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## JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

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### COMMITTEE REPORT -- 2009 ASSEMBLY BILL 241 & SENATE BILL 171

[Introduced by Representatives Danou, Turner, Jorgensen, Pasch, Kestell, Van Roy, Brooks, Lothian, Kerkman, Staskunas, A. Ott, Steinbrink, Zepnick, Kleefisch, Kaufert, Bies and Hebl; cosponsored by Senators Taylor, Sullivan, Kreitlow, Holperin, Lassa, Wirch, Harsdorf and Darling.]

#### **Background**

AB 241 and SB 171 are identical, companion legislation. AB 241 was introduced in the Assembly on April 30, 2009 and referred to the Assembly Committee on Criminal Justice. SB 171 was introduced in the Senate on April 23, 2009 and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. AB 241/SB 171 make retail theft a Class I felony if the value of the merchandise exceeds \$1,500 but does not exceed \$5,000. Currently, the threshold is \$2,500. In addition, the bills make retail theft a Class I felony if the value of the merchandise does not exceed \$1,500 and if there is intent to sell the merchandise by means of the Internet.

AB 241 was recommended for passage by the Assembly Committee on Criminal Penalties by a vote of 9-1. The Assembly unanimously adopted AA2 to AB 241 and passed the amended bill unanimously on a voice vote. AB 241 was messaged to the Senate and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. SB 171 received a public hearing in the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. Senator Lena C. Taylor, chair of the standing committee to which the bills were referred, requested a report of the Joint Review Committee on Criminal Penalties on the bills pursuant to s. 13.525(5)(a) & (b). This section of statutes requires a report to be prepared concerning all of the following:

1. The costs that are likely to be incurred or saved by the department of corrections, the department of justice, the state public defender, the courts, district attorneys, and other state and local government agencies if the bill is enacted.
2. The consistency of penalties proposed in the bill with existing criminal penalties.
3. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.
4. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

This report addresses these statutory points regarding AB 241/SB 171.

#### **Costs or savings**

No fiscal estimates have been submitted by any state agencies regarding the potential costs or savings of AB 241/SB 171. For additional information, please see the attached letter from Wisconsin State Court system, which predicts that AB 241/SB 171 will likely lead to increased costs for the state court system, but that these costs are not estimated to be significant.

The committee received no other testimony or information regarding the potential costs or savings of AB 241/SB 171.

The committee did engage in some discussion regarding the potential costs of the bills. Senator Hopper stated that AB 241/SB 171 would likely lead to some increase in prosecutorial costs because more cases would be prosecuted as felonies under the proposal.

State Public Defenders (SPD) stated that they do not have available data about how many cases would currently become felonies if the new felony threshold in AB 241/SB 171 is adopted, so any cost projections would be indeterminate.

However, the SPD would see some increase in the number of felony cases, which are more costly than misdemeanor cases. The increased penalties indirectly would lead to additional proceedings in which the Department of Corrections would seek to revoke supervision and in which the State Public Defender would appoint attorneys. The increase in felony convictions (in some cases that are misdemeanors under current law) would indirectly lead to additional felony cases for possession of a firearm by a person previously convicted of a felony.

#### **Consistency of penalties**

AB 241/SB 171 lowers the current dollar amount threshold for cases of felony retail theft. Concern was expressed by members of the committee and the Wisconsin State Court system that AB 241/SB 171 would create inconsistent penalties for the crimes felony retail theft and other felony theft statutes.

The Department of Justice (DOJ) stated that AB 241 and AA2 to AB 241, if adopted, would create inconsistent felony thresholds between the retail theft statute (s. 943.50), theft (s. 943.20), credit card theft (943.41), and theft of library materials (943.61). If adopted, engrossed AB 241 would create a felony threshold of \$1,500 of stolen property for retail theft, while the theft, credit card theft, and theft of library materials violations would all have felony thresholds of \$2,500 of stolen property.

Members of the judiciary and the state court system expressed concern that this inconsistent classification undermines the intent of Wisconsin's uniform crime classification system by implementing different felony thresholds for property crimes. Members of the judiciary expressed frustration that the Legislature has not adhered to the most recent criminal penalty reclassification, which occurred in 1997 and mandated that each felony and Class A misdemeanor should be classified "in a manner that places crimes of similar severity into the same classification." (see Wisconsin State Court System testimony).

If the new threshold under AB 241 is adopted, there could be inconsistent outcomes for the same dollar value of damage done to property or stolen. This could lead to perceptions of unequal treatment for similar property crimes, depending on the way prosecutors make charging decisions.

**Alternative suggestions**

The committee did not discuss alternative suggestions to AB 241/SB 171.

**Duplication in statutes**

No concerns were raised by members of the committee or other parties that AB 241/SB 171 duplicated existing statutes.

**Findings of the committee**

The Joint Review Committee on Criminal Penalties finds that AB 241/SB 171 will likely result in an indeterminate cost increase in the state's criminal justice system. Members of the committee and the Wisconsin State Court system expressed significant concerns that the proposed penalty structure in AB 241/SB 171 and AA2 to AB 241 could create major penalty and sentencing inconsistencies for property crime violations.



# Supreme Court of Wisconsin

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A. John Voelker  
Director of State Courts

TO: Joint Review Committee on Criminal Penalties

FROM: John Voelker, Director of State Courts

RE: AB 241/SB 171 Relating to Retail Theft

DATE: February 1, 2010

Your committee has requested comments about AB 241 and SB 171 that is the subject of an informational hearing before the Joint Review Committee on Criminal Penalties today. These bills would decrease the dollar threshold that divides misdemeanors from felonies for crimes of retail theft. The bills also contain provisions relating to racketeering activity, sales over the Internet and proof of ownership for flea market sales. Please accept these written comments about the portions of the bills dealing with the threshold at which various property crimes would become a felony.

#### (1) Costs Likely to be Incurred

AB 241 and SB 171 will have likely increase costs for the court system, although the increases are not estimated to be significant. Certain cases that currently are brought as misdemeanors would now be brought as felonies.

Felony proceedings generally require additional court appearances and more court hearings than misdemeanors. Additional court proceedings require judge, court reporter, court staff and juror time. These costs are borne by the state and the county.

It is impossible to estimate how many cases would be impacted by this change. Using data from the 2006 Judicial Needs Assessment, submitted to the Director of State Courts by the National Center for State Courts, misdemeanors overall took an average of 27.7 minutes of judicial time. For purposes of comparison, felony cases required, on average, 162.8 minutes of judicial time, from filing through post-disposition.

#### (2) Consistency of Penalties

Wisconsin has maintained a uniform crime classification for the last 30 years. The most recent reclassification was done by the Criminal Penalties Study Committee, which was created by 1997 Wis. Act 283. One of the mandates for the committee was as follows:

Classification of each felony and Class A misdemeanor in a manner that places crimes of similar severity into the same classification. See sec. 454(1)(e)2

In its final report, issued August 31, 1999, the Criminal Penalties Study Committee recommended the threshold at which various property crimes would become a felony be raised from \$1,000 to \$2,000, noting the legislature has last adjusted the dollar cut-off between misdemeanors and felonies in the 1991 session. The Legislature raised the threshold for these various property crimes from \$1,000 to \$2,500 in 2001 Wis. 16.

If the differing threshold contained in AB 241 and SB 171 is adopted, there could be very inconsistent outcomes for the same dollar value of damage done or property stolen, based on the charging decisions made. For instance, under these bills, if a person is alleged to have committed retail theft of property with a value exceeding \$1,500, then that person could be charged with a felony. If, however, a person is charged with theft under s. 943.20, credit card theft under s. 943.41, or theft of library materials under s. 943.61, that person could steal property up to a value of \$2,500 before being charged with a felony. This could lead to the perception of unequal treatment under the statutes, depending on the way charging decisions are made.

(3) Alternative Suggestions

We do not have any alternative language to suggest.

(4) Duplication in Statutes

It does not appear these bills duplicate other statutes.

I hope this information is helpful to the committee in fulfilling its assignment.

JV:NMR