

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1924 Session of
1975

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

SENATOR HILL, JUDICIARY, IN SENATE, AS AMENDED,
SEPTEMBER 20, 1976

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; or

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

1 the merchandise to the merchant.

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

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

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

28 (d) Detention.--A peace officer, merchant or merchant's
29 employee or an agent under contract with a merchant, who has
30 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 OF A DEFENDANT ACCUSED OF THE OFFENSE OF RETAIL THEFT, THE DISTRICT JUSTICE 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 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 TRIAL IN SUMMARY CASES UNTIL IN RECEIPT OF THE DETERMINATION MADE BY THE RECORDS AND IDENTIFICATION DIVISION. THE DISTRICT JUSTICE SHALL USE THE INFORMATION OBTAINED SOLELY FOR THE PURPOSE OF GRADING THE OFFENSE

1 PURSUANT TO SUBSECTION (B). IF THE DEFENDANT IS CONVICTED OF
2 RETAIL THEFT, THE DISTRICT JUSTICE SHALL FORWARD THE DOCKET
3 TRANSCRIPT AS REQUIRED ACCORDING TO LAW.

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

9 Section ~~2~~ 3. This act shall take effect immediately.

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