

# SENATE BILL REPORT

## ESSB 5178

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As Passed Senate, March 12, 2013

**Title:** An act relating to organized retail theft.

**Brief Description:** Modifying organized retail theft provisions.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Carrell, Rolfes, Roach, Becker, Padden, Pearson and Conway).

**Brief History:**

**Committee Activity:** Law & Justice: 2/01/13, 2/21/13 [DPS-WM, w/oRec].

Passed Senate: 3/12/13, 49-0.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5178 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; Carrell, Vice Chair; Darneille, Kohl-Welles, Pearson and Roach.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Kline, Ranking Member.

**Staff:** Jessica Stevenson (786-7465)

**Background:** A new form of theft, commonly referred to as a flash mob or flash rob, is becoming more prevalent across the United States. When this occurs, a large group of people flood a retail store and steal goods, including items ranging from food to clothing. Social media and other forms of electronic communication are a way in which people have organized the theft.

Because of the mass number of people that enter the store at once, the retail staff usually cannot do anything to prevent or stop the theft. Many businesses have suffered monetary losses and property damage as a result of this type of organized retail theft. These stores include kiosks, convenient stores, grocery stores, high end boutiques, and large department stores.

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*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.*

Under current law, a person can be charged with organized retail theft if a person commits the theft of property with a value of at least \$750 from a mercantile establishment with an accomplice, possesses stolen property with a value of at least \$750 from a mercantile establishment with an accomplice, or commits theft of property with a cumulative value of at least \$750 from one or more mercantile establishments within a period of up to 180 days.

Organized retail theft in the first degree, which is a class B felony, requires that the property stolen or possessed has a value of \$5,000 or more. Organized retail theft in the second degree, which is a class C felony, requires that the property stolen or possessed has a value of at least \$750, but less than \$5,000. A series of organized retail thefts committed by the same person from one or more mercantile establishments over a period of 180 days may be aggregated in one count and the sum of the value of all the property must be the value considered in determining the degree of the organized retail theft involved. The mercantile establishment whose property was stolen can request that the charge is aggregated with other thefts of property.

**Summary of Engrossed Substitute Bill:** A person can be charged with organized retail theft if the person commits theft of property with a cumulative value of at least \$500 from a mercantile establishment with at least six accomplices and makes or receives at least one electronic communication seeking participation in the theft in the course of planning or commission of the theft. The thefts committed by the principal and accomplices can be aggregated into one count and the value of all the property must be the value considered in determining the degree of organized retail theft involved.

Electronic communication means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. Electronic communication includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

A first offense of organized retail theft in which the person commits theft of property with a cumulative value of at least \$500 from a mercantile establishment with no less than six accomplices and makes or receives at least one electronic communication seeking participation in the theft in the course of planning or commission of the theft is a gross misdemeanor.

A second or subsequent offense of organized retail theft in which the person commits theft of property with a cumulative value of at least \$500 from a mercantile establishment with no less than six accomplices and makes or receives at least one electronic communication seeking participation in the theft in the course of planning or commission of the theft is a class C felony.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Flash rob has not become a problem in Washington yet, but preempting this type of crime by taking a proactive approach in Washington will be beneficial. The theft results in a large amount of goods stolen, and it can result in a large loss to the business. It is difficult for employees to prevent or stop the theft because of the mass number of individuals involved in the theft. A major concern is the safety of store employees and customers. Theft of this nature impacts retailers of all sizes and in many states across the United States.

CON: The \$250 requirement is a step backwards from a few years ago when the threshold amount for organized retail theft was increased to \$750. The connection between the electronic communication element and the actual crime needs to be improved. Since the value of the principal and the accomplices' stolen property can be aggregated, decreasing the value threshold to \$250 is unnecessary. It is not clear whether this new form of organized retail theft is a misdemeanor, felony, or specific level of felony.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor; Mark Johnson, WA Retail Assn.

CON: Robert Quilliam, WA Assn. of Criminal Defense Lawyers, WA Defense Attorneys.