

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1196

Short Title: Increase Certain Shoplifting Penalties.

(Public)

Sponsors: Representatives McLawhorn; and Goodwin.

Referred to: Judiciary III.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT FOR MULTIPLE OFFENSE
SHOPLIFTERS WHO HAVE CERTAIN OTHER PRIOR CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72.1 reads as rewritten:

"§ 14-72.1. **Concealment of merchandise in mercantile establishments.**

(a) Offense of Concealing Merchandise. – Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided ~~in subsection (e).~~ by this section. Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2.

(c) Detention of Person Suspected of Committing Offense. – A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the

1 parent or guardian of the minor shall not be held civilly liable for failing to notify the
2 parent or guardian of the minor.

3 (d) Offense: Transfer Price Tag From Merchandise to Other Merchandise. –
4 Whoever, without authority, willfully transfers any price tag from goods or merchandise
5 to other goods or merchandise having a higher selling price or marks said goods at a
6 lower price or substitutes or superimposes thereon a false price tag and then presents
7 said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon
8 conviction, shall be punished as provided ~~in subsection (e)~~ by this section.

9 Nothing herein shall be construed to provide that the mere possession of goods or
10 the production by shoppers of improperly priced merchandise for checkout shall
11 constitute prima facie evidence of guilt.

12 (d1) Offense Committed by Using a Lead-Lined or Aluminum-Lined Bag;
13 Penalty. – ~~Notwithstanding subsection (e)~~ subsection (e), (e1), or (e2) of this section,
14 any person who violates subsection (a) of this section by using a lead-lined or
15 aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar
16 device to prevent the activation of any anti-shoplifting or inventory control device is
17 guilty of a Class H felony.

18 (e) Punishment Generally. – ~~Punishment.~~ ~~For a first conviction under~~
19 ~~subsection (a) or (d), or for a subsequent conviction for which the punishment is not~~
20 ~~specified by this subsection, the defendant shall be guilty of a Class 3 misdemeanor.~~ A
21 person convicted of a violation of subsection (a) or (d) of this section is guilty of a Class
22 3 misdemeanor, unless otherwise provided by this section. The term of imprisonment
23 imposed for a conviction may be suspended only on condition that the defendant
24 perform community service for a term of at least 24 hours. ~~For a second offense~~
25 ~~committed within three years after the date the defendant was convicted of an offense~~
26 ~~under this section, the defendant shall be guilty of a Class 2 misdemeanor. The term of~~
27 ~~imprisonment may be suspended only on condition that the defendant be imprisoned for~~
28 ~~a term of at least 72 hours as a condition of special probation, perform community~~
29 ~~service for a term of at least 72 hours, or both. For a third or subsequent offense~~
30 ~~committed within five years after the date the defendant was convicted of two other~~
31 ~~offenses under this section, the defendant shall be guilty of a Class 1 misdemeanor. The~~
32 ~~term of imprisonment may be suspended only if a condition of special probation is~~
33 ~~imposed to require the defendant to serve a term of imprisonment of at least 11 days.~~
34 However, if the sentencing judge finds that the defendant is unable, by reason of mental
35 or physical infirmity, to perform the service required under this ~~section,~~ subsection, and
36 the reasons for such findings are set forth in the judgment, the judge may pronounce
37 such other sentence as the judge finds appropriate.

38 (e1) Punishment if Defendant Has a Prior Conviction of Certain Offenses That
39 Occurred Three Years or Less From the Date of Conviction. – A person convicted of an
40 offense under subsection (a) or (d) of this section is guilty of a Class 2 misdemeanor if:
41 (i) the person has a prior conviction under G.S. 14-71, 14-71.1, 14-72, or 14-72.1; and
42 (ii) the prior conviction occurred within three years or less from the date the defendant
43 is convicted of the offense under this section. The term of imprisonment imposed for a
44 conviction may be suspended only on the condition that the defendant be imprisoned for

1 a term of at least 72 hours as a condition of special probation, perform community
2 service for a term of at least 72 hours, or both. However, if the sentencing judge finds
3 that the defendant is unable, by reason of mental or physical infirmity, to perform the
4 service required under this subsection, and the reasons for the findings are set forth in
5 the judgment, the judge may pronounce such other sentence as the judge finds
6 appropriate.

7 (e2) Punishment if Defendant Has Two or More Prior Convictions of Certain
8 Offenses That Occurred Five Years or Less From the Date of Conviction. – A person
9 convicted of an offense under subsection (a) or (d) of this section is guilty of a Class 1
10 misdemeanor if: (i) the person has two or more prior convictions under G.S. 14-71, 14-
11 71.1, 14-72, or 14-72.1; and (ii) both of the prior convictions occurred within five years
12 or less from the date the defendant is convicted of the offense under this section. The
13 term of imprisonment imposed for a conviction may be suspended only if a condition of
14 special probation is imposed to require the defendant to serve a term of imprisonment of
15 at least 11 days. However, if the sentencing judge finds that the defendant is unable, by
16 reason of mental or physical infirmity, to perform the service required under this
17 subsection, and the reasons for the findings are set forth in the judgment, the judge may
18 pronounce such other sentence as the judge finds appropriate.

19 (f) Community Service Period. – If the judgment requires a defendant sentenced
20 under this section to perform a specified number of hours of community service, the
21 community service must be completed within:

- 22 (1) 90 days, if the amount of community service required is 72 hours or
23 more;
- 24 (2) 60 days, if the amount of community service required is at least 48
25 hours but less than 72 hours; and
- 26 (3) 30 days, if the amount of community service required is at least 24
27 hours but less than 48 hours.

28 The court may extend these time limits upon motion of the defendant if it finds that the
29 defendant has made a good faith effort to comply with the time limits specified in this
30 subsection. Failure to complete the community service requirement within the
31 applicable time limits is a violation of the defendant's probation.

32 (g) Limitations. – For active terms of imprisonment imposed under this section:

- 33 (1) The judge may not give credit to the defendant for the first 24 hours of
34 time spent in incarceration pending trial;
- 35 (2) The defendant must serve the mandatory minimum period of
36 imprisonment and good or gain time credit may not be used to reduce
37 that mandatory minimum period; and
- 38 (3) The defendant may not be released or paroled unless he is otherwise
39 eligible and has served the mandatory minimum period of
40 imprisonment."

41 **SECTION 2.** This act becomes effective December 1, 2001, and applies to
42 offenses committed on or after that date.