thousand five~~  
18 ~~hundred~~) two thousand five hundred dollars in value; or

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

22 (c) An access device; or

23 (d) A motor vehicle, of a value less than (~~one thousand five~~  
24 ~~hundred~~) two thousand five hundred dollars; or

25 (e) A firearm, of a value less than (~~one thousand five hundred~~)  
26 two thousand five hundred dollars.

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

1       **Sec. 4.** RCW 9A.56.050 and 1975 1st ex.s. c 260 s 9A.56.050 are  
2 each amended to read as follows:

3       (1) A person is guilty of theft in the third degree if ~~((he))~~ the  
4 person commits theft of property or services which does not exceed  
5 ~~((two hundred and fifty))~~ five hundred dollars in value.

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

7       **Sec. 5.** 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 bank or other depository, to meet said check or draft,  
14 in full upon its presentation, shall be guilty of unlawful issuance of  
15 bank check. The word "credit" as used herein shall be construed to  
16 mean an arrangement or understanding with the bank or other depository  
17 for the payment of such check or draft, and the uttering or delivery of  
18 such a check or draft to another person without such fund or credit to  
19 meet the same shall be prima facie evidence of an intent to defraud.

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

28       (3) When any series of transactions which constitute unlawful  
29 issuance of a bank check would, when considered separately, constitute

1 unlawful issuance of a bank check in an amount of (~~two hundred fifty~~)  
2 five hundred dollars or less because of value, and the series of  
3 transactions are a part of a common scheme or plan, the transactions  
4 may be aggregated in one count and the sum of the value of all of the  
5 transactions shall be the value considered in determining whether the  
6 unlawful issuance of a bank check is to be punished as a class C felony  
7 or a gross misdemeanor.

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

10 (5) Unlawful issuance of a bank check in an amount of (~~two hundred~~  
11 ~~fifty~~) five hundred dollars or less is a gross misdemeanor and shall  
12 be punished as follows:

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

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

20 **Sec. 6.** RCW 9A.56.150 and 1975 1st ex.s. c 260 s 9A.56.150 are  
21 each amended to read as follows:

22 (1) A person is guilty of possessing stolen property in the first  
23 degree if (~~he~~) the person possesses stolen property which exceeds  
24 (~~one thousand five hundred~~) two thousand five hundred dollars in  
25 value.

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

1       **Sec. 7.** RCW 9A.56.160 and 1987 c 140 s 4 are each amended to read  
2 as follows:

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

5       (a) ((He)) Possesses stolen property which exceeds ((two hundred  
6  ~~fifty~~)  five hundred dollars in value but does not exceed ((one  
7  ~~thousand five hundred~~)  two thousand five hundred dollars in value; or

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

10       (c) ((He)) Possesses a stolen access device; or

11       (d) ((He)) Possesses a stolen motor vehicle of a value less than  
12 ((one thousand five hundred))  two thousand five hundred dollars; or

13       (e) ((He)) Possesses a stolen firearm.

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

16       **Sec. 8.** RCW 9A.56.170 and 1975 1st ex.s. c 260 s 9A.56.170 are  
17 each amended to read as follows:

18       (1) A person is guilty of possessing stolen property in the third  
19 degree if ((he)) the person possesses stolen property which does not  
20 exceed ((two hundred fifty))  five hundred dollars in value.

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

23       NEW SECTION. **Sec. 9.** A new section is added to chapter 9A.20 RCW  
24 to read as follows:

25       For purposes of collecting restitution owed to a victim of a crime,  
26 the court with jurisdiction over the convicted person shall continue to  
27 have jurisdiction over the offender for a maximum period of ten years  
28 subsequent to the imposition of the sentence. The portion of the

1 sentence concerning restitution may be modified as to amount, terms,  
2 and conditions during the ten-year period, regardless of the expiration  
3 of the offender's term of suspended sentence, probation, community  
4 supervision, or community placement, and regardless of the statutory  
5 maximum for the crime. This section applies to misdemeanors, gross  
6 misdemeanors, and felonies whether the offender pled guilty to an  
7 offense as charged, to a lesser offense, or to fewer offenses and  
8 agreed with the prosecutor's recommendation that the offender be  
9 required to pay restitution to a victim of an offense or offenses which  
10 are not prosecuted pursuant to a plea agreement. The department of  
11 corrections or the county or municipal probation department that has  
12 jurisdiction over the offender and responsibility for supervising the  
13 offender shall monitor the offender's compliance with payment of  
14 restitution. The court shall set restitution as provided in RCW  
15 9A.20.030, 9.94A.142, 9.94A.145, 9.95.210, 9.92.060, as applicable, or  
16 according to other applicable statutes governing the restitution  
17 obligation of a convicted offender.

18 **Sec. 10.** RCW 3.50.320 and 1984 c 258 s 116 are each amended to  
19 read as follows:

20 After a conviction, the court may defer sentencing and place the  
21 defendant on probation and prescribe the conditions thereof, but in no  
22 case shall ~~((it))~~ probation extend for more than two years from the  
23 date of conviction except as provided in section 9 of this act  
24 regarding the continuing jurisdiction of the court to recover  
25 restitution. During the time of the deferral, the court may, for good  
26 cause shown, permit a defendant to withdraw the plea of guilty, permit  
27 the defendant to enter a plea of not guilty, and dismiss the charges.

1       **Sec. 11.** RCW 3.50.330 and 1984 c 258 s 117 are each amended to  
2 read as follows:

3       (~~For a period not to~~) Except as provided in section 9 of this act  
4 regarding the continuing jurisdiction of the court to recover  
5 restitution, the jurisdiction of the court shall not exceed a period of  
6 two years after imposition of sentence(~~(7)~~). The court shall have  
7 continuing jurisdiction and authority to suspend the execution of all  
8 or any part of the sentence upon stated terms, including installment  
9 payment of fines.

10       **Sec. 12.** RCW 3.66.067 and 1984 c 258 s 46 are each amended to read  
11 as follows:

12       After a conviction, the court may defer sentencing the defendant  
13 and place the defendant on probation and prescribe the conditions  
14 thereof, but in no case shall (~~it~~) probation extend for more than two  
15 years from the date of conviction except as provided in section 9 of  
16 this act regarding the continuing jurisdiction of the court to recover  
17 restitution. During the time of the deferral, the court may, for good  
18 cause shown, permit a defendant to withdraw the plea of guilty and to  
19 enter a plea of not guilty, and the court may dismiss the charges.

20       **Sec. 13.** RCW 3.66.068 and 1983 c 156 s 2 are each amended to read  
21 as follows:

22       (~~For a period not to~~) Except as provided in section 9 of this act  
23 regarding the continuing jurisdiction of the court to recover  
24 restitution, the jurisdiction of the court shall not exceed a period of  
25 two years after imposition of sentence(~~(7)~~). The court has continuing  
26 jurisdiction and authority to suspend the execution of all or any part  
27 of its sentence upon stated terms, including installment payment of  
28 fines.

1       **Sec. 14.** RCW 9.95.210 and 1987 c 202 s 146 are each amended to  
2 read as follows:

3       In granting probation, the court may suspend the imposition or the  
4 execution of the sentence and may direct that the suspension may  
5 continue upon such conditions and for such time as it shall designate,  
6 not exceeding the maximum term of sentence or two years, whichever is  
7 longer. The two-year maximum term shall not restrict the court from  
8 continuing jurisdiction to recover restitution ordered pursuant to this  
9 section as provided in section 9 of this act.

10       In the order granting probation and as a condition thereof, the  
11 court may in its discretion imprison the defendant in the county jail  
12 for a period not exceeding one year and may fine the defendant any sum  
13 not exceeding the statutory limit for the offense committed, and court  
14 costs. As a condition of probation, the court shall require the  
15 payment of the penalty assessment required by RCW 7.68.035. The court  
16 may also require the defendant to make such monetary payments, on such  
17 terms as it deems appropriate under the circumstances, as are necessary  
18 (1) to comply with any order of the court for the payment of family  
19 support, (2) to make restitution to any person or persons who may have  
20 suffered loss or damage by reason of the commission of the crime in  
21 question or when the offender pleads guilty to a lesser offense or  
22 fewer offenses and agrees with the prosecutor's recommendation that the  
23 offender be required to pay restitution to a victim of an offense or  
24 offenses which are not prosecuted pursuant to a plea agreement, (3) to  
25 pay such fine as may be imposed and court costs, including  
26 reimbursement of the state for costs of extradition if return to this  
27 state by extradition was required, and (4) to contribute to a county or  
28 interlocal drug fund, and may require bonds for the faithful observance  
29 of any and all conditions imposed in the probation. The court shall  
30 order the probationer to report to the secretary of corrections or such

1 officer as the secretary may designate and as a condition of the  
2 probation to follow implicitly the instructions of the secretary. If  
3 the probationer has been ordered to make restitution, the officer  
4 supervising the probationer shall make a reasonable effort to ascertain  
5 whether restitution has been made. If restitution has not been made as  
6 ordered, the officer shall inform the prosecutor of that violation of  
7 the terms of probation not less than three months prior to the  
8 termination of the probation period. The secretary of corrections will  
9 promulgate rules and regulations for the conduct of the person during  
10 the term of probation. For defendants found guilty in district court,  
11 like functions as the secretary performs in regard to probation may be  
12 performed by probation officers employed for that purpose by the county  
13 legislative authority of the county wherein the court is located.

14 NEW SECTION. **Sec. 15.** This act shall apply to crimes committed  
15 on or after the effective date of this act.