

THEFT

Some of the strangest cases this firm has come across involved accusations of theft. These acts range from the simple shoplift to sophisticated corporate fraud networks to bizarre deals worked out between angry family members. As police and prosecutor budgets continue to shrink, “property crimes” are also the number one area the government is starting to avoid. This law firm has seen a number of investigations where the police have simply told family members, business owners, and others to “work it out themselves.”

Investigations & Avoiding the Criminal Charge

Theft and property crime is also the number one category where a client can benefit from early intervention, hiring an experienced attorney and trying to broker a deal with the complaining party and the police to “settle it civilly.” Property crimes often take additional detective investigation which gives a good defense attorney time to intervene. With stretched budgets, they seem to welcome the extra information more than they used to. Like the drug trade, when the crime is more complex and involves others, the government will sometimes offer “deals” for information.

The Legal Definition

RCW 9A.56.020 defines theft:

- (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
- (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
- (c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

Theft crime is organized by the property value or the type

Theft 1

Theft 1 is the highest felony level and involves the “wrongful taking” of

Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

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

A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty; or

Certain commercial or private metal property.

Theft in the first degree is a class B felony.

Theft 2

Theft 2 is still a Class C felony and involves:

Property or services which exceed(s) seven hundred fifty dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

Certain commercial and private metal property and the value exceeds seven hundred fifty dollars

An “access device” - credit cards and other access instruments. You do not have to charge anything on it.

Theft 3

Theft 3 is a Gross Misdemeanor and involves any minimal value up to \$750. These are the lion’s share of theft cases and they crowd most of the municipal and district courts across the state.

The government has also specifically reserved “ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates” for the misdemeanor category.

The “Mall Cop” and other Defense Issues

The misdemeanor cases often involve the “mall cop,” odd store security characters who dress and act like junior police but follow very few of their rules and have just as few legal issues surrounding them.

Confessions

For example, when the police question you without Miranda and seek a confession, a good defense attorney can get that evidence thrown out, when a mall cop does the same, the confession usually “comes in” as they do not work for the government and do not have to give you the warnings. The issue gets more complex when they begin to threaten a suspect or use force.

Search and Seizure

The same is true when they “frisk” an individual or take the stolen property from their clothing, car and other areas. Since mall cops are not government actors, they need not follow their rules and the evidence is more likely to come in. Once again, force can complicate the issues and a good defense attorney will exploit it.

The Unstable Witness

Police Officers still enjoy some of the best retirement and medical benefits in the working class. Store security makes minimum wage and can barely afford a donut on their coffee break. Like all other retail, these folks move around and sometimes the prosecutor can’t find their witnesses when the matter is set for trial.

The Real Police

Often times, the “real police” are called in and the legal issues get more complex as both parties continue to question the suspect and search for evidence.

Violence

By law, police can employ force under a lot of circumstances. While they can detain you, store security do not enjoy the same protection and this office has seen more than one mall cop fired for repeated excessive force and threats.

RCW 4.24.230 The Civil Backdoor

The retail lobby has erected an odd statute that allows them to go after the individual shoplifter and in some cases their parents for a flat civil penalty plus attorneys fees. The individual usually gets a letter demanding the money not long after the event. Paying or not paying the demand has no automatic effect on the prosecution.

The Compromise of Misdemeanor RCW 10.22.010

RCW 10.22 carves out a unique exception in criminal law reserved only for misdemeanors. It allows a criminal case to be dismissed and resolved “civilly” when the individual “appears(s) in the court and indicates that they “have received satisfaction for the injury.”

This usually involves some kind of payment for damages. The law also requires the defendant to pay court costs.

There is a continuing debate regarding how much the “victim” must be involved in the process but most courts require a written statement from them indicating they’ve been paid and have no objection to the court dismissing the case

Exceptions: The law specifically forbids this result for domestic violence, assaults on police, “riotous” acts and when the defendant “intends to commit a felony.

It is most commonly used in property crimes. Some large retailers, by policy, object to this resolution and want “their criminals” to be punished. Some don’t care as long as they’re paid.

Unlawful Issuance of Bank Checks

RCW 9A.56.060 has carved out a special area for people accused of writing “bad checks”

They must still prove the individual “intended to defraud” the person and that they “knew” they did not have sufficient funds. Unfortunately, the law has also stated that by simply issuing the check without the funds to back it up constitutes “prima facie” evidence of the crime. This means that unlike most crime, the “burden of proof” then switches to the defendant to show they did not intend to defraud them.

Stop Payment Orders

You can even be charged with the crime by issuing a stop payment if you issue the stop and fail to make good on the check “within twenty days.” They must still prove that it was done with the “intent to defraud.”

Like theft, the crime is either a felony or misdemeanor depending on the value.

Other Theft Crimes Are Defined by the Property

Washington has carved out other specific crimes simply by the property:

Taking a Motor Vehicle

Mail

Firearms

Shopping Carts

Telecommunication Services & Subscription Television

Livestock

Each of these has its own quirks, defenses and punishments. Most of them are felonies.

POSSESSION OF STOLEN PROPERTY

“PSP,” as the prosecutors call it, contains even more twists and turns than simple theft as an individual can end up with questionable property under a lot of circumstances. Sometimes parents, roommates and spouses are charged for simply owning or living in the same space. This law office has had more than one parent call them not sure what to do.

The Definition

RCW 9A.56.140 defines PSP as “knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

Like theft, PSP First Degree involves a value over \$5000 and is a Class B Felony. PSP Second Degree involves value over \$750 and a Class C Felony, and PSP Third Degree involves any value. Once again, there is an exception for firearms

The Law Makes Presumptions

When someone possesses “stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates,

or a combination” they are presumed to know that they are stolen. The defense must then show they had no knowledge.

If you have been arrested, cited, charged or are under investigation for these types of crimes, **PLEASE CONTACT OUR OFFICE FOR A FREE CONSULTATION**