
Government of the District of Columbia



Metropolitan Police Department

Testimony of
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***Personal Property Robbery Prevention
Amendment Act of 2013***

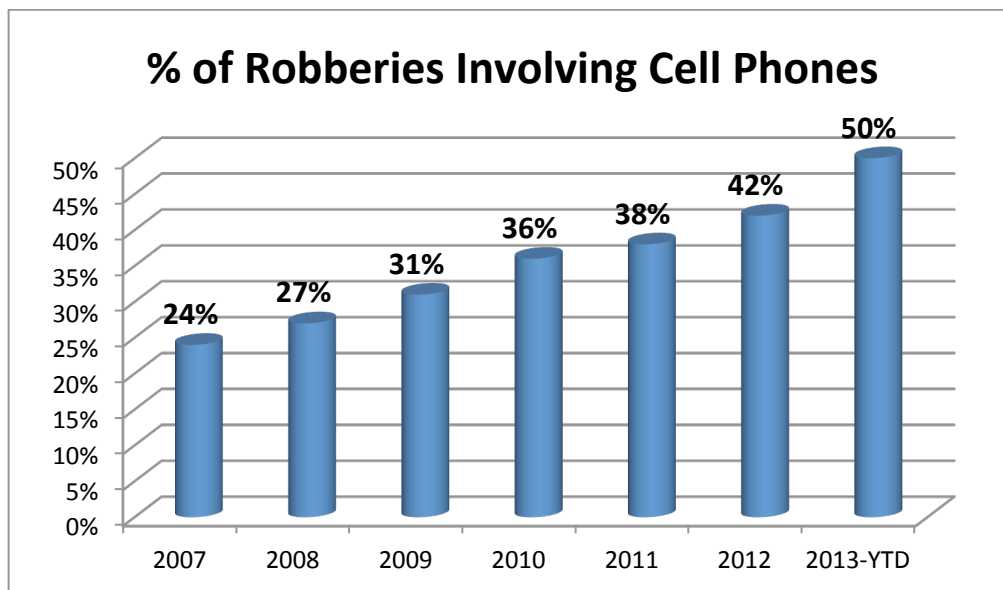
Committee on the Judiciary & Public Safety
Tommy Wells, Chair
Council of the District of Columbia

May 29, 2013

John A. Wilson Building
1350 Pennsylvania Avenue, NW, Room 412
Washington, DC 20004

Good morning, Chairman Wells, Members of the Committee, and members of the public. As the Chief of the Metropolitan Police Department (MPD), I appreciate the opportunity to discuss with you today possible tools to help us address the growing violence related to the robbery or theft of small personal electronic devices and other goods that criminals are finding work just as well as cash. I would like to thank you, Chairman Wells, for recognizing the importance of this issue and scheduling this hearing on the proposed *Personal Property Robbery Prevention Amendment Act*. In my testimony, I will outline some alternatives to this legislation that I believe will be more effective in combatting crime in the District. I strongly urge the Council to take quick action to pass legislation to help the District and our neighborhoods now, rather than waiting for the fall.

As you know, the scope of the problem is massive. In cities around the country, the robbery and theft of small personal electronics is driving an increase in crime as thieves target unattended small electronics in cars, pockets, purses, and on table tops. Over the past six years in the District, the percentage of robberies in which a cell phone was taken increased from just 24 percent to *half* of all robberies. And unfortunately, in some cases the criminals are inflicting serious personal injury on their victims, often just for a cell phone.



My Department and our partners in the community and criminal justice system have worked to get offenders off the street and address illegal fencing operations. In terms of operational efforts, in 2012, arrests for robbery were up 13 percent. During one operation, we executed 31 search warrants, made 53 arrests, and seized almost 500 cell phones and 24 tablets. In just seven months, MPD's Robbery Intervention Program, or RIP Team, made almost 350 arrests and seized 53 illegal guns.

Although street operations are critical, we also need to change some of the conditions that are allowing the secondary market in stolen personal electronics to proliferate. To that end, I worked with the Federal Communications Commission, members of Congress, and police departments across the country to convince the cell phone industry to reform their policies and stop allowing the reactivation

of stolen phones. Consumers can now report a stolen phone to their service providers, which will then “blacklist” and “brick” the phone, so that criminals can no longer profit from their crimes. As a result, five of seven major carriers have already launched their individual lists, and two carriers report that they have blacklisted more than 430,000 cell phones.

This persistence and determination have paid off. Although there was a nearly 50 percent increase in robberies in the first few months of 2012 compared to 2011, the number of robberies was substantially reduced over the second half of 2012, as 2012 ended with virtually the same number of robberies as 2011. So far this year, robberies are down 2 percent from the same time period last year. Nevertheless, it is clear that our efforts are only mitigating the problem, not eliminating it, so I am not satisfied. Criminals are still finding secondary markets here in DC, our surrounding jurisdictions, and around the globe. In order to combat this crime, and to keep our neighborhoods safe, we need to keep developing and refining our tools.

One of the areas we must address is the secondary market for personal electronics in the District. Our investigations have revealed that most stolen personal electronics are not bought and sold by licensed secondhand dealers, but rather by stores illegally purchasing and reselling used goods, which may or may not be stolen. These are often small, “Mom and Pop” businesses such as convenience and liquor stores, carry out restaurants, even nail and hair salons. Since these businesses are already operating outside of the District regulations, they are not complying with the requirements on secondhand goods that would help police track stolen goods. In addition, some secondhand dealers are also trading in stolen goods. Currently, we need to be able to prove that the goods are stolen in order to take action. However, in the case of businesses already operating without a proper license, it makes sense for the government to be able to take appropriate action based on that fact alone.

With that in mind, MPD, the Department of Consumer and Regulatory Affairs (DCRA), and the Office of the Attorney General (OAG) are proposing strengthening the general business licensing statute to dry up this illegal secondary market, and ensure that licensed secondhand dealers are fully complying with the law so that law enforcement can identify and track stolen goods, and hold the criminals responsible. In order to accomplish this, our proposal incorporates both swift and certain repercussions in the form of short, summary closures of establishments, coupled with graduated sanctions and an appeal process to ensure the due process that is necessary for a viable regulatory system. It is important to note that our goal is not to close down businesses – but rather to bring them into compliance and dry up the secondary market here in DC.

Under our proposal, the first infraction where a business is engaged in illegal activity would result in a fine of \$2,500 and a warning that a second occurrence will result in business license suspension. Such a fine and warning to the business license holder would put the business license holder on notice of prohibited activities occurring on the premises. A second infraction would impose a fine of \$5,000, and summary suspension of any existing business licenses for up to 96 hours. In addition, it would preliminarily suspend any existing business licenses for an additional 30 days, unless, to avoid the additional 30-day suspension, the business provides to DCRA and, in consultation with MPD, DCRA approves: (1) the business’s affirmative plan to prevent any more stolen items or

potentially stolen items being purchased at the store by the owner or any of the owner's employees, (2) a timeline for the business to obtain a Secondhand Business License if engaging in any purchase of used goods, and (3) the owner's acknowledgement that any additional occurrence will result in revocation of business license. If DCRA, in consultation with MPD, rejects the plan, the Defendant may appeal the additional 30-day suspension to the Office of Administrative Hearings. A third infraction would include a fine of \$10,000 and suspension of any existing business licenses for 96 hours. DCRA would preliminarily revoke any existing business licenses, pending an OAH hearing where, to avoid revocation, the business must show reasonable grounds for failing to abide by the previous affirmative plan to prevent the illegal trade in used goods, or stolen goods being purchased at a business.

These graduated sanctions are an improvement on the current scheme of fines alone, which start at \$2,000 and increase to \$8,000 for the third offense. According to DCRA, these fines are frequently overturned or greatly reduced in administrative hearings, leaving the government with few options for securing compliance from these businesses. Additionally, the current statutory provisions for suspending or revoking the business license of a business engaged in illegal activities are insufficient to have a real impact on preventing illegal commercial activities.

Although the *Personal Property Act* is a well-intentioned and positive start, the Administration believes its proposal will be more effector for several reasons. As an initial matter, our proposal relies on established processes in the government, and improves on them. As many of us have experienced, creating a new process, especially one dealing with external constituents, takes time and will most likely delay achieving results. The *Personal Property Act* would establish an entirely new process for declaring certain items frequently stolen as High Offense Contraband (HOC), and for businesses selling these to report such to the police. This process will be cumbersome and unduly burdensome for both MPD and secondhand dealer businesses – the majority of which are in compliance with the regulatory requirements. And if a business is purchasing or selling stolen goods, or used goods without a secondhand dealer license, why should the government have to take extra steps to designate the involved property as High Offense Contraband? Moreover, the reporting requirements are actually less than that already required of secondhand dealers.¹ The *Personal Property Act* would also allow the

¹ DC Municipal Regulations 16-1001.4 The account of each transaction shall set forth the following:

(a) An accurate and complete description of the goods, article, or thing purchased or received on account of money paid for it, giving all numbers, marks, monograms, trade marks, and manufacturer's names and any other marks of identification appearing on the item at the time of receiving the item;

(b) The name, residence, race, and sex of the person selling or delivering the item;

(c) The terms and conditions of the purchase, or receipt of the item;

(d) The place and date of the transaction;

(e) All other information contained in at least one (1) type of identification provided by the seller or person delivering the item; and

(f) All other facts and circumstances respecting the purchase or receipt.

HOC designation to expire after an undefined period of time. We need permanent solutions, not temporary fixes.

Our proposal addresses both legally licensed secondhand dealers and those buying and selling used goods without a license. Because our goal is to bring businesses into compliance rather than just put them out of business, it sets up a mechanism for the government to consider and negotiate a plan to address the particular violation, much like the Alcohol Beverage Control Board does. It is important that this role not be delegated to OAH judges, whose function is not to determine whether the plan proposed by a business adequately protects public safety. This proposal also establishes a graduated scale of penalties with swift and certain consequences – the 96-hour closure, again to support compliance. The graduated system also helps the government to overcome legal hurdles in the current scheme of establishing a “knowing” violation by clearly designating the first violation as knowledge of the problem. Lastly, this proposal provides an affirmative right of action for the OAG to seek civil action to compel compliance, or abate, enjoin, or prevent violations of this regulatory chapter.

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Although the proposal outlined above presents alternatives for the legislation currently under consideration at this hearing, I would like to share with you additional ideas to help combat robberies and thefts by limiting the ability of criminals to easily turn the proceeds of these crimes into cash.

One emerging enterprise enabling criminals to receive cash for stolen phones is through ecoATMs. An ecoATM is a kiosk at which individuals can turn in a phone and quickly receive cash back for it. Although this business model could certainly be seen as a green business by keeping phones out of landfills, it is also a golden opportunity for criminals to quickly turn stolen phones into cash. No employees work at these kiosks; the machine takes a picture of the customer, who also must submit an ID for scanning. However, the kiosk cannot verify that these match. In one sting conducted by MPD, an officer used another officer’s identification and was able to turn in a stolen phone.

Under the District’s current regulations, these kiosks cannot be licensed as secondhand dealers here, but they have been licensed in surrounding jurisdictions. As a result, we are working to close those avenues to criminals. To date, MPD has identified well over 400 suspicious transactions in which we believe the phones may have been stolen or illegally obtained. About 200 phones have been confirmed as stolen. Since early February, MPD has requested approximately 150 phones in relation to ongoing investigations. Approximately 30 phones have been returned to MPD from ecoATM in connection with ongoing investigations; MPD was advised that the remaining phones had been resold to a third-party or recycled and no longer were in ecoATM’s possession. Arrested subjects have made statements that it was easy to obtain money from the kiosks and as such they targeted iPhones and other smart phones. Suspects knew they could not sell numerous devices in a pawn shop or a secondhand dealer as it would arouse suspicion. One subject sold approximately 22 phones within 30 days and received about \$2,500 in cash. So far, six individuals have been arrested in connection to robberies in DC where phones were deposited in kiosks and another 40 investigations are currently underway. We have identified another 70 phones that have been stolen in thefts and robberies in other jurisdictions. These cases are being pursued by the appropriate police agency.

While it may be easy for the District to say this is not our problem since ecoATMs cannot operate here, their availability in a few Virginia and Maryland counties has an impact on crime here. We may consider revising our regulations to allow ecoATM to operate in the District, but only in a manner that supports a green concept without supporting a massive criminal enterprise. If we were a full partner with ecoATM, they may be more receptive to modifying their overall business practices.

Another dangerous trend that we are seeing involves thieves and robbers immediately using stolen credit cards to buy gift cards that they can use later. Unfortunately, with many if not most stores selling gift cards using point of sale systems and not actually handling the credit card, there seems to be little verification that the user matches the card. To address this, we might consider requiring businesses to check identification for customers purchasing gift cards with a credit card. In addition, to address the secondary market for the cards that help criminals turn these into ready cash, we should specify that secondhand dealer cannot engage in the purchase, receipt, sale, or exchange of gift cards unless it is an original sale of a card purchased from the company from which it will be redeemed.

Lastly, Ohio may have a good model for reducing robbery and theft by prohibiting secondhand dealers from purchasing goods from people convicted of certain crimes. To use an example from the District, we have offenders who have been convicted of multiple counts of theft from auto, and arrested for literally dozens more offenses. The courts have been reluctant to incarcerate these offenders for allegedly minor property crimes for significant periods of time. While I understand the concerns of the judges, I hear the stories from our community members who are tired of having car windows broken, and repeatedly spending time and money that they don't have to fix them. Don't we all want to live in a city where residents and visitors don't have to worry about clearing everything out of their car every time they park it? Perhaps an effective option that would not rely on significant periods of incarceration would be to prohibit secondhand dealers from buying from offenders convicted of robbery, burglary, theft from auto, and receiving stolen property. If the criminals can't easily turn stolen goods into cash, then the risk of committing the crime may outweigh the perceived benefits. I think this is a model that could be implemented here.

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While I implore the Council to consider and pass these initiatives, rest assured that I am not simply relying on legislative changes. I am working to reinvigorate the Department's Pawn Shop Unit to ensure better oversight of secondhand dealers. I will also be meeting with the Office of Administrative Hearings to discuss the critical role of administrative judges in addressing these crimes. The OAH judges are the ones who rule on administrative matters related to regulating business in the District. And while a case before them may seem to just be a matter of obtaining the proper license or keeping appropriate records, the judges should understand that these administrative lapses can also be part of a criminal enterprise that enables violent crime to proliferate on our streets. For our part, I want to ensure that MPD is doing all that it can to support these administrative cases. Officers are accustomed to writing reports and testifying in criminal matters, but there may be different points to emphasize for civil matters. Everyone in this process needs to understand how they can help combat these crimes and make our neighborhoods safer.

This applies to businesses and consumers as well. When a business or consumer is taking advantage of deals on electronics that seem too good to be true – they probably are. The cheap phone you buy today may have belonged to a robbery victim last week. Participating in this secondary market just encourages criminals to victimize others. And the individual who celebrates finding a cheap phone may one day find a family member, friend, or themselves falling victim to a violent robbery. We need their help to stop this cycle.

In closing, I think these regulatory tools can have a real impact on crime in the District. The violence and crime that we are facing on the street justify swift consideration and passage of these proposals. That said, I must caution that these tools are not a magic wand that will eliminate robberies. Criminals have always been quick to adapt to new law enforcement strategies to counter them. From finding new markets for stolen electronics to bio-designing drugs with chemical compounds that change faster than the Drug Enforcement Agency can regulate them, criminal strategies are evolving as quickly as new technologies. The District must be prepared to respond as quickly.