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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL  
No. 1924 Session of  
1975

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INTRODUCED BY MESSRS. THOMAS, W. W. WILT, DeVERTER AND WAGNER,  
NOVEMBER 19, 1975

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 8, 1976

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, changing provisions relating to retail  
3 theft; and ~~requiring reports to the Pennsylvania State Police~~ <—  
4 ~~of retail theft convictions.~~ PROVIDING FOR CERTAIN <—  
5 FINGERPRINTING.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 3929 of Title 18, act of November 25,  
9 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated  
10 Statutes, added December 6, 1972 (P.L.1482, No.334), is amended  
11 to read:

12 § 3929. Retail theft.

13 (a) Offense defined.--A person is guilty of a retail theft  
14 if he:

15 (1) takes possession of, carries away, transfers or  
16 causes to be carried away or transferred, any merchandise  
17 displayed, held, stored or offered for sale by any store or  
18 other retail mercantile establishment with the intention of

1 [converting it to his own use] depriving the merchant  
2 permanently of the possession, use or benefit of such <—  
3 merchandise without paying [to the owner] the full retail  
4 value thereof; [or]

5 (2) alters, transfers or removes any label, price tag  
6 [or marking upon any merchandise offered for sale by any  
7 store or other retail mercantile establishment; or] marking,  
8 indicia of value or any other markings which aid in  
9 determining value affixed to any merchandise displayed, held,  
10 stored or offered for sale, in a store or other retail  
11 mercantile establishment and attempts to purchase such  
12 merchandise personally or in consort with another at less  
13 than the full retail value with the intention of depriving  
14 the merchant of the full retail value of such merchandise;

15 (3) transfers any merchandise displayed, held, stored or  
16 offered for sale by any store or other retail mercantile  
17 establishment from the container in or on which the same  
18 shall be displayed to any other container with intent to  
19 deprive the [owner] MERCHANT of all or some part of the full <—  
20 retail value thereof; or

21 (4) under-rings with the intention of depriving the  
22 merchant of the full retail value of the merchandise. ; or <—

23 ~~(5) removes a shopping cart from the premises of a store~~  
24 ~~or other retail mercantile establishment without the consent~~  
25 ~~of the merchant given at the time of such removal with the~~  
26 ~~intention of depriving the merchant permanently of the~~  
27 ~~possession, use or benefit of such cart.~~

28 (b) Grading.--

29 [(1) Any person committing the first offense of retail <—  
30 theft when the value of the merchandise is less than +\$100+ <—

1     ~~\$150~~ is guilty of a summary offense.

2           (2) Upon conviction of a second offense when the value  
3     of the merchandise is less than ~~+\$100+~~ ~~\$150~~, the person shall <—  
4     be guilty of a misdemeanor of the second degree.

5           (3) Upon commission of a third or any subsequent  
6     offense, regardless of the value of the merchandise, the  
7     person shall be guilty of a ~~misdeemeanor of the first degree~~ <—  
8     ~~felony of the third degree.~~

9           (4) When the value of the merchandise shall be ~~+\$100+~~ <—  
10    ~~\$150~~ or more, any person who shall commit the offense of  
11    retail theft whether same shall be a first or ~~subsequent~~ <—  
12    ~~second~~ offense, shall be guilty of a misdemeanor of the first <—  
13    degree.] <—

14         (1) RETAIL THEFT CONSTITUTES A: <—

15           (I) SUMMARY OFFENSE, WHEN THE OFFENSE IS A FIRST  
16         OFFENSE AND THE VALUE OF THE MERCHANDISE IS LESS THAN  
17         \$150.

18           (II) MISDEMEANOR OF THE SECOND DEGREE, WHEN THE  
19         OFFENSE IS A SECOND OFFENSE AND THE VALUE OF THE  
20         MERCHANDISE IS LESS THAN \$150.

21           (III) MISDEMEANOR OF THE FIRST DEGREE, WHEN THE  
22         OFFENSE IS A FIRST OR SECOND OFFENSE AND THE VALUE OF THE  
23         MERCHANDISE IS \$150 OR MORE.

24           (IV) FELONY OF THE THIRD DEGREE, WHEN THE OFFENSE IS  
25         A THIRD OR SUBSEQUENT OFFENSE, REGARDLESS OF THE VALUE OF  
26         THE MERCHANDISE.

27         ~~(5) (2) A person who commits a first offense of retail~~ <—  
28         ~~theft when the value of the merchandise is less than \$150 may~~  
29         ~~be placed in an Accelerated Rehabilitative Disposition~~  
30         ~~Program if he makes restitution of the full retail value of~~

~~the merchandise to the merchant.~~

~~(6) (3) (2) Amounts involved in retail thefts committed~~ <—  
~~pursuant to one scheme or course of conduct, whether from the~~  
~~same store or other retail mercantile establishments~~ <—  
~~ESTABLISHMENT or several stores or other retail mercantile~~ <—  
~~establishments, may be aggregated in determining the grade of~~  
~~the offense.~~

(c) Presumptions.--Any person intentionally concealing  
unpurchased property of any store or other mercantile  
establishment, either on the premises or outside the premises of  
such store, shall be prima facie presumed to have so concealed  
such property with the intention of [converting it to his own  
use] DEPRIVING THE MERCHANT OF THE POSSESSION, USE OR BENEFIT OF <—  
SUCH MERCHANDISE without paying the [purchase price] FULL RETAIL <—  
VALUE thereof within the meaning of subsection (a) of this  
section, and the finding of such unpurchased property concealed,  
upon the person or among the belongings of such person, shall be  
prima facie evidence of intentional concealment, and, if such  
person conceals, or causes to be concealed, such unpurchased  
property, upon the person or among the belongings of another,  
such fact shall also be prima facie evidence of intentional  
concealment on the part of the person so concealing such  
property.

(c.1) Evidence.--To the extent that there is other competent  
evidence to substantiate the offense, the complaint shall not be <—  
dismissed CONVICTION SHALL NOT BE AVOIDED because the <—  
prosecution cannot produce the stolen merchandise.

(d) Detention.--A peace officer, merchant or merchant's  
employee or an agent under contract with a merchant, who has  
probable cause to believe that retail theft has occurred or is

1 occurring on or about a store or other retail mercantile  
2 establishment and who has probable cause to believe that a  
3 specific person has committed or is committing the retail theft  
4 may detain the suspect in a reasonable manner for a reasonable  
5 time on or off the premises for all or any of the following  
6 purposes: to require the suspect to identify himself, to verify  
7 such identification, to determine whether such suspect has in  
8 his possession unpurchased merchandise taken from the mercantile  
9 establishment and, if so, to recover such merchandise, to inform  
10 a peace officer, or to institute criminal proceedings against  
11 the suspect. Such detention shall not impose civil or criminal  
12 liability upon the peace officer, merchant, employee, or agent  
13 so detaining.

14 ~~(d.1) Defense. It shall be no defense to a prosecution for~~ <—  
15 ~~retail theft that signs were not posted in the store or other~~  
16 ~~retail mercantile establishment stating that persons committing~~  
17 ~~the offense of retail theft will be prosecuted.~~

18 (e) Reduction prohibited.--No justice of the peace or other  
19 magistrate shall have the power to reduce any other charge of  
20 theft to a charge of retail theft as defined in this section.

21 (f) Definitions.--

22 "Conceal." To conceal merchandise so that, although  
23 there may be some notice of its presence, it is not visible  
24 through ordinary observation.

25 "Full retail value." The merchant's stated or advertised  
26 price of the merchandise.

27 [(1) "STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT." <—  
28 A PLACE WHERE MERCHANDISE IS SOLD OR OFFERED TO THE PUBLIC  
29 FOR SALE.

30 ‡(2)] "Merchandise." Any goods, chattels, foodstuffs or <—

wares of any type and description, regardless of the value thereof.

"Merchant." An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.

~~"Minor." A person who is less than 18 years of age, is unemancipated and resides with his parents or legal guardian.~~ <—

"Premises of a retail mercantile establishment."  
Includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

~~"Shopping cart." Those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.~~ <—

~~—[(1)]—"Store or other retail mercantile establishment." A place where merchandise is displayed, held, stored or sold or offered to the public for sale.~~

"STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT." A PLACE WHERE MERCHANDISE IS DISPLAYED, HELD, STORED OR SOLD OR OFFERED TO THE PUBLIC FOR SALE. <—

"Under-ring." To cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

~~(g) Reports. The justice of the peace or judge hearing or presiding at a trial involving retail theft shall within 30 days~~ <—

~~after a person has been convicted of retail theft report the conviction to the Pennsylvania State Police. The report shall contain a copy of the fingerprints of the person convicted. Records of convictions of retail theft shall be public records but publication thereof may be restricted by the sentencing court to persons who require the information for subsequent offenses of retail theft.~~

(G) FINGERPRINTING.--

~~(1) PRIOR TO THE COMMENCEMENT OF TRIAL OR ENTRY OF PLEA OF A DEFENDANT 16 YEARS OF AGE OR OLDER ACCUSED OF THE SUMMARY OFFENSE OF RETAIL THEFT, THE DISTRICT JUSTICE ISSUING AUTHORITY SHALL ORDER THE DEFENDANT TO SUBMIT WITHIN FIVE DAYS OF SUCH ORDER FOR FINGERPRINTING BY THE MUNICIPAL POLICE OF THE JURISDICTION IN WHICH THE OFFENSE ALLEGEDLY WAS COMMITTED OR BY THE STATE POLICE. FINGERPRINTS SO OBTAINED SHALL BE FORWARDED IMMEDIATELY TO THE RECORDS AND IDENTIFICATION DIVISION OF THE PENNSYLVANIA STATE POLICE FOR DETERMINATION BY THAT DIVISION AS TO WHETHER OR NOT THE DEFENDANT PREVIOUSLY HAS BEEN CONVICTED OF THE OFFENSE OF RETAIL THEFT. THE RESULTS OF SUCH DETERMINATION SHALL BE FORWARDED TO THE POLICE DEPARTMENT OBTAINING THE FINGERPRINTS IF SUCH DEPARTMENT IS THE PROSECUTOR, OR TO THE DISTRICT JUSTICE ISSUING AUTHORITY IF THE PROSECUTOR IS OTHER THAN A POLICE OFFICER.~~

~~(2) IN SUMMARY CASES, TRIAL OF THE DEFENDANT SHALL BE SET NO SOONER THAN 15 DAYS FROM THE ORIGINAL APPEARANCE OF THE DEFENDANT AT WHICH SUBMISSION FOR FINGERPRINTS WAS ORDERED, PROVIDED THAT THE DISTRICT JUSTICE SHALL NOT CONDUCT THE ISSUING AUTHORITY SHALL NOT PROCEED WITH THE TRIAL OR PLEA IN SUMMARY CASES UNTIL IN RECEIPT OF THE DETERMINATION~~

1     ~~MADE BY THE RECORDS AND IDENTIFICATION DIVISION STATE POLICE.~~     <—  
2     ~~THE DISTRICT JUSTICE SHALL USE THE INFORMATION OBTAINED~~  
3     ~~SOLELY FOR THE PURPOSE OF GRADING THE OFFENSE PURSUANT TO~~  
4     ~~SUBSECTION (B). IF THE DEFENDANT IS CONVICTED OF RETAIL~~  
5     ~~THEFT, THE DISTRICT JUSTICE SHALL FORWARD THE DOCKET~~  
6     ~~TRANSCRIPT AS REQUIRED ACCORDING TO LAW. TO THE STATE POLICE.~~     <—

7     SECTION 2. THE PROVISIONS OF THIS ACT SHALL NOT AFFECT ANY  
8     ACT DONE, LIABILITY INCURRED OR RIGHT ACCRUED OR VESTED, OR  
9     AFFECT ANY SUIT OR PROSECUTION PENDING OR TO BE INSTITUTED TO  
10    ENFORCE ANY RIGHT OR PENALTY OR PUNISH ANY OFFENSE UNDER THE  
11    AUTHORITY OF ANY ACT OR PART THEREOF REPEALED IN THIS ACT.

12    Section ~~2~~ 3. This act shall take effect immediately.     <—