

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1238/1dn  
PJH:rs&kmg:pg

January 19, 2001

Please review this draft carefully to ensure that it is consistent with your intent.

I have created s. 341.607, rather than amend the general receiving-stolen-property statute (s. 943.34) because various sections of ch. 341 refer specifically to improper or illegal display of registration plates and because this draft targets a particular illegal display of registration plates.

Please note that the draft does not make "knowledge that the registration plates were stolen" an element of the crime of displaying stolen registration plates. Instead, a defendant may argue, as an affirmative defense, that he or she did not know that the registration plates that he or she displayed were stolen. The burden is on the defendant to prove this by a preponderance of the evidence.

I found that this approach was more desirable, for two reasons, than making "knowledge" an element of the crime and stating that the display of stolen registration plates creates a rebuttable presumption that the person knew the plates were stolen. First, a constitutionally valid presumption of an element of a crime must not undercut the basic requirement that all facts necessary to constitute a crime must be proved by the prosecution beyond a reasonable doubt. If "knowledge" is a necessary element, it could be argued that creating a presumption based on the display itself relieves the prosecution of their burden to prove that the defendant knew that the plates were stolen.

Second, a constitutionally valid presumption must logically follow the underlying fact or facts. For example, s. 948.62 (2) (receiving stolen goods from a child) creates a presumption that, if a defendant received property from a child that is worth more than \$500 and the defendant did not get consent to receive the goods from a person who is responsible for the child, it may be presumed that the defendant knew that the goods were stolen. This is constitutionally permissible because the underlying facts support a logical inference that the goods were stolen. In contrast, it would be more difficult to argue that "knowledge that registration plates were stolen" logically follows from the mere display of the plates.

If you have any questions, please let me know.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)