

Office of the Defender General

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Re: H.579/H.580

The Office of the Defender General *supports* the goal of reclassifying criminal offenses as a way to improve the consistency and fairness of our criminal code. H.579 and H.580 take significant steps toward that goal, but fall short in small, but important ways.

While consistency is an important value, it is sometimes in conflict with other important justice system concerns. In the case of these bills, there are four offenses in particular where the goal of consistency works an injustice. *We support* the reclassification of property offenses if these increased penalties are addressed.

- 1) False pretenses/Credit card fraud – Fraudulent use of a credit card can be prosecuted under either of these two statutes. In order to promote consistency, the property crimes bill raises the penalty on credit card fraud to match the penalty for false pretenses. The two separate penalties should remain so that charging can be tailored to the severity of the offense. Some instances of credit card fraud are opportunistic decisions made by desperate people, others are sophisticated and organized. It is appropriate to have two separate offenses.
- 2) Home improvement fraud – The property crimes bill raises the penalty on home improvement fraud over 10,000. That increase is inappropriate because the penalty for home improvement fraud is already disproportionate to the offense – “home improvement” has been singled out as the only industry whose contracts are enforced through the criminal courts. When anyone in any other industry violates the terms of a contract – whether a formal compact or an informal agreement – the remedy is to sue for damages in civil court. Only home improvement contractors face criminal penalties for failing to honor a contract. The offense itself targets a single profession and this bill would magnify the disproportionality.
- 3) Theft of rental property – The property crimes bill would increase the penalty on theft of rental property. That offense is charged when someone fails to return rented items or a rented car (but not rented real estate or a leased vehicle) at the correct time. The typical offense – for example, when someone fails to make payments on furniture rented from Rent-a-Center – is a crime of poverty or disorganization or both. Raising the penalty on people who can’t make payments on rented furniture is not going to serve any legitimate state interest.
- 4) Identity theft – the property crimes bill will increase the penalty on identity theft.

Our office is concerned that this offense is often committed by non-citizens who use others' identity information to gain employment. Raising the penalty on such a vulnerable population for offenses that are often not about depriving someone else of property would be unjust.

Our office also *supports* the proposal to lower the penalty for Class B felonies from 25 years to 20. This change would ensure that we are not raising penalties on offenses that already have particularly high sentences.

Finally, our office *opposes* the proposal to lower the felony threshold in the classification bills from \$10,000 to something lower. It seems that the push to lower the threshold in the bill is driven by concerns about retail theft. Though those concerns may be valid, it would not be appropriate to have concerns about a single crime drive down the felony threshold for all property offenses. The better approach would be to either except retail theft from the property value rubric and set a felony threshold for retail theft that differs from other property offenses. Or, concerns about high-value, sophisticated retail theft could be addressed through the organized retail theft bill that is currently in committee.