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NO. 69948-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CLAY BORDEN,

Appellant.

2012 FEB 14 PM 3:33

~~FILED~~  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD D. EADIE

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

BRIDGETTE E. MARYMAN  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

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**A. ISSUE PRESENTED**

1. Whether the charging document included all of the essential elements of malicious mischief in the first degree and attempted theft in the second degree where it included the monetary thresholds in effect at the time of Borden's crimes.

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS.

The State charged defendant Clay Borden with burglary in the second degree, malicious mischief in the first degree, and attempted theft in the second degree. CP 70-71. The jury convicted Borden as charged. CP 72-74. The trial court imposed a standard-range sentence. CP 122-32.

2. SUBSTANTIVE FACTS.

Timothy Zonneveld is the manager of the Firestone Tire Center located at 12553 Aurora Avenue North. 3RP 13-14.<sup>1</sup> Shortly after opening the store at 6:00 a.m., on August 10, 2009, he

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<sup>1</sup> The verbatim report of proceedings consists of four volumes: 1RP (12/28/2010, 1/20/2011, 2/15/2011, 3/24/2011); 2RP (2/16/2011); 3RP (2/17/2011); and 4RP (2/22/2011).

was alerted to a disturbance in the back of the store. 3RP 17. As Zonneveld moved from the front-desk area to the mechanics' shop, he noticed that several doors that should have been locked were unlocked. 3RP 17-19. He also saw a man wearing jeans and a hooded sweatshirt running out the back door. 3RP 19. Zonneveld called 911. 3RP 22. After Seattle Police Officer Walter Bruce confirmed that no suspects remained on the property, Zonneveld and Bruce surveyed the scene. Id.

Several of the shop's doors were damaged and a large window across the back of the store was broken. 3RP 24-25, 27, 29, 36. The window was large enough for a grown man to crawl through and access the shop. 3RP 37-38. Officer Bruce found blood on the sill below the broken window and skin and hair on the shattered glass. 3RP 63-64. Believing that the burglar probably cut himself while crawling through the window, Bruce collected samples of the blood, skin, and hair. 3RP 64.

Zonneveld noticed a shopping cart loaded with 20 boxes of spark plugs. 3RP 32. Each box contained four spark plugs. Id. Based on the individual retail price of \$15.99, the total estimated value of the spark plugs exceeded \$1,200. Id. The spark plugs were usually stored on a shelf and an employee would not have left

such a large quantity in the shopping cart. 3RP 33. Zonneveld found the shopping cart full of spark plugs near the back door. 3RP 28, 32.

Forensic Scientist Brianne Huseby conducted DNA analysis of the blood sample taken from the windowsill. 3RP 131-39. The DNA profile of the blood matched the reference sample taken from Borden. 4RP 12-15. Borden had never worked at Firestone and did not have permission to be in the store on August 10, 2009. 3RP 46-47.

Firestone Tire Center paid over \$8,000 to repair the damaged windows and doors. 3RP 40-41.

**C. ARGUMENT**

1. THE INFORMATION CONTAINED THE ESSENTIAL ELEMENTS OF THE CRIMES CHARGED.

Borden claims that changes to the monetary thresholds of property crimes took effect on July 26, 2009.<sup>2</sup> Because Borden's malicious mischief and attempted theft charges occurred on August 10, 2009, he argues that the charging language in this case for

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<sup>2</sup> Borden cites to Laws 2009, ch. 431, §§ 4, 8, to support his claim that the new law went into effect on July 26, 2009. These sections amend the substantive portions of RCW 9A.48.070 and RCW 9A.56.040 and include no reference to the effective date.

malicious mischief and attempted theft was constitutionally deficient because it was based on the older monetary thresholds. Borden's claim fails because the changes to the property-crime statutes affected only crimes occurring on or after September 1, 2009, after these crimes occurred.

a. Relevant Legislative History.

In 2009, the Washington legislature passed Senate Bill 6167, which the Governor signed into law on May 8, 2009. Laws 2009, ch. 431, Appendix A. The law increased the monetary thresholds for felony property crimes. Id. For instance, under the old version of RCW 9A.48.070, a person committed malicious mischief in the first degree if he or she damaged property in excess of \$1,500. The new law increased the threshold to \$5,000. Laws 2009, ch. 431, § 4. Similarly, under the old version of RCW 9A.56.040, a person committed theft in the second degree if he or she stole property valued anywhere between \$250 and \$1,500; the new law increased the range to \$750 to \$5,000. Laws 2009, ch. 431, § 8. In addition to amending the property crime statutes, the new law also established an organized-retail-crime task force and increased the monetary penalties for organized retail crime.

Laws 2009, ch. 431, §§ 1, 3. Although the law went into effect on July 26, 2009, it specifically provides that it applies only to crimes committed on or after September 1, 2009. Laws 2009, ch. 431, § 20.

b. The Information Contained The Essential Elements Of Malicious Mischief In The First Degree.

The federal and state constitutions require that the State give notice to the defendant of the charged offense so that he may prepare a defense. State v. Goodman, 150 Wn.2d 774, 784, 83 P.3d 410 (2004). The charging document must allege facts that identify the crime charged and support the elements of the charged offense. State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). It must include all statutory and nonstatutory elements of the charged offense. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). This requirement has been termed the "essential elements" requirement. State v. Williams, 162 Wn.2d 177, 183, 170 P.3d 30 (2007). An "essential element is one whose specification is necessary to establish the very illegality of the behavior" charged. State v. Johnson, 119 Wn.2d 143, 147, 829 P.3d 1078 (1992).

When an information is challenged for the first time on appeal, appellate courts apply a liberal test to determine whether the required elements appear in any form in the charging document. Kjorsvik, 117 Wn.2d at 105-06. The test is as follows: (1) do the necessary facts appear in any form by fair construction in the charging document; and if so, (2) can the defendant show that he or she was actually prejudiced by inartful language which caused an actual lack of notice? Id.

The first-degree malicious mischief statute in effect on August 10, 2009 provided:

- (1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:
  - (a) Causes physical damage to the property of another in an amount exceeding one thousand five hundred dollars....

Former RCW 9A.48.070(1)(a) (emphasis added).

Here, the charging language for malicious mischief in the first degree read:

That the defendant CLAY ERNEST BORDEN, in King County, Washington, on or about August 10, 2009, did knowingly and maliciously cause physical damage in excess of \$1,500, to a building located at 12553 Aurora Avenue N., Seattle, the property of Firestone Tire Center.

CP 71 (emphasis added). The information included all of the essential elements of malicious mischief in the first degree. Therefore, Borden had adequate notice of the crime with which he was charged.

Borden's sole challenge to the charging document is based on his claim that the monetary threshold provisions of SB 6167 affected crimes occurring on or after July 26, 2009.

Borden's argument relies on an incomplete reading of the new law. As stated above, while the law went into effect on July 26, 2009, it affected only crimes occurring on or after September 1, 2009. Laws 2009, ch. 431, § 20. Because Borden's crime occurred on August 10, 2009, the increased monetary threshold did not apply to his case. Rather, the State properly charged him with malicious mischief based on the \$1,500 threshold, and the information contained all of the essential elements.

c. The Information Contained The Essential Elements Of Attempted Theft In The Second Degree.

Borden raises an identical challenge to the attempted theft charge. Just as with his challenge to the malicious mischief charging language, Borden's challenge to the attempted theft

charge fails because it is based on an incomplete reading of the new law.

The second-degree theft statute in effect on August 10, 2009, provided:

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

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

Former RCW 9A.56.040(1)(a) (emphasis added).

Here, the charging language for attempted theft in the second degree read:

That the defendant CLAY ERNEST BORDEN, in King County, Washington, on or about August 10, 2009, with intent to deprive another of property, to-wit: store merchandise, did attempt to wrongfully obtain such property belonging to Firestone Tire Center, that the value of such property did exceed \$250; attempt as used in the above charge means that the defendant committed an act which was a substantial step towards the commission of the above described crime with the intent to commit that crime.

CP 71 (emphasis added).

Borden argues that the newer monetary threshold applied to his case, and that the underlined charging language should have read, "the value of such property did exceed \$750." See App. Br.

at 8. As explained above, the new monetary threshold applied only to crimes committed after September 1, 2009. Because Borden committed the attempted theft on August 10, 2009, the information reflected the correct monetary threshold and was constitutionally sufficient.

**D. CONCLUSION**

For all of the foregoing reasons, the State asks this court to affirm Borden's convictions.

DATED this 14 day of February, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: Bridgette E. Maryman  
BRIDGETTE E. MARYMAN, WSBA #38720  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

# Appendix A

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6167**

Chapter 431, Laws of 2009

61st Legislature  
2009 Regular Session

PROPERTY CRIMES--ORGANIZED RETAIL CRIME TASK FORCE--THRESHOLD  
AMOUNTS

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 20, 2009  
YEAS 25 NAYS 21

BRAD OWEN

**President of the Senate**

Passed by the House April 25, 2009  
YEAS 53 NAYS 41

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 8, 2009, 11:26 a.m.

CHRISTINE GREGOIRE

**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6167** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

**Secretary**

FILED

May 11, 2009

**Secretary of State  
State of Washington**

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SENATE BILL 6167

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Passed Legislature - 2009 Regular Session

State of Washington                      61st Legislature                      2009 Regular Session  
By Senators Kline, Regala, and Hargrove

1            AN ACT Relating to crimes against property; amending RCW 4.24.230,  
2            9A.48.070, 9A.48.080, 9A.48.090, 9A.56.030, 9A.56.040, 9A.56.050,  
3            9A.56.060, 9A.56.096, 9A.56.150, 9A.56.160, 9A.56.170, and 9A.56.350;  
4            adding a new section to chapter 9.94A RCW; adding a new section to  
5            chapter 3.50 RCW; adding a new section to chapter 3.66 RCW; adding a  
6            new section to chapter 35.20 RCW; creating new sections; and  
7            prescribing penalties.

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

9            NEW SECTION.    **Sec. 1.**    (1) An organized retail crime task force is  
10            created for the purpose of monitoring the effects of raising the  
11            monetary threshold amounts differentiating the various degrees of  
12            property crimes in Washington state. The task force is directed to  
13            examine the impact of raising these values on (a) the retail industry;  
14            (b) the district and municipal courts; and (c) the county and city  
15            offices of the prosecuting attorney. The task force shall also examine  
16            the best methods for apportionment and sharing of costs for prosecution  
17            when multiple jurisdictions are involved. In addition, the task force  
18            is charged with identifying any policies or procedures which would

1 enhance the successful investigation and prosecution of property crimes  
2 in Washington state.

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

4 (a) One member from each of the two largest caucuses of the house  
5 of representatives, appointed by the speaker of the house of  
6 representatives;

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

9 (c) One member appointed by the Washington association of  
10 prosecuting attorneys;

11 (d) One member appointed by the Washington association of criminal  
12 defense lawyers;

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

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

15 (g) One member appointed by the food industry association of  
16 Washington representing retail grocers who own a single store or a  
17 regional chain with less than ten million five hundred thousand dollars  
18 in gross revenues per location annually;

19 (h) One member appointed by the Washington association of retailers  
20 representing a retailer who owns a single store or a chain with one  
21 million five hundred thousand dollars or more in gross revenues  
22 annually; and

23 (i) The superior court judges association and the district and  
24 municipal court judges association are each invited to select a judge  
25 to be a member of the task force.

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

29 (4) Staff for the task force will be provided by the staff of the  
30 legislature.

31 (5) Legislative members of the task force shall not be reimbursed  
32 for travel expenses. Nonlegislative members appointed under subsection  
33 (2)(c) through (h) of this section are not entitled to reimbursement  
34 under RCW 43.03.050 or 43.03.060 for travel or other expenses related  
35 to service on the task force. The participation of an organization in  
36 the task force shall not result in any finding or determination that  
37 the organization is a governmental or public agency.

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

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

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW  
7 to read as follows:

8 The sentencing guidelines commission shall review the monetary  
9 threshold amounts differentiating the various degrees of property  
10 crimes in Washington state to determine whether such amounts should be  
11 modified. The sentencing guidelines commission shall report to the  
12 legislature with its recommendations by November 1, 2014, and every  
13 five years thereafter.

14 **Sec. 3.** RCW 4.24.230 and 1994 c 9 s 1 are each amended to read as  
15 follows:

16 (1) An adult or emancipated minor who takes possession of any  
17 goods, wares, or merchandise displayed or offered for sale by any  
18 wholesale or retail store or other mercantile establishment without the  
19 consent of the owner or seller, and with the intention of converting  
20 such goods, wares, or merchandise to his or her own use without having  
21 paid the purchase price thereof (~~(shall be)~~) is liable in addition to  
22 actual damages, for a penalty to the owner or seller in the amount of  
23 the retail value thereof not to exceed (~~(one)~~) two thousand eight  
24 hundred fifty dollars, plus an additional penalty of not less than one  
25 hundred dollars nor more than (~~(two)~~) six hundred fifty dollars, plus  
26 all reasonable attorney's fees and court costs expended by the owner or  
27 seller. A customer who orders a meal in a restaurant or other eating  
28 establishment, receives at least a portion thereof, and then leaves  
29 without paying, is subject to liability under this section. A person  
30 who shall receive any food, money, credit, lodging, or accommodation at  
31 any hotel, motel, boarding house, or lodging house, and then leaves  
32 without paying the proprietor, manager, or authorized employee thereof,  
33 is subject to liability under this section.

34 (2) The parent or legal guardian having the custody of an  
35 unemancipated minor who takes possession of any goods, wares, or  
36 merchandise displayed or offered for sale by any wholesale or retail

1 store or other mercantile establishment without the consent of the  
2 owner or seller and with the intention of converting such goods, wares,  
3 or merchandise to his or her own use without having paid the purchase  
4 price thereof, (~~shall be~~) is liable as a penalty to the owner or  
5 seller for the retail value of such goods, wares, or merchandise not to  
6 exceed (~~five~~) one thousand four hundred twenty-five dollars plus an  
7 additional penalty of not less than one hundred dollars nor more than  
8 (~~two~~) six hundred fifty dollars, plus all reasonable attorney's fees  
9 and court costs expended by the owner or seller. The parent or legal  
10 guardian having the custody of an unemancipated minor, who orders a  
11 meal in a restaurant or other eating establishment, receives at least  
12 a portion thereof, and then leaves without paying, is subject to  
13 liability under this section. The parent or legal guardian having the  
14 custody of an unemancipated minor, who receives any food, money,  
15 credit, lodging, or accommodation at any hotel, motel, boarding house,  
16 or lodging house, and then leaves without paying the proprietor,  
17 manager, or authorized employee thereof, is subject to liability under  
18 this section. For the purposes of this subsection, liability shall not  
19 be imposed upon any governmental entity, private agency, or foster  
20 parent assigned responsibility for the minor child pursuant to court  
21 order or action of the department of social and health services.

22 (3) Judgments and claims arising under this section may be  
23 assigned.

24 (4) A conviction for violation of chapter 9A.56 RCW shall not be a  
25 condition precedent to maintenance of a civil action authorized by this  
26 section.

27 (5) An owner or seller demanding payment of a penalty under  
28 subsection (1) or (2) of this section shall give written notice to the  
29 person or persons from whom the penalty is sought. The notice shall  
30 state:

31 "IMPORTANT NOTICE: The payment of any penalty demanded of you does  
32 not prevent criminal prosecution under a related criminal provision."

33 This notice shall be boldly and conspicuously displayed, in at  
34 least the same size type as is used in the demand, and shall be sent  
35 with the demand for payment of a penalty described in subsection (1) or  
36 (2) of this section.

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

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

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

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

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

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

15       **Sec. 5.** RCW 9A.48.080 and 1994 c 261 s 17 are each amended to read  
16 as follows:

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

19       (a) Causes physical damage to the property of another in an amount  
20 exceeding (~~two~~) seven hundred fifty dollars; or

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

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

27       **Sec. 6.** RCW 9A.48.090 and 2003 c 53 s 71 are each amended to read  
28 as follows:

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

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

34       (b) Writes, paints, or draws any inscription, figure, or mark of  
35 any type on any public or private building or other structure or any  
36 real or personal property owned by any other person unless the person

1 has obtained the express permission of the owner or operator of the  
2 property, under circumstances not amounting to malicious mischief in  
3 the first or second degree.

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

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

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

12 **Sec. 7.** RCW 9A.56.030 and 2007 c 199 s 3 are each amended to read  
13 as follows:

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

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

19 (b) Property of any value, other than a firearm as defined in RCW  
20 9.41.010 or a motor vehicle, taken from the person of another; or

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

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

24 **Sec. 8.** RCW 9A.56.040 and 2007 c 199 s 4 are each amended to read  
25 as follows:

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

28 (a) Property or services which exceed(s) ~~((two))~~ seven hundred  
29 fifty dollars in value but does not exceed ~~((one))~~ five thousand ~~((five~~  
30 ~~hundred))~~ dollars in value, other than a firearm as defined in RCW  
31 9.41.010 or a motor vehicle; or

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

35 (c) An access device.

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

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

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

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

9           **Sec. 10.** RCW 9A.56.060 and 1982 c 138 s 1 are each amended to read  
10 as follows:

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

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

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

1 transactions shall be the value considered in determining whether the  
2 unlawful issuance of a bank check is to be punished as a class C felony  
3 or a gross misdemeanor.

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

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

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

10 (b) The defendant need not be imprisoned, but the court shall  
11 impose a ~~((minimum))~~ fine of ~~((five))~~ up to one thousand one hundred  
12 twenty-five dollars. Of the fine imposed, at least ~~((fifty))~~ three  
13 hundred seventy-five dollars or an amount equal to one hundred fifty  
14 percent of the amount of the bank check, whichever is greater, shall  
15 not be suspended or deferred. Upon conviction for a second offense  
16 within any twelve-month period, the court may not suspend or defer  
17 ~~((only that))~~ any portion of the fine ~~((which is in excess of five~~  
18 ~~hundred dollars))~~.

19 **Sec. 11.** RCW 9A.56.096 and 2007 c 199 s 17 are each amended to  
20 read as follows:

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

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

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

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

1 (3) As used in subsection (2) of this section, "proper notice"  
2 consists of a written demand by the owner or the owner's agent made  
3 after the due date of the rental, lease, lease-purchase, or loan  
4 period, mailed by certified or registered mail to the renter, lessee,  
5 or borrower at: (a) The address the renter, lessee, or borrower gave  
6 when the contract was made; or (b) the renter, lessee, or borrower's  
7 last known address if later furnished in writing by the renter, lessee,  
8 borrower, or the agent of the renter, lessee, or borrower.

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

12 (5)(a) Theft of rental, leased, lease-purchased, or loaned property  
13 is a class B felony if the rental, leased, lease-purchased, or loaned  
14 property is valued at (~~one~~) five thousand (~~five hundred~~) dollars or  
15 more.

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

20 (c) Theft of rental, leased, lease-purchased, or loaned property is  
21 a gross misdemeanor if the rental, leased, lease-purchased, or loaned  
22 property is valued at less than (~~two~~) seven hundred fifty dollars.

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

32 **Sec. 12.** RCW 9A.56.150 and 2007 c 199 s 6 are each amended to read  
33 as follows:

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

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

3 **Sec. 13.** RCW 9A.56.160 and 2007 c 199 s 7 are each amended to read  
4 as follows:

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

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

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

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

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

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

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

24 (2) Possessing stolen property in the third degree is a gross  
25 misdemeanor.

26 **Sec. 15.** RCW 9A.56.350 and 2006 c 277 s 2 are each amended to read  
27 as follows:

28 (1) A person is guilty of organized retail theft if he or she:

29 (a) Commits theft of property with a value of at least ((~~two~~))  
30 seven hundred fifty dollars from a mercantile establishment with an  
31 accomplice; ((~~or~~))

32 (b) Possesses stolen property, as defined in RCW 9A.56.140, with a  
33 value of at least ((~~two~~)) seven hundred fifty dollars from a mercantile  
34 establishment with an accomplice; or

1        (c) Commits theft of property with a cumulative value of at least  
2 seven hundred fifty dollars from one or more mercantile establishments  
3 within a period of up to one hundred eighty days.

4        (2) A person is guilty of organized retail theft in the first  
5 degree if the property stolen or possessed has a value of ~~((one))~~ five  
6 thousand ~~((five hundred))~~ dollars or more. Organized retail theft in  
7 the first degree is a class B felony.

8        (3) A person is guilty of organized retail theft in the second  
9 degree if the property stolen or possessed has a value of at least  
10 ~~((two))~~ seven hundred fifty dollars, but less than ~~((one))~~ five  
11 thousand ~~((five hundred))~~ dollars. Organized retail theft in the  
12 second degree is a class C felony.

13        (4) For purposes of this section, a series of thefts committed by  
14 the same person from one or more mercantile establishments over a  
15 period of one hundred eighty days may be aggregated in one count and  
16 the sum of the value of all the property shall be the value considered  
17 in determining the degree of the organized retail theft involved.  
18 Thefts committed by the same person in different counties that have  
19 been aggregated in one county may be prosecuted in any county in which  
20 any one of the thefts occurred.

21        (5) The mercantile establishment or establishments whose property  
22 is alleged to have been stolen may request that the charge be  
23 aggregated with other thefts of property about which the mercantile  
24 establishment or establishments is aware. In the event a request to  
25 aggregate the prosecution is declined, the mercantile establishment or  
26 establishments shall be promptly advised by the prosecuting  
27 jurisdiction making the decision to decline aggregating the prosecution  
28 of the decision and the reasons for such decision.

29        NEW SECTION. Sec. 16. A new section is added to chapter 3.50 RCW  
30 to read as follows:

31        Before a sentence is imposed upon a defendant convicted of a crime  
32 against property, the court or the prosecuting authority shall check  
33 existing judicial information systems to determine the criminal history  
34 of the defendant.

35        NEW SECTION. Sec. 17. A new section is added to chapter 3.66 RCW  
36 to read as follows:

1 Before a sentence is imposed upon a defendant convicted of a crime  
2 against property, the court or the prosecuting authority shall check  
3 existing judicial information systems to determine the criminal history  
4 of the defendant.

5 NEW SECTION. **Sec. 18.** A new section is added to chapter 35.20 RCW  
6 to read as follows:

7 Before a sentence is imposed upon a defendant convicted of a crime  
8 against property, the court or the prosecuting authority shall check  
9 existing judicial information systems to determine the criminal history  
10 of the defendant.

11 NEW SECTION. **Sec. 19.** Merchants and other parties who create a  
12 database of individuals who have been: Apprehended in the process of  
13 committing a property crime; assessed a civil fine or penalty for  
14 committing a property crime; or convicted of a property crime are not  
15 subject to civil fines or penalties for sharing information from the  
16 database with other merchants, law enforcement officials, or legal  
17 professionals.

18 NEW SECTION. **Sec. 20.** This act applies to crimes committed on or  
19 after September 1, 2009.

Passed by the Senate April 20, 2009.

Passed by the House April 25, 2009.

Approved by the Governor May 8, 2009.

Filed in Office of Secretary of State May 11, 2009.