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SHOPLIFTING AND THE LAW

A MODEL CODE



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Prepared for the National Coalition to Prevent Shoplifting
by the law firm of Sheldon I. London

SHOPLIFTING AND THE LAW
— A MODEL CODE —

Published By
NATIONAL COALITION TO PREVENT SHOPLIFTING
DECA, ARF, GFWC
Atlanta, Georgia
Judi Rogers, Director

NCJRS

JAN 18 1980

ACQUISITION

MODEL CODE AND COMMENTS
Prepared By
LAW FIRM OF SHELDON I. LONDON
Washington, D.C.
JUVENILE JUSTICE COMMENTS
Prepared By
JOSEPH L. WHITE

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AUTHOR'S NOTE

This has been both an unusual and satisfying assignment. We have enjoyed splendid cooperation and wish to express gratitude to the state's Attorneys General and their staffs, retail security enforcement experts, members of the private bar, the American Retail Federation, and to Judi Rogers and the staff of the National Coalition to Prevent Shoplifting. Their willingness to share their expertise in formulating this Model Code added immeasurably to the quality of our work. We have drafted a statute that we believe can work effectively to combat the serious crime of theft by shoplifting. We would expect lawmakers to add their modifications, both to reflect personal predilections as well as to conform the Code to the State Constitutions and existing law.

For my office this research project has been a real team effort. Attorney Luis L. Granados, III, has patiently waded through the state statutes and developed the outstanding summary of state shoplifting laws. His significant contribution to both the Model Code and Comment section is appreciated. Stuart L. Gasner and Steven D. Brown, third year students at the University of Michigan School of Law, creatively participated in our research and drafting.

In any assignment of this magnitude, the correspondence, typing and editing tasks are enormous, but they were made routine by co-workers and friends, Kathie C. Auth and Ruth A. Corlett.

Sheldon I. London

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The National Coalition To Prevent Shoplifting gratefully acknowledges the important contribution that Attorney Sheldon I. London has made in drafting this Model Code and researching the various laws of shoplifting. The Coalition appreciates that this work was completed in time for the convening of the 1982 legislative sessions. The Coalition would also like to acknowledge the efforts of Joseph L. White, who drafted the commentary regarding the applicability of the Code to the Juvenile Justice System.

It would be impossible to list everyone who gave their time, energy, and concern towards the research, drafting and approval of this document. It is a fact however, that the approved publication of this Code would not have been possible without the participation of several key people, including: Maurice Aresty, Houston Retail Merchants Association, Robert Barry, P.C., Attorney, New York S.M.P.A., Norm Weslow, Attorney, J.C. Penney Company, William Landres, National Retail Merchants Association, Washington S.M.P.A., and Cleveland S.M.P.A., R. A. Shaw, American Society of Industrial Security, W.C. McBrayer, Georgia Retail Association, John Fitzpatrick, Attorney, Penjurdel-Philadelphia, Jerry Udell, American Retail Federation.

Since its inception our Coalition has been privileged to have both the financial support of the Law Enforcement Assistance Administration and the personal commitment of the staff of the Office of Juvenile Justice and Delinquency Prevention. In particular, the Coalition would like to recognize publicly the enthusiastic support of Marjorie Miller, who has been the program monitor for the Coalition and Emily Martin, Director of Special Emphasis Division of OJJDP.

Judi Rogers
Executive Director
National Coalition To Prevent
Shoplifting

INTRODUCTION

Shoplifting is America's most expensive crime. The loss figure of \$24 billion in 1980 is staggering; consider that for every \$1 stolen in bank robberies that year, over \$300 were stolen in shoplifted merchandise.

Shoplifting is a leading contributor to higher prices and inflation. On the average, retail prices are five to seven percent higher than they would be if merchants did not have to pass through shoplifting costs to their customers. And, there are the hidden costs: for elaborate security systems; prosecuting and punishing apprehended shoplifters; sales taxes lost to state and local governments because an item was stolen, not bought; and finally, the personal loss to the convicted shoplifter because of his or her criminal record.

In 1979, through a grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, the National Coalition was officially formed to combat this pervasive problem. Comprised of the American Retail Federation, the Distributive Education Clubs of America and the General Federation of Women's Clubs, the Coalition administers a comprehensive program of public education, research, training, and technical assistance to lead the fight against the shoplifting epidemic. This Model Theft by Shoplifting Code is one part of that effort.

Why a Model Theft by Shoplifting Code

As is the case with other crimes, a systematic approach must be taken if society is to reduce the incidence of shoplifting. No one group can do the job alone; each must act in concert with the others if real progress is to be made.

Retailers must understand their rights and responsibilities. The store manager or employee is the front line of defense against shoplifting, and he or she must know what should and should not be done under the law when encountering a shoplifting suspect. The law must be simple and clearcut for the understanding and use of nonlawyer retailers. It must give retailers flexibility in dealing with varied types of shoplifting situations, and retailers must be persuaded that the legal system is on their side, to cooperate with them in their good faith efforts to eradicate this crime.

Peace Officers have regular involvement in conducting searches and arrests of suspected shoplifters. They need clear direction as to when such actions are appropriate so that they can act without fear of liability.

Prosecutors generally have heavy caseloads and often give shoplifting cases a low priority because of the small amounts of money involved, the difficulty of obtaining convictions, and the often inconsequential sentences. The law should be written to make it as easy as possible for a prosecutor to convict a guilty shoplifter, and sentencing procedures should be designed to make such convictions meaningful.

Judges need the same clear standards for defining the shoplifting offense, and sentencing procedures should be more uniform to establish a predictability of punishment that will deter the potential shoplifters.

The public, ultimately, is the only group that can effect a real reduction in shoplifting. In a recent unpublished survey of 100,000 students entitled "A Survey of High School Students' Attitudes About Shoplifting" (Atlanta, GA.: NCPS, 1981), 49 percent admitted to having shoplifted at least once. Another 40 percent rationalized shoplifting by agreeing with the statement, "Stores force people to shoplift by charging prices that are too high." If the widespread attitude that shoplifting is "OK" persists, then the criminal justice system will be powerless to prevent it. A model statute alone will not be sufficient to change public attitudes but the increase in the effectiveness of enforcement activities at all levels which a well-designed statute could generate would serve to stimulate public awareness of the seriousness of the crime.

Communication and understanding of the rights and responsibilities of each group involved are absolutely essential if the Coalition's prevention program is to succeed. This is particularly true in the case of retailers, who often hesitate to act because it is not worth risking \$50,000 of liability for false arrest for stopping someone who has pocketed a \$5 item. Effectively communicating to retailers what they can do is virtually impossible when the laws vary as radically from state to state as they do today. Enactment of a Model Code such as this one would go a long way toward simplifying the process of educating retailers about their proper course of conduct. Once the provisions of this Model Code are adopted on a widespread basis and knowledge of its procedures become common in the retail community, it is hoped that enforcement activities will be encouraged and that the dramatic increase in shoplifting losses throughout the country can be reserved.

How To Use The Model Code

This Model Code is not meant to be automatically applicable "as is" to every state. It is extremely important that it be tailored to fit the existing constitutional and statutory framework of any state in which it is introduced.

For example, the Model Code refers to theft by shoplifting as an "offense." The criminal laws of some states do not use the term "offense," but use instead terms such as "crime" or "violation." In such a state, the Model Code should be amended to conform with the general practice to avoid confusion in the applicability of other statutes which do not use the term "offense". In addition, state codes determine the ways in which juveniles may be apprehended and tried for shoplifting, and also circumscribe the dispositions which are possible for juvenile offenders.

Other states follow a policy of consolidating all theft-related offenses into a single "theft" offense covering larceny, larceny by trick, embezzlement, etc. While a case can be made that shoplifting should be treated as a separate offense even in such a state, it would, of course, be possible to keep shoplifting under the single "theft" offense and incorporate various parts of this Model Code into the law on a piecemeal basis.

State constitutional law must also be examined to assure that portions of this Model Code would not be invalidated. While the drafters are confident that the Model Code is consistent with the U.S. Constitution, there may be provisions relating to searches, arrests, and juvenile offenders in state constitutions which would require that the Code be substantially amended before it is introduced.

In several sections of the Model Code, and in the comments which follow each of those sections, references are made to juveniles and how the Model Code may apply to them or to their parents or guardians. However, the statements must be read and understood within the context of the nature of juvenile justice in America, and the basic distinctions between it and the criminal justice process that applies to adults. In order to facilitate this understanding, a separate commentary on the juvenile justice system is included immediately after Section 10, in a separate commentary.

Finally, we do not regard this Model Code as the "last word" in the law of shoplifting. Reasonable people can disagree about the substantive merits of each of its provisions. It can undoubtedly be improved upon, but we believe that it does represent an improvement over the existing laws in the great majority of the states.

ABOUT THE SPONSORING ORGANIZATIONS

NATIONAL COALITION TO PREVENT SHOPLIFTING

The National Coalition to Prevent Shoplifting conducts the largest citizen-based crime prevention program in the country. It is a non-profit organization that was officially incorporated in 1979 under a grant from the U. S. Office of Juvenile Justice and Delinquency Prevention. The Coalition, headquartered in Atlanta, Georgia, is community-oriented and works to involve concerned citizens in a program to reduce the crime of shoplifting and to seek solutions to that crime.

The Coalition was created by three principal organizations, the American Retail Federation (ARF), the Distributive Education Clubs of America (DECA), and the General Federation of Women's Clubs (GFWC). Its objectives include:

- . Initiating community involvement and establishing statewide programs to increase public awareness of the crime of shoplifting.
- . Conducting research in order to understand factors contributing to the crime of shoplifting, its perpetrators and victims.
- . Educating the public, particularly young people, about the consequences of the crime of shoplifting.
- . Increasing the public awareness of the fact that merchants' shoplifting losses are ultimately borne by consumers.
- . Building a national volunteer group to organize and coordinate shoplifting prevention activities.

The Coalition has sought to achieve its goals through a national advertising program, the operation of nationwide, shoplifting prevention campaigns, the development of a model diversion program for teen-age shoplifters, and the distribution of educational materials, such as this "Model Theft By Shoplifting Code, with Comments."

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AMERICAN RETAIL FEDERATION

The American Retail Federation was created in 1937 by a group of leading nationwide retailers in response to an enlarging federal government impact on the business community in general and retailing in particular. In the last several years, the Federation has been reorganized and restructured to respond more effectively to growing federal laws and regulations affecting the marketplace, the retail industry, and the consumer, and to coordinate all national public policy and public affairs representation for the retail industry.

Now, it is through the 51 state associations, including the District of Columbia, 33 national retail associations and over 200 corporate retailers that the Federation gains its strength and ability to perform the missions assigned to it by the industry.

Retailing now constitutes nearly one-third of the gross National Product, and employs over 14 million persons. As retailing has grown in importance and increased its contribution to the economy, it has also taken on unique problems. The marketplace has become the subject of a series of laws and regulations that demand information and representation to be presented from a retail point of view and not just from a general business point of view. Consequently, the objectives of the Federation include:

- . Furnish to the public, to retailers, and to public officials information regarding the retail industry;
- . Promote unity in the retail industry and develop, where possible, national policies that will serve the interests of the industry as a whole;
- . Represent state and national retail associations and the retail industry in national government affairs; and
- . Maintain strong associations of retailers throughout the nation.

DISTRIBUTIVE EDUCATION CLUBS OF AMERICA

The Distributive Education Clubs of America is an organization with a program of leadership, personal development and career encouragement designed specifically for students enrolled in Distributive Education. DECA is the only national student organization operating through the nation's schools to attract individuals to careers in marketing, merchandise and management.

The DECA's objectives include: developing education in marketing and distribution which will develop an occupational competence; and promoting understanding and appreciation for the responsibilities of citizenship in our free, competitive enterprise system.

National DECA is made up of State Associations, and each DECA Division has its own elected national leaders, chosen annually by the membership of that Division. Overall control of DECA lies with DECA, Inc., its legal, sponsoring group, which consists of one representative from each of the 54 chartered (state or territorial) units. At the present there are over 185,000 members in over 5,000 school chapters.

GENERAL FEDERATION OF WOMEN'S CLUBS

The General Federation of Women's Clubs was organized in March, 1889, adopted its constitution on April 24, 1890, and received its charter by Congress in 1901. "Unity in Diversity", the GFWC motto, exemplifies the diverse interests and methods of members for implementing programs and projects tailored to meet the needs of their communities, states and countries. Today, the GFWC is an international volunteer service organization with 600,000 clubwomen in 12,000 clubs in the United States and Puerto Rico and ten million members in 46 countries, territories, national and associate organizations.

GFWC clubwomen serve as community catalysts, assessing the needs of their communities and gathering the people together to meet those needs. Emphasis areas in the GFWC program include community involvement, free enterprise, energy (in homes and vehicle fuel), National Family Week, cardiopulmonary resuscitation training (CPR), national and civil defense, and crime prevention.

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MODEL THEFT BY SHOPLIFTING CODE

WITH COMMENTS

MODEL THEFT BY SHOPLIFTING CODE, WITH COMMENTS

§ 1 Theft by Shoplifting Defined.

- (a) A person commits the offense of theft by shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
- (i) Conceals the merchandise ; or
 - (ii) Removes, takes possession of, or causes the removal of merchandise; or
 - (iii) Alters, transfers or removes any price marking, or any other marking which aids in determining value affixed to the merchandise; or
 - (iv) Transfers the merchandise from one container to another; or
 - (v) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise.
- (b) A person commits the offense of theft by shoplifting if, with intent to appropriate, such person, alone or in concert with another person, knowingly removes a shopping cart from the premises of the merchantile establishment.

COMMENTS

This section defines the substantive offense of theft by shoplifting. To commit the offense, a person must "knowingly" perform one of the acts listed in the section and have the requisite mental state, "intent to appropriate merchandise without paying the merchant's stated price." An absentminded shopper who innocently removes merchandise from the premises would not commit the offense, because the requisite intent would be lacking; a person who merely conceals merchandise, but did so with the intent of appropriating it, would commit the offense. This approach, using a single mental state combined with a short "laundry list" of shoplifting methods, seems the clearest and most concise way to define the offense. This approach has been adopted by several states, including New Jersey (N.J. Stat. Ann. § 2C-20-11(West)), Pennsylvania (18 Pa. Cons. Stat. Ann § 3929) and New Mexico (N.M. Stat. Ann. § 30-16-20).

"Intent to appropriate merchandise" embraces various forms of desire to exercise control over merchandise and is meant to include intent to consume or destroy as well as more familiar senses of "appropriate" such as taking possession for personal use. A person must also intend to appropriate "without paying the merchant's stated price," an element of the mental state which is meant to cover both intent not to pay at all, and intent to pay at an artificially low price, i.e., where the person switches price tags intending to pay the lower price on the wrongfully affixed tag. Finally, the person must act "knowingly." This term has a well-established meaning developed in the Model Penal Code and is designed to exclude accidental or inadvertent action but include action which is not necessarily planned or deliberately carried to fruition.

Intent, of course, may be inferred from the circumstances. See, e.g., *Turner v. State*, 515 P.2d 1167 (Okla.Ct. App. 1973) (defendant's concealment of frozen meat in clothing over a 60 foot distance, with ample opportunity to pay, sufficient to establish intent). A finding of intent may also follow from the presumption contained in section 2 of this Model Code.

The acts listed in subsections (a) (i) and (a) (ii) are the most common methods of shoplifting. A person need not "hide" merchandise in clothing or a backpack, for example, in order to be "concealing" for the purposes of (a) (i), but might simply tuck the item under his or her arm or among other goods. "Removes" the merchandise refers to situations where the shoplifter may not be concealing the merchandise, but has left the premises or the last station for payment. "Takes possession of" refers to situations in which the merchant has reason to believe that a shoplifting has occurred, even though the suspect may still be within the premises of the merchantile establishment. Subsections (a) (iii) - (a) (v), and (b) refer to slightly more unusual forms of shoplifting: respectively, swapping of price tags or altering a price marking (e.g., a Universal Price Code) in (a) (iii); switching boxes or other containers to obtain a lower price in (a) (iv); "under-ringing" in (a) (v); and removing a shopping cart in section (b). Under-ringing includes asking or otherwise causing third persons to under-ring, as well as doing it oneself. These acts are listed as separate offenses in some states.

Other variations are, of course, possible and are normally considered offenses which should be prosecuted under other criminal statutes. For example, where a person pays for merchandise with a bad check, the crime would either be forgery or fraud, depending upon the circumstances and state laws. Where a person attempts to get a refund or an exchange for shoplifted merchandise (and the shoplifting was not observed), the crime would be chargeable under fraud statutes in most states.

§ 2 Evidence and Presumptions.

- (a) Knowing concealment of merchandise shall create a rebuttable presumption that the person intended to appropriate the merchandise without paying the merchant's stated price for the merchandise.
- (b) Evidence of stated price or ownership of merchandise may include, but is not limited to:
 - (i) The actual merchandise or the container which held the merchandise alleged to have been shoplifted; or
 - (ii) The content of the price tag or marking from such merchandise; or
 - (iii) Properly identified photographs of such merchandise.
- (c) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

COMMENT

This section deals with two common evidentiary problems in shoplifting cases: proof of intent, and proof of the value and ownership of shoplifted merchandise. Subsection (a) creates a rebuttable presumption allowing "intent to appropriate" to be inferred from knowing concealment. Of course, a presumption alone does not establish intent - the prosecution still must present evidence from which a jury can rationally find the existence of intent. See *State v. Matamoros*, 89 N.M. 125, 547 P. 2d 1167 (1976) (presumption alone is not sufficient; but evidence that the defendant concealed merchandise under a blanket and tried to leave the store was sufficient to imply intent); also, *State v. Burt*, 249 N.W. 2d 651 (Iowa 1977) (at least circumstantial evidence is required of presumed fact to allow issuing instructions based on statutory presumption). The defendant can rebut the presumption by offering evidence that he or she thought the merchandise was paid for, was unaware the merchandise was in his or her possession, or by otherwise indicating lack of the proper intent.

A presumption of this type is helpful in authorizing jury instructions, and in avoiding controversy on appeal as to the sufficiency of the evidence on the question of intent. Many states have similar presumptions. See, e.g., VA. Code §18.2-103; N.J. Stat. Ann. § 2C:20-11(d); N.M. Stat. Ann. § 30-16-22,

18 Pa. Cons. Stat. Ann. § 3929 (c). (Purdon). Although most of these statutes include a second presumption, allowing "knowing concealment" to be inferred from "concealment" undercuts the knowledge requirement. In effect, this establishes a double presumption - mere concealment of goods establishes intent to appropriate. Such a presumption could raise constitutional problems. McCormick Evidence § 344 (2d ed. 1977). Distinguishing inadvertent from knowing concealment is better left to the finder of fact on a case-by-case basis.

Subsection (b) authorizes introducing certain kinds of evidence for the purpose of proving value or ownership. When the allegedly stolen merchandise is portable, the merchant may prefer to bring the actual merchandise into court; when this would be impracticable, use of a photograph is authorized. The photograph must be "properly identified" - the precise requirements for proper identification will vary from state to state, but generally must be supported by testimony of the photographer or other witness. See generally McCormick, Evidence § 214 (2d ed. 1977). At least two states, Utah and Virginia, specify that the photograph must bear a written description of the goods, the name of the arresting officer, and other detailed information. Va. Code §19.2-270.1; Utah Code Ann. §76-6-605. The drafters preferred, however, that individual state laws pertaining to authentication of photographs apply. In any case, the merchant may use the price tag or other label on the merchandise to prove its stated price, a provision adopted from Ga. Code Ann. §26-1802.1. In cases where the offense involves the switching of containers, in an effort to pay a lower price, the original container may be introduced into evidence, in addition to the merchandise and its subsequent container.

Subsection (c), in conjunction with the broad definition of "merchant" in subsection 8(b), makes it clear that any store employee or agent may appear at the trial to testify as to the stated price or ownership of merchandise, as well as to testify on other matters.

§ 3 Penalties.

A person convicted of theft by shoplifting shall be punished as follows:

- (a) First Theft By Shoplifting Conviction: Upon a first theft by shoplifting conviction:
 - (i) When the merchant's stated price of the merchandise is less than or equal to \$100, the defendant shall be fined not more than \$250.
 - (ii) When the merchant's stated price of the merchandise exceeds \$100, the defendant shall be fined not less than \$100, nor more than \$500, and such fine shall not be suspended; or the defendant shall be punished by imprisonment not to exceed one year; or both.
- (b) Second Theft By Shoplifting Conviction: Upon a second theft by shoplifting conviction:
 - (i) When the merchant's stated price of the merchandise is less than or equal to \$100, the defendant shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended; or the defendant shall be punished by imprisonment not to exceed one year; or both.
 - (ii) When the merchant's stated price of the merchandise exceeds \$100, the defendant shall be fined not less than \$500 and shall be imprisoned for not less than 30 days and not to exceed 3 years. The first 30 days of such sentence shall not be suspended, probated, deferred or withheld.
- (c) Third Theft By Shoplifting Conviction: Upon a third or subsequent theft by shoplifting conviction, regardless of the merchant's stated price of the merchandise, the defendant shall be fined not less than \$500 nor more than \$5,000, and shall be imprisoned for one to ten years. The first year of such sentence shall not be suspended, probated, deferred or withheld.
- (d) In determining the number of prior theft by shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the theft by shoplifting offense in question.

COMMENT

This section sets penalties for persons convicted of theft by shoplifting. It lists specific fines and prison sentences, rather than referring to "misdemeanors" or "felonies" which are sometimes differently defined from state to state.

Mandatory fines and/or prison sentences are provided for second-time and subsequent offenders, and for first-time offenders when the value of shoplifted merchandise exceeds \$100. These mandatory penalties are applied in the form of minimum fines and sentences, rising to higher levels with each subsequent conviction, and are modeled after Ga. Code Ann § 26-1802.1(b). These minimum penalties may not be suspended or probated.

The penalties provided in this section are to be imposed on the basis of the retail value of the merchandise shoplifted in the present instance. However, if a person switches a price tag on a \$150 item, so that it reads \$95, and purchases the merchandise for the lower amount, that person should be punished for an offense of under \$100, not for an offense of over \$100.

The merchant's stated price of the merchandise involved in previous theft by shoplifting convictions has no effect on the level of punishment. For example, a person who is convicted of theft by shoplifting a stereo system valued at \$300, who has previously been convicted of theft by shoplifting clothes valued at \$75, would be punished under section 3(b)(ii). It is how many times a person has shoplifted that is the basis for mandatory sentencing. By making mandatory sentencing dependent on the number of past theft by shoplifting convictions, rather than fines or sentences previously assessed, the section eliminates any need to determine the weight given to previous concurrent or continuous sentences. See *State v. Robinson*, 262 N.W. 2d 270 (Iowa 1978) (Defendant punished as third-time offender even though sentences for previous convictions were served concurrently).

If a shopping cart is the shoplifted item, the value of the shopping cart must be established and the penalty must be provided in the Penalties section.

In a case where a defendant has stolen more than one item in a given incident, he or she should be convicted of a single offense. It would be neither fair nor appropriate under the statute to apply the stiff penalties for a third-time conviction to a person who pockets three items in one incident, by treating the theft of each item as a separate offense.

This section arbitrarily groups theft by shoplifting offenses into two categories: those when the property shoplifted was valued at, or under \$100, and those when it was valued at over \$100. Among states which presently have a separate theft by shoplifting offense, the dividing line between "minor" and "serious" theft by shoplifting offenses ranges from \$50 (S.C. Code § 16-13-110(B)

to \$500 (Wis. Stat. Ann. § 943.50(4), § 39.50-51 (West)). Georgia and many other states make the division at \$100. Partly because the \$100 dividing line is arbitrary, and in recognition that requiring a prison sentence for a first-time shoplifter may be unduly harsh, this section departs from the Georgia model as to penalties for theft by shoplifting merchandise valued above \$100. Penalties for this more serious offense, like those under \$100, are increased upon a second conviction.

This section provides a range, albeit with minimums, of possible fines and sentences at each punishable level. Prosecutors and courts still have flexibility in fixing fines and sentences. The authority of a sentencing judge to provide alternative sentencing or fine procedures as allowed by state laws is unaffected by the provisions of this section.

For specific limitations that may exist in your state for different levels of courts, consult your state laws.

Section 3 (Penalties) may be used by juvenile courts in disposing of cases in which juveniles have been adjudicated delinquents because of shoplifting offenses. However, juvenile court judges would not be bound by state sentencing laws which apply only to convicted adults. For a better understanding of the authority of juvenile courts, refer to Chapter 4 of this document. For specific limitations that may exist in your state, consult your state laws.

Section 3(d) is designed to protect persons whose prior theft by shoplifting convictions occurred long ago from an unfair application of the mandatory sentences provided in this section.

While researching the various state shoplifting statutes for penalty provisions, the drafters noted that many states did not provide an effective procedure which the courts or prosecutors could utilize to determine what level of offense should be charged. However, they found that the Commonwealth of Pennsylvania retail theft statute did provide a fingerprint procedure, a modified version of which is reprinted below:

Prior to the commencement of trial or entry of plea of a defendant accused of the offense of theft by shoplifting, the court with jurisdiction over the matter shall order the defendant to submit himself for fingerprinting by the law enforcement agency of the jurisdiction in which the offense was allegedly committed. Fingerprints so obtained shall be forwarded immediately to the appropriate state agency for determination as to whether or not the defendant previously has been convicted of the offense of theft by shoplifting. The results of such determination shall be forwarded to the court

with jurisdiction over the matter. The presiding judge or magistrate shall use the information obtained for the purpose of grading the offense pursuant to section (3). (cf., Pa. P.L.1230, as amended).

This procedure could be an effective tool for determining which accused persons had been involved in more than one shoplifting incident, and thus help courts to set penalties accordingly. However, any fingerprinting provision which is proposed for enactment in a state should be carefully reviewed with appropriate law enforcement authorities to ensure that it is workable statewide for all levels of courts having jurisdiction over shoplifting cases.

§ 4 Merchant's Immunity from Civil and Criminal Liability.

- (a) General Rule: A merchant who detains, questions, or causes the arrest of any person suspected of theft by shoplifting shall not be criminally or civilly liable for any legal action relating to such detention, questioning, or arrest, if:
- (i) The merchant has reasonable grounds to suspect that the person has committed or is attempting to commit theft by shoplifting; and
 - (ii) The merchant acts in a reasonable manner under the circumstances; and
 - (iii) The merchant detains the suspected person for a reasonable period of time.
- (b) Reasonable Grounds: Reasonable grounds to suspect that a person has committed or is attempting to commit theft by shoplifting may be based on, but is not limited to:
- (i) Personal observation, including observation via closed circuit television or other visual device; or
 - (ii) Report of such personal observation from another merchant; or
 - (iii) Activation of an electronic or other type of mechanical device designed to detect shoplifting.
- (c) Reasonable Manner: A merchant or peace officer who has reasonable grounds to believe that a person has committed or is attempting to commit the offense of theft by shoplifting, as defined in Section 1 of this act, may detain such person on or off the premises of the merchantile establishment if such detention is done for any or all of the following purposes:
- (i) To question the person, investigate the surrounding circumstances, obtain a statement, or any combination thereof;

- (ii) To request and/or verify identification;
 - (iii) To inform a peace officer of the detention of such person, and/or surrender that person to the custody of a peace officer;
 - (iv) To inform a peace officer, the parent or parents, guardian or other private person interested in the welfare of a minor of the detention and to surrender the minor to the custody of such person(s); or
 - (v) To institute criminal proceedings against the person.
- (d) The merchant may use a reasonable amount of force necessary to protect himself, to prevent escape of the person detained, or to prevent the loss of destruction of property.
- (e) Reasonable Time: A reasonable period of time, for purposes of this section, shall be deemed to be a period of time long enough to accomplish the purpose set forth in this section, and shall include any time spent awaiting the arrival of a law enforcement officer or the parents or guardian of a juvenile suspect, if the merchant has summoned such law enforcement officer, parents, or guardian.
- (f) Any detention as defined in this section shall not constitute an arrest.

COMMENT

This section provides merchants (and by definition their employees and agents) who comply with its provisions liability protection from causes of action brought by persons treated as suspected shoplifters. Many merchants fear lawsuits to the point that they refuse to exercise their present statutory rights to detain, question, and arrest. Some stores, for example, ignore as a matter of policy shoplifting incidents involving inexpensive merchandise on the theory that the risk of potential tort liability outweighs the cost of the goods taken. To help relieve merchants frozen into inaction by this fear of liability, the immunity granted by this section applies to all state actions "relating to" the shoplifting incident. The merchant could plead this section as complete protection, for example, to state actions for false arrest, false imprisonment, unlawful detention, defamation of character, assault and battery, trespass, invasion of civil rights, or other causes of action arising from the merchant's conduct in dealing with a person suspected of shoplifting.

This section does not give the merchant "carte blanche" in dealing with suspected shoplifters. The merchant must still exercise caution and discretion. His actions must be based on reasonable grounds, he must act in a reasonable manner, and he must not detain the suspect for longer than a reasonable time. In short, the statute recognizes that the merchant's rights must be balanced against important personal rights.

Also, this section would not protect merchants against causes of action unrelated to a shoplifting incident. Plaintiffs obviously do not forfeit preexisting or otherwise independent causes of action (contract or warranty claims, for example) simply because they are implicated in shoplifting incidents involving the would be defendant.

In addition, in some states, private citizens or security agents have the legal authority to make arrests for theft by shoplifting or other offenses. This section in no way adds to or detracts from such authority. It simply immunizes merchants from civil and criminal liability when they have acted in the manner prescribed by this action.

In this section, the phrase "reasonable grounds" has been employed rather than "probable cause" for two reasons. Probable cause is a legal term of art most often used in connection with official law enforcement. "Reasonable grounds" may be easier for

merchants to understand, since to them it turns more on the "reasonableness" of their belief, rather than on the "probability" that their belief is correct. The emphasis is on how the merchant acquired his belief that a person is shoplifting. However, for legal interpretation, the courts have tended to view reasonable grounds or cause and probable cause as synonymous. See, e.g., *Coblyn v. Kennedy's Inc.*, 359 Mass. 319, 268 N.E. 2d 860 (1971); *State v. Childs*, 269 N.W. 2d 25 (Minn. 1978).

Exactly what constitutes reasonable grounds for belief in a particular instance has been left to the courts in each state in the past and this should be continued.

However, subsection (b) provides guidance for the courts, merchants and the police on some of the means by which a merchant or the police may form reasonable grounds for belief that a person has committed or is attempting to commit the offense of theft by shoplifting. Personal observation as well as observation by mechanical devices is included. A report of the personal observation of another merchant as well as the activation of a shoplifting detection device may also constitute reasonable grounds. However, one case has held that if a person reenters through a security alarm device and does not reactivate it, reasonable grounds no longer exist. (*Smith v. Whatley*, 338 So. 2d 153 (La. App. 1976)).

Even if "reasonable grounds" exist, subsection (c) only gives the merchant and the police the power to detain and question a suspect for certain specified purposes. The specified purposes may include any or all of the following: questioning the suspect, investigating the surrounding circumstances, obtaining a statement from the suspect, requesting and/or verifying identification of the suspect, informing the police and/or surrendering the suspect to police custody, informing the police, parent(s), guardian or other private person interested in the welfare of a minor and/or surrendering the minor to their custody, and instituting criminal proceedings against the suspect. No authority is given to detain or question other persons. A merchant, generally, does not have reasonable grounds to detain and question a third party who interferes with a security guard's questioning of a suspect. See, e.g., *State v. Griffin*, 54 Ohio Misc. 52, 376 N.E. 2d 1364 (1971).

Also, the merchant has not been given the authority to search a suspect to recover suspected stolen merchandise, although the merchant could request that the suspect voluntarily consent to such a search. While four states (Cal., Iowa, Mont., and Okla.) currently allow some form of detention search in some circumstances, the safer course of action for any merchant would be to let the law enforcement officer conduct the search. However, a private

citizen making a lawful citizen's arrest under the law of his particular state generally has the right to conduct a limited search of the subject incidental to the citizen's arrest.

This search is generally based on the need for the arrestee to determine if the arrested subject has on his person any weapons with which he could injure himself or others. Cautious searches of the person should be avoided.

It is important to understand that in order for this search to be lawful and valid, an actual arrest (more than a mere detention) must take place, and the arrest supporting the search must be valid. If the arrest is deemed invalid or unlawful, then the weapons search following it similarly will fail.

The right to detain or question extends outside of the merchantile establishment because a person may not look like a shoplifting suspect until he leaves the store. Also, security guards may only be stationed at entrances or exits to a merchantile establishment. Most states presently allow detention both on and off store premises.

In addition, if the merchant, security employee or agent, or law enforcement officer wishes to interrogate suspects, consideration should be given to constitutional rights as may be applicable in each state. When juveniles are the suspects, the issue of "informed consent" can be especially problematic. For specific limitations which may exist in your state, you should consult your state law.

Under subsection (d), any use of reasonable force is limited to what is necessary for protection, keeping the suspect until the arrival of a law enforcement officer, or preventing the loss or destruction of property. It cannot be used to force a suspect to answer questions or otherwise cooperate with the merchant's investigation.

Section 4 (e) defines "reasonable time" as the time necessary to accomplish the utilized purposes of the section, which may include awaiting the arrival of a law enforcement officer and/or the parents or guardian of a juvenile. Some states set specific time periods on the overall detention, such as 60 minutes, but the drafters do not believe this to be a sound approach.

Subsection (f) makes it clear that the detention provided for in subsection (a) is not an arrest.

§ 5 Arrest of Theft by Shoplifting Suspects.

A law enforcement officer may arrest without warrant any person he or she has probable cause for believing has committed the offense of theft by shoplifting. "Probable cause", as used in this section, includes but shall not be limited to the statement of a merchant containing facts and circumstances demonstrating that he has reasonable grounds to suspect that a person has committed theft by shoplifting.

COMMENT

This section permits a law enforcement officer to arrest without a warrant a person who the officer has probable cause to believe committed the offense of theft by shoplifting. The law enforcement officer may make an arrest even if he or she did not view the offense itself.

If the merchant informs the officer of facts and circumstances demonstrating that he or she has reasonable grounds to suspect the person has committed theft by shoplifting, that fact alone can be sufficient to constitute probable cause for a warrantless arrest. The officer will not be required to make such an arrest if he or she has doubts about the merchant's story.

A search incident to the arrest may then be conducted by the law enforcement officer under the doctrine of Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969).

It should be noted, however, that the laws of some states might consider a provision dealing with police arrest powers as a separate subject and prohibit more than one subject being covered in a legislative proposal. For this reason and otherwise, this section may have to be a separate legislative proposal amending the statutory provisions governing police arrest powers.

In most states, laws specifically provide that when a juvenile is arrested or otherwise taken into custody by a law enforcement officer, he or she must be taken "forthwith" to juvenile court. The statutes are intended specifically to eliminate any discretion on the part of the law enforcement officer once the decision to arrest the juvenile has been made. In these states, therefore,

the decision to arrest is tantamount to a referral to juvenile court. Recent juvenile justice standards on Police Handling of Juvenile Problems (Section 2.4), issued jointly by the Institute of Judicial Analysis and the American Bar Association, suggest that for minor thefts, police should consider selecting from a broad range of alternative courses of action and choose the least restrictive alternative appropriate to the circumstances. An officer could, for example, escort a juvenile home and discuss the matter with the parents, without formally placing him or her under arrest.

§ 6 Civil Liability.

- (a) An adult or emancipated minor who, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, alone or in concert with another person, knowingly commits any of the acts described in section 1 (a) or an adult or emancipated minor who, with intent to appropriate a shopping cart alone or in concert with another person knowingly removes a shopping cart from the premises of the merchantile establishment, shall be liable, in addition to actual damages, for a penalty to the owner or seller in the amount of the value of the merchandise or the value of the shopping cart, respectively, not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars.
- (b) The parent of legal guardian having custody of an unemancipated minor who, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, alone or in concert with another person, knowingly commits any of the acts described in section 1(a) or the parent or legal guardian having custody of an unemancipated minor who, with intent to appropriate a shopping cart, alone or in concert with another person knowingly removes a shopping cart from the premises of the merchantile establishment, shall be liable, in addition to actual damages, for a penalty to the owner or seller in the amount of the value of the merchandise or the value of the shopping cart, respectively, not to exceed five hundred dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars.

- (c) Liability of Parents or Guardian: Civil liability under this section is not limited by any other law concerning the liability of parents or guardians or minors.
- (d) Costs and Attorneys Fees: A merchant who is a prevailing party under this section shall be entitled to costs and reasonable attorneys fees.
- (e) Effect of Conviction: A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section.
- (f) Right to Demand Payment: The fact that a merchantile establishment may bring an action against an individual as provided in this section shall not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit said damages prior to the consideration of the commencement of any legal action.
- (g) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction, including a small claims court, whether or not the merchant is a corporation, partnership, etc., if the total damages do not exceed the jurisdictional limit of the court involved.

COMMENT

This section enables a merchant to bring a civil action against an adult or emancipated minor who shoplifts (as defined in the Model Code) or the parent or legal guardian of an emancipated minor who shoplifts (as defined in the Model Code) and recover more than his actual damages (losses). For an adult or emancipated minor, in addition to actual damages, the merchant can recover a penalty based on the retail value of the merchandise involved (or the value of the shopping cart unlawfully taken) up to \$1,000 and an additional penalty of at least \$100 but not more than \$200.

For the parent or guardian of a minor, in addition to actual damages, the merchant can recover a penalty based on the retail value of the merchandise taken (or the value of the shopping cart) up to \$500, and an additional penalty of at least \$100 but not more than \$200.

It should be noted that the laws of some states might consider a provision dealing with civil liability as a separate subject. For this reason, this section may have to be a separate legislative proposal amending the civil liability sections of the state code. Section 6 may, as a consequence, appear to be redundant but the intent is to allow this section to stand above in the event that it is served from other sections.

Although tied to the definition of shoplifting in this Model Code, the provisions of this section are, for the most part, derived from similar provisions in the states of Oregon and Washington. See, Or. Rev. Stat. §30.870, and .875 and Wash. Rev. Code Ann. §4.24.230. However, many other states have specific statutory provisions providing for civil suits by merchants against an adult and/or an emancipated minor who shoplifts and/or the parent(s) or guardian of a minor who shoplifts. See, e.g., Alaska Stat. § 09.65.110; Cal. Penal Code §490.5(b); Idaho Code §48-701 and 702; Nev. Rev. Stat. §598.033, and .035; N.D. Cent. Code §51-21-05; Utah Code Ann. §78-11-15, -16; W. Va Code §61-3A-5.

Subsection (c) creates a necessary exception to cover situations where state law otherwise provides for general parent-child tort immunity or the general parent-child tort law has other limitations.

Subsection (d) allows the merchant to obtain costs and reasonable attorneys fees in a successful action.

Subsection (e) makes it clear that a shoplifting conviction is not necessarily for recovery. A merchant may bring a civil action against an adult or emancipated minor who shoplifts or the parent or guardian of a minor who shoplifts if criminal charges are never brought, are dropped, or result in a conviction. Also, since the burden of proof is lower in civil cases, a merchant may bring a civil action even if the criminal charges do not result in a conviction.

Subsection (f) makes it clear that the merchant may attempt to avoid going to court by demanding the damages and penalties directly from the adult, emancipated minor, parent or guardian, as applicable.

Subsection (g) makes it clear that the merchant (whether an individual proprietor, partnership, corporation, etc.) may utilize the small claims courts for bringing these suits. It should be noted, however, that the laws of some states might consider a provision dealing with small claims courts as a separate subject and prohibit more than one subject being covered in a legislative proposal. For this reason and otherwise this subsection may have to be a separate legislative proposal amending the statutory provisions governing small claims courts. Also, in some states, court rules may have to be modified to accomplish the change.

§ 7 Severability.

If any section, causes, grounds, paragraph or part of this act is for any reason adjudged to be invalid, such judgments will not invalidate the remainder thereof but shall be confined to the part directly involved in the controversy.

COMMENT

In the event that any part of this Model Code is declared unconstitutional, see Duran v. Butrey Food, Inc., 616 P. 2d 237 (Sup. Ct. Mont., 1980). This section is designed to preserve the legal effect of those parts of the statute not affected by such a decision.

§ 8 Definitions.

- (a) "Conceal" means to hide, hold, or carry merchandise, so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (b) "Merchant" means an owner or operator of any merchantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (c) "Merchantile Establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Merchantile establishment" includes adjoining parking lots or adjoining areas of common use with other establishments.
- (d) "Merchandise" means any goods, foodstuffs, wares, or personal property, or any part or portion thereof of any type or discription displayed, held or offered for sale.
- (e) "Merchants Stated Price For The Merchandise" means the price that the merchandise is offered for sale at the time and place of offense.

COMMENT

This section defines several of the important terms used in the Model Code.

The definition of "conceal" is drawn from NJ. Stat. Ann. § 2C: 20-11. It is intended to cover a broad array of possible forms of concealment.

"Merchant" specifically includes merchant's employees, servants, security guards, and other agents, to avoid confusion as to who is authorized to question and detain. It is drawn from Utah Code Ann. § 76-6-602(4).

The definition of "merchantile establishment" is drawn from Ore. Re. Stat. § 30-870(1), and would include resturants and whole-sale establishments. It includes adjoining parking lots or areas of common use so that a person who removes merchandise from or to a parking lot or area of common use will have committed the offense of theft by shoplifting. In the case of a booth or table where merchandise is sold in such a parking lot or common use area, the "merchantile establishment" would be the immediate around the booth or table. A person who removed merchandise from the immediate area of the booth or table would have committed theft by shoplifting.

The definition of "merchandise" includes any part or portion of property offered for sale, even if such part or portion standing alone is not offered for sale by the merchant.

§ 9 Effective Date.

This act shall become effective ninety (90) days after enactment.

§ 10 Repealer.

All laws and parts of laws in conflict with this act are hereby repealed.



NATIONAL RESEARCH REPORT
1980 SUMMARY
National Coalition to Prevent Shoplifting
5-A-5 Atlanta Merchandise Mart • Atlanta, GA 30303-1366
GFWC-ARF-DECA

Prepared by: Warren French, Research Specialist

I. INTRODUCTION

Behavioral scientists agree that attitudes influence behavior. If we wish to change or modify behavior regarding shoplifting, we must gain insight into the attitudes that underlie this behavior. Teenagers, given their proportion in the total population, are overrepresented in the population of shoplifters. They are also of an age where they can still be influenced--certainly more easily influenced than adults.

The prime purpose of this research was to collect and analyze data about young people's attitudes toward shoplifting. This information can be used as the basis of a plan to educate teenagers concerning the seriousness of shoplifting. The second purpose of this study was to collect and analyze retail store managers' opinions regarding shoplifting. This information can be used to gauge the economic impact as well as the consequences of the crime.

II. METHODOLOGY AND CONSTRAINTS

Pretests of the 1979-1980 survey form indicated that a ten-question instrument could be understood and completed in ten to twelve minutes by young students. Only minor modifications were made in the 1980-1981 survey form in order to permit comparison of results for the two years.

The Retail Shoplifting Survey was also designed to be completed in a short period of time in order to encourage response. As a result of comments made by interviewers and survey respondents slight changes were made from the 1979-80 to the 1980-81 survey forms in order to facilitate comprehension.

While this research reflects data collected from a majority of the states, it is by no means comprehensive. In some states information was collected from only one metropolitan area. Thus, the data may not be representative of the entire state. Women's Clubs volunteers (GFWC), DECA (Distributive Education Clubs of America) students and faculty advisors, Retail Association personnel in various states, PTA (Parent/Teacher Association) personnel, Chamber of Commerce volunteers and various other individual and civic organizations all participated as data collection agencies. Since the nature of volunteer efforts is such that control is lacking, the number of completed questionnaires, the timing and place of data collections are all left to the discretion of the volunteer group.

III. STUDENT SHOPLIFTING SURVEY

A total of 100,671 student shoplifting surveys were collected and analyzed. This number is more than double the 49,376 responses obtained in the 1979-80 survey year. The student sample came from 38 states and ranged in age from 9 to 22 years old. Additional classification figures identify the composition of the sample:

46% males - 54% females

41% pre high school - 49% high school

The survey results are as follows:

% OF STUDENTS AGREEING TO STATEMENTS

	<u>1979-80</u>	<u>1980-81</u>
Shoplifting is a crime.	91	91
Most shoplifters are never caught.	67	70
Stores force people to shoplift by charging prices that are too high.	42	41
Retail clerks watch teenage shoppers more closely than adults.	75	72
Teenagers are more likely to shoplift than are adults.*	51	41
Stores pass the cost of shoplifting on to consumers.	56	65
Have shoplifted.	49	49
(Of those who have shoplifted)		
Will continue to shoplift.	17	30
Have shoplifted in last two years.	N.A.	40
Planned act in advance.	27	26
Store personnel, police and judges are too soft on shoplifters.	35	43
Were caught.	14	17
(Of those who were caught)		
Lectured by store personnel.	N.A.	46
Detained by store personnel.	N.A.	36
Detained by store personnel and parents contacted.	N.A.	40
Arrested by police.	N.A.	16
Taken to court.	N.A.	7
Sentenced/finned by a court.	N.A.	5
(Reasons of those who have shoplifted)		
Didn't have the money to pay for the item.	35	30
Did it for a thrill.	27	17
Did it on a dare.	27	11
Just acted on impulse.	25	19
Wanted to get even.	9	6

*The results to this question are presented so as to allow comparisons between the two years.

IV. RETAIL SHOPLIFTING SURVEY

Approximately 77% of the 4,275 retailers contacted acknowledged a problem with shoplifting. Forty-three percent of the retailers also reported a problem with employee theft. Of those retailers suffering from employee theft or shoplifting, 74% noted shoplifting as the more serious problem.

The cost of shoplifting, averaged across the 38 states (plus Puerto Rico) which were included in this year's survey, exceeded 6% of sales. It should be emphasized that this figure includes the costs of security and prosecution as well as the value of merchandise stolen. Not included in this calculation, though, is the loss of revenue to states in the form of state and local sales taxes.

V. OBSERVATIONS

The findings from the Retailer and the Student surveys show a harmony which is not necessarily healthy. Retailers have noted an increase in shoplifting while the number of students who state that they will continue shoplifting has also increased. Most retailers agree that the costs of shoplifting are passed on to the consumer--a fact understood by the sampled students. A final item of agreement deals with the inconsistent and "soft" policies on prosecuting shoplifters--a point well noted and exploited by the students.

To reduce shoplifting, retailers and legal authorities as well as students need to modify their behavior. Retailers must exercise a consistent policy of prosecution, a policy promulgated to their patrons. In turn, courts and legislatures must be convinced of the seriousness of the problem to make the penalty a deterrent to the commission of the crime. The dollar revenue lost to the states as well as the costs to customers are the best arguments to be used in instigating legal action.

Ultimately, it is the students who must be reached and then convinced that shoplifting is not worth the risks. Their value system as reflected by their respect for another's property is the focal point for efforts to modify attitudes and influence behavior. Appeals to their social and altruistic values can only go so far. A simplified view of the shoplifter's current attitude is: "If I shoplift I won't get caught, and if I get caught I won't be punished." To change this attitude there must be some deterrent to committing the crime.

% OF RETAILERS AGREEING TO STATEMENTS

	<u>1979-80</u>	<u>1980-81</u>
There has been a definite increase in shoplifting over the last two years.	56	89
When shoplifters are apprehended and prosecuted, the treatment they receive in the courts is not fair and appropriate.*	37	42
The average person is aware that shoplifting is a crime.	64	88
Females are more prone to shoplift than are males.*	55	54
Teenagers are more prone to shoplift than are adults.*	63	57
Racial minorities are more prone to shoplift than are others.*	46	47
The law enforcement agencies in my area are sensitive to the shoplifting problem and give it the attention it deserves.*	42	33
The cost of shoplifting is directly passed on to my customers.	45	76
If you could reduce shoplifting in your store, prices would decrease.	40	45
Your employees play a role in helping to reduce shoplifting.	82	84

*The results to this question are presented so as to allow comparisons between the two years.

SHOPLIFTING \$ LOSSES BY STATE, 1980*
(in millions)

ALABAMA	385+	MONTANA	80
ALASKA	64	NEBRASKA	154
ARIZONA	283	NEVADA	108
ARKANSAS	224+	NEW MEXICO	129+
CALIFORNIA	2,860-	NEW HAMPSHIRE	104
COLORADO	319	NEW JERSEY	783-
CONNECTICUT	312-	NEW YORK	1,827-
DELAWARE	75-	NORTH CAROLINA	557
DIST. OF COLUMBIA	48	NORTH DAKOTA	58-
FLORIDA	1,263+	OHIO	1,228-
GEORGIA	581+	OREGON	341-
HAWAII	141	OKLAHOMA	329-
IDAHO	92-	PENNSYLVANIA	1,163-
ILLINOIS	1,175-	RHODE ISLAND	84+
INDIANA	536-	SOUTH CAROLINA	305-
IOWA	300-	SOUTH DAKOTA	63
KANSAS	239-	TENNESSEE	481-
KENTUCKY	399+	TEXAS	1,678-
LOUISIANA	446+	UTAH	135+
MAINE	115	VERMONT	44-
MARYLAND	524+	VIRGINIA	609
MASSACHUSETTS	655-	WASHINGTON	479-
MICHIGAN	1,043-	WEST VIRGINIA	209-
MINNESOTA	413-	WISCONSIN	467-
MISSOURI	514+	WYOMING	50-
MISSISSIPPI	249-		

NATIONAL TOTAL EXCEEDS \$24 BILLION!

*6.6% of total retail sales in "Food," "General Merchandise" and "Drug" store categories. Source: "1981 Survey of Buying Power," Sales & Marketing Management magazine.

+The average % losses reported by retailers in the state would indicate a slightly higher figure.

-The average % losses reported by retailers in the state would indicate a slightly lower figure.

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SUMMARY OF STATE SHOPLIFTING STATUTES

So that retailers and other interested persons may have a quick guide to the present shoplifting laws in their own states, we have summarized the relevant statutes in each of the 50 states and the District of Columbia as of November 15, 1980.

This summary is meant for quick reference and for purposes of comparing the laws of the different states. It is not meant to be relied upon as a definitive statement of the law in any particular state. Any person who needs accurate, detailed information about the law of a state should consult the statutory authority we have listed following our summary of each of the 50 states and the District of Columbia and would also be well-advised to consult an attorney from that state.

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ALABAMA

ELEMENTS OF THE OFFENSE

A person commits theft of property if he knowingly obtains or exerts unauthorized control over another's property, with intent to deprive the owner of the property.

PROOF

No mention.

DEFENSES OF THE SUSPECT

It is a defense to prosecution that the actor:

- a. was unaware that the property was that of another; or
- b. honestly believed that he had a claim to the property or services involved which he was entitled to assert in the manner which forms the basis for the charge against him.

MERCHANT RIGHTS AND DEFENSES

1. A merchant or employee who has probable cause to believe that goods have been unlawfully taken by a person and that he can recover them by taking the person into custody may take such person into custody and detain him in a reasonable manner for a reasonable length of time.
2. A merchant taking such person into custody, based on probable cause, is protected from criminal and civil liability from charges of false arrest, false imprisonment, and unlawful detention.

PEACE OFFICER RIGHTS AND DEFENSES

1. A peace officer may take a suspect into custody in the same manner as a merchant.
2. Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

PENALTIES

1. Theft of property where the value exceeds \$1,000 is theft in the first degree, a class B felony, punishable by imprisonment for 2-10 years and/or a fine of up to \$10,000 or double the value of the property, whichever is higher.

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2. Theft of property from a building where the property is sold or stored, where the value exceeds \$25 is in the second degree, a class C felony, punishable by imprisonment for 1-10 years and/or a fine of up to \$5,000 or double the value of the property whichever is higher.
3. Theft of property from a building where the property is sold or stored, where the value is under \$25 is theft in the third degree, a class A misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$2,000, or double the value of the property, whichever is higher.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ALA. CODE	§13A-8-1	Definitions generally.
	§13A-8-2	Theft of property—Definition.
	§13A-8-12	Defenses to prosecutions for theft and unauthorized use of vehicle.
	§15-10-14	Detention and arrest of person suspected of larceny of goods held for sale.
	§15-10-30	Arrest without process when defendant present.
	§13A-8-3	Theft of property in the first degree.
	§13A-8-4	Theft of property in the second degree.

ALASKA

ELEMENTS OF THE OFFENSE

1. A person commits theft if he obtains the property of another with intent to deprive or to appropriate that property for himself or a third person.
2. A person commits concealment of merchandise if without authority he knowingly conceals on or about his person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of his merchandise.
3. There is also a civil liability for concealment of merchandise, in favor of the merchant, in addition to the criminal penalties.

PROOF

Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

In a civil or criminal action by the person detained in a commercial establishment for the purpose of investigation or questioning about the ownership of merchandise, it is a defense that the person was detained for a reasonable time in a reasonable manner to permit investigation or questioning, and that the merchant had probable cause to believe that the person was committing concealment of merchandise.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft is in the second degree if the value is \$500-\$25,000; which is a class C felony, punishable by imprisonment for up to 5 years and/or a fine of up to \$50,000.
2. Theft is in the third degree if the value is \$50-\$500; which is a class A misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$5,000.
3. Theft is in the fourth degree if value is less than \$50; which is a class B misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000.

4. Concealment where value is more than \$500 is a class C felony, punishable by imprisonment for up to 5 years and/or a fine of up to \$50,000.
5. Concealment where value is \$50 to \$500 is a class A misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000.
6. Concealment where the value is below \$50 is a class B misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000.
7. Civil liability for concealment: A person who willfully conceals goods or merchandise from a merchant's premises, in addition to criminal penalties, is liable for civil damages to the merchant of not less than \$100 or more than \$250 (unless the goods cost more than \$250, in which case the damages are the full retail value of the goods). The shoplifter is also liable for all costs and attorney fees.

A 1980 law provides for civil liability of a shoplifter or the shoplifter's parent or guardian to the merchant. For an adult shoplifter, damages are: (1) actual damages; plus (2) a penalty equal to the retail value of the merchandise or \$1,000, whichever is less; plus (3) a penalty of \$100-\$200. For the parent or guardian of an unemancipated minor shoplifter, damages are: (1) a penalty equal to the retail value of the merchandise or \$500, whichever is less; plus (2) a penalty of \$100-\$200.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ALASKA STAT.	§11.46.100	Theft defined.
	§11.46.220	Concealment of merchandise.
	§11.46.230	Reasonable detention as defense.
	§09.65.110	Civil liability for concealment of merchandise.

ARIZONA

ELEMENTS OF THE OFFENSE

1. A person commits shoplifting if, while in an establishment in which merchandise is offered for sale, he knowingly obtains goods of another with intent to deprive him of such goods by:
 - a. removing the goods without paying the purchase price;
 - b. charging the purchase price to a fictitious person or any person without his authority;
 - c. paying less than the purchase price by some trick or artifice, such as substituting price tags;
 - d. transferring the goods from one container to another; or
 - e. concealment.
2. A person commits theft if he controls property of another with the intent to deprive him of such property.

PROOF

Any person who knowingly conceals upon himself or another person unpurchased merchandise of any mercantile establishment while within the mercantile establishment shall be presumed to have committed shoplifting.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant may, with reasonable cause, detain in a reasonable manner for a reasonable time a shoplifting suspect for questioning or summoning a law enforcement officer.
2. Reasonable cause is a defense to a civil or criminal action for false arrest, false or unlawful imprisonment or wrongful detention.

PEACE OFFICER RIGHTS AND DEFENSES

A peace officer has the same defense to criminal or civil action as a merchant does.

PENALTIES

1. Shoplifting where value is more than \$1,000 is a class 5 felony, punishable by imprisonment up to 2 years and/or a fine of up to \$150,000.

2. Shoplifting where the value is \$100-\$1,000 is a class 6 felony, punishable by imprisonment up to 1-1/2 years and/or a fine of up to \$150,000.
3. Shoplifting where the value is less than \$100 is a class 1 misdemeanor, punishable by imprisonment up to 6 months and/or a fine of up to \$1,000.
4. If the shoplifter is a minor, the merchant may bring civil action against the parent or legal guardian.
5. The court may require a person convicted of shoplifting to perform public services in lieu of or in addition to the fine imposed.
6. Theft where the value is more than \$1,000 is a class 3 felony, punishable by imprisonment up to 5 years and/or a fine of up to \$150,000.
7. Theft where the value is \$100-\$1,000 is a class 4 felony, punishable by imprisonment up to 4 years and/or a fine of up to \$150,000.
8. Theft where the value is under \$100 is a class 1 misdemeanor, punishable by imprisonment up to 6 months and/or a fine of up to \$150,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ARIZ. REV. STAT. ANN. §13-1805 Shoplifting; detaining suspect; defense to wrongful detention; civil action by merchant; classification; public services in lieu of fines.
 §13-1802 Theft; classification.

ARKANSAS

ELEMENTS OF THE OFFENSE

A person commits theft if he knowingly takes or exercises unauthorized control over the property of another person, with the purpose of depriving the owner of the property.

PROOF

"Shoplifting Presumption": The knowing concealment, on his person or the person of another, of unpurchased goods or merchandise offered for sale by any store shall give rise to a presumption that the actor took the goods with the purpose of depriving the owner.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

A person engaging in conduct giving rise to the "Shoplifting Presumption" may be detained in a reasonable manner and for a reasonable length of time in order that recovery of such goods may be effected. Such detention shall not render the merchant criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

PEACE OFFICER RIGHTS AND DEFENSES

A peace officer has the same rights and defenses as a merchant. In addition, he may arrest without a warrant upon probable cause for believing the suspect has committed the offense of shoplifting. Sufficient probable cause may be established by written statement by the merchant that the affiant has observed the person accused committing the offense of shoplifting.

PENALTIES

1. Theft where the value is over \$2,500 is a class B felony, punishable by imprisonment for 3-20 years and/or a fine of up to \$15,000 or double the amount involved, whichever is higher.
2. Theft where the value is \$100-\$2,500 is a class C felony, punishable by imprisonment for 2-10 years and/or a fine of up to \$10,000.
3. Other theft is a class A misdemeanor, punishable by imprisonment up to 1 year and/or a fine of up to \$1,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ARK. STAT. ANN.	§41-2201	Definitions.
	§41-2202	Consolidation of theft offenses--Provisions applicable to theft generally.
	§41-2203	Theft of property.
	§41-2209	Theft of leased personal property--Evidence of intent--Affirmative defense to prosecution.
	§41-2251	Detention of shoplifting suspects--Arrest without warrant.

CALIFORNIA

ELEMENTS OF THE OFFENSE

Every person who shall feloniously steal, take, carry, lead, or drive away the property of another is guilty of theft.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

A merchant may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant's premises. A reasonable amount of non-deadly force may be used.

During the period of detention, any items which the merchant has reasonable cause to believe are unlawfully taken from the premises of the merchant and which are in plain view may be examined by the merchant for the purposes of ascertaining the ownership of the items.

In any action for false arrest, false imprisonment, slander or unlawful detention brought by any person detained by a merchant, it shall be a defense to such action that the merchant detaining the person had probable cause to believe that he had stolen or attempted to steal merchandise and that the merchant acted reasonably under all the circumstances.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. First conviction for petty theft involving merchandise taken from a merchant's premises: mandatory fine of not less than \$50 or more than \$1,000, plus imprisonment in county jail for up to six months.
2. When the shoplifter is an unemancipated minor, the merchant may bring civil action against the parents or guardian for the market value of the merchandise plus damages of \$50-\$500 plus costs.
3. In lieu of fines, the court may require the shoplifter to perform public services designated by the court, with the number of hours limited to the number needed to satisfy the fine at prevailing minimum wage rates.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

CAL. [Penal] CODE (West) §484	Theft Defined.
§490	Petty theft; punishment.
§490.5	Petty theft of retail merchandise or library materials; punishment.

COLORADO

ELEMENTS OF THE OFFENSE

1. A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, and
 - a. intends to deprive the other person permanently of the use or benefit of the thing of value; or
 - b. knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or
 - c. uses, conceals or abandons the thing of value intending to deprive the other person permanently of its use or benefit.

PROOF

Willful concealment of unpurchased goods, wares, or merchandise in a mercantile establishment constitutes prima facie evidence that the person intended to commit the crime of theft.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

A merchant (or employee), acting in good faith and upon probable cause based upon reasonable grounds, may detain and question a person suspected of concealment or theft in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning will not render the merchant civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft where the value is \$200-\$10,000 is a class 4 felony, punishable by imprisonment for 1 day to 10 years, and/or a fine of \$2,000-\$30,000.
2. Theft where the value is \$50-\$2,000 is a class 2 misdemeanor, punishable by 3-12 months' imprisonment and/or a fine of \$250-\$1,000.
3. Theft where the value is under \$50 is a class 3 misdemeanor, punishable by imprisonment up to 6 months and/or a fine of \$50-\$700.

4. If a person commits theft twice or more within a period of 6 months without having been placed in jeopardy for the prior offense, and the aggregate value is \$200-\$10,000, it is a class 4 felony, punishable by imprisonment for 1 day to 10 years, and/or a fine of \$200-\$30,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

COLO. REV. STAT.	§18-4-401	Theft
	§18-4-406	Concealment of goods.
	§18-4-407	Questioning of person suspected of theft without liability.

CONNECTICUT

ELEMENTS OF THE OFFENSE

A person commits larceny when, with intent to deprive another of property or to appropriate it to himself or a third person, he wrongfully takes, obtains, or withholds such property from an owner. Larceny includes shoplifting, and a person is guilty of shoplifting who intentionally takes possession of merchandise from a store with the intention of converting the same to his own use, without paying the purchase price of the merchandise.

PROOF

A person intentionally concealing unpurchased merchandise of a store shall be presumed to have concealed the article with the intention of converting it to his own use without paying the purchase price of the merchandise.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who observes a person concealing goods or transporting goods from the premises without paying for them may question such person as to his name and address, and if the merchant has reasonable grounds to believe that the person so questioned was attempting to commit larceny, may detain such person for a time sufficient to summon a police officer to the premises. No information other than name and address shall be required of such person until a police officer has taken him into custody. "Reasonable grounds" shall include knowledge that a person has concealed unpurchased merchandise of such establishment while on the premises, has altered or removed identifying labels on such merchandise while on the premises, or is leaving the premises with such unpurchased or concealed or altered merchandise in his possession.
2. In any civil action by the person detained against the merchant, evidence that the merchant had reasonable grounds to believe that the person was attempting to commit larceny shall create a rebuttable presumption that the person was attempting to commit larceny.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Larceny where the value exceeds \$2,000 is in the first degree, a class B felony punishable by imprisonment for 1-20 years.
2. Larceny where the value is \$500-\$2,000 is in the second degree, a class D felony, punishable by imprisonment for 1-5 years.

3. Larceny where the value is \$50-\$500 is in the third degree, a class B misdemeanor, punishable by imprisonment up to 6 months.
4. Larceny where the value is under \$50 is in the fourth degree, a class C misdemeanor, punishable by imprisonment up to 3 months.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

CONN. GEN. STAT. ANN. (West)	§53a-118	Definitions generally.
	§53a-119	Larceny defined.
	§53a-119a	Shoplifting; detention, questioning, presumption of crime.

DELAWARE

ELEMENTS OF THE OFFENSE

1. A person is guilty of shoplifting if, while in a mercantile establishment, he:
 - a. removes goods from any place within the establishment with intent to deprive the owner of the use, value, or possession of the goods without paying to the owner the full value;
 - b. conceals any such goods with like intent;
 - c. alters or removes any label or price tag on such goods with like intent; or
 - d. transfers any goods, wares, or merchandise from a container to any other container with like intent.
2. A person is guilty of theft when he takes property of another person intending to deprive him of it or appropriate it.

PROOF

Any person willfully concealing unpurchased merchandise of any store shall be presumed to have concealed such merchandise with the intention of converting it to his own use without paying the purchase price. The finding of such merchandise concealed upon the person outside of such store shall be presumptive evidence of intentional concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant or employee 18 years of age or older, who has probable cause for believing that a person has intentionally concealed unpurchased merchandise or has committed shoplifting, may, for the purpose of summoning a law enforcement officer, take the person into custody and detain him in a reasonable manner on the premises for a reasonable time.
2. A merchant who detains a suspect or who provides information leading to the arrest of a person for shoplifting shall not be held civilly or criminally liable for such detention or arrest provided he had probable cause to believe that the person committed the crime of shoplifting.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Shoplifting or theft where the value is over \$300 is a class E felony, punishable by imprisonment up to 7 years.
2. Shoplifting or theft where the value is under \$300 is a class A misdemeanor, punishable by imprisonment up to 2 years and a fine of up to \$1,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

DEL. CODE. ANN. Tit. 11	§840 Shoplifting; class E felony; class A misdemeanor.
	§841 Theft; class E felony; class A misdemeanor.
	§855 Theft; indictment and proof.
	§856 Theft, receiving stolen property no defense; receiving stolen property, theft no defense; conviction of both offenses.
	§857 Theft and related offenses; definitions.

DISTRICT OF COLUMBIA
(Present Law may change soon. See Proposed Revision.)

ELEMENTS OF THE OFFENSE

Whoever shall feloniously take and carry away anything of value is guilty of larceny.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

No mention.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Grand larceny, when the value is over \$100 is punishable by imprisonment for not less than one nor more than ten years.
2. Petit larceny, when the value is less than \$100, is punishable by a fine of up to \$200 or imprisonment for not more than one year, or both.
3. In all convictions for larceny, either grand or petit, the judge may order restitution to be made of the value of the money or property shown to have been stolen by the defendant.

DISTRICT OF COLUMBIA
(Proposed Revision)

ELEMENTS OF THE OFFENSE

1. A person is guilty of shoplifting if, with intent to appropriate without complete payment any tangible personal property of another that is offered for sale, that person knowingly:
 - a. conceals such property;
 - b. removes or alters any price tag, etc.; or

c. transfers it to another container.

2. A person is guilty of theft if, with intent to deprive another of property without lawful authority, he knowingly takes any property of another.

PROOF

No mention.

DEFENSES OF THE SUSPECT

1. It is a defense that the defendant acted under a good faith reasonable claim of right.
2. There is no such crime as "attempted shoplifting," since the definition of shoplifting includes attempts.

MERCHANT RIGHTS AND DEFENSES

1. A merchant shall not be held liable for detention, false imprisonment, malicious prosecution, defamation, or false arrest if:
 - a. the merchant had probable cause to believe that the suspect had committed shoplifting in the merchant's presence;
 - b. the manner of such detention or arrest was reasonable;
 - c. the suspect was released or the police notified within 15 minutes; or
 - d. the suspect was released or surrendered to the police within 60 minutes.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Shoplifting is a class B misdemeanor, punishable by imprisonment up to 6 months and/or a fine of up to \$5,000.
2. Theft where the value is \$500-\$25,000 is a class E felony punishable by imprisonment for up to 5 years and/or a fine of up to \$50,000.
3. Theft where the value is \$100-\$500 is a class B misdemeanor, punishable by imprisonment up to 6 months and/or a fine of up to \$5,000.
4. Theft where the value is less than \$100 is a class C misdemeanor, punishable by imprisonment up to 3 months and/or a fine of up to \$5,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

D.C. CODE	§22-2201	Grand larceny.
	§22-2202	Petit larceny-Order of restitution.

FLORIDA

ELEMENTS OF THE OFFENSE

1. A person is guilty of theft if he knowingly obtains or uses the property of another with intent to deprive the other person of a right to the property or a benefit from it, or to appropriate the property to his own use or to the use of any person not entitled to it.
2. Retail theft means the taking possession of or carrying away of merchandise, altering or removing a label or price tag, transferring merchandise from one container to another, or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

PROOF

No mention.

DEFENSES OF THE SUSPECT

Two 1979 cases held that lack of scienter [intent] is a defense.

MERCHANT RIGHTS AND DEFENSES

A merchant who has probable cause to believe that a person has unlawfully taken merchandise and that he can recover it by taking the person into custody may, for the purpose of attempting to effect such recovery and for prosecution, take the person into custody and detain him in a reasonable manner for a reasonable length of time. This shall not render the merchant civilly or criminally liable for false arrest, false imprisonment, or unlawful detention. A peace officer must be called to the scene immediately.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants. In addition, he may arrest, either on or off the premises and without warrant, any person he has probable cause to believe has committed theft of merchandise in retail or wholesale establishments.

PENALTIES

1. Theft of property where the value is \$100-\$20,000 is grand theft of the second degree and a felony of the third degree, punishable by imprisonment up to 5 years and/or a fine of up to \$5,000.
2. Theft of property where the value is under \$100 is petit theft and a misdemeanor of the second degree, punishable by imprisonment up to 60 days and/or a fine of up to \$500.
3. Upon a second or subsequent conviction for petit theft of merchandise, the court shall impose a fine of \$50-\$1,000. However, in lieu of such fine, the court may require the offender to perform public services designated by the court.

MISCELLANEOUS

1. A person who resists the reasonable efforts of a peace officer or merchant to recover merchandise which the peace officer or merchant had probable cause to believe had been concealed or removed, and who is subsequently found guilty of theft shall be guilty of a misdemeanor of the first degree, unless he did not know or have reason to know that the person seeking recovery was a merchant or peace officer.
2. The term "retail theft" appears only in a definitions section and is never referred to again in the law.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

FLA. STAT. ANN. (Harrison)	§812.012	Definitions.
	§812.014	Theft.
	§812.015	Retail Theft; mandatory fine; alternative punishment, detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.
	§812.021	"Larceny" defined; penalties; sufficiency of indictment, information or warrant.

GEORGIA

ELEMENTS OF THE OFFENSE

1. A person commits theft by shoplifting when he, with the intent of appropriating merchandise without paying for it or to deprive the owner of possession or the value of the merchandise:
 - a. conceals or takes possession of the goods or merchandise of any store or retail establishment;
 - b. alters the price tag;
 - c. transfers goods from one container to another; or
 - d. interchanges price tags from one item to another.
2. A person commits theft by taking when he unlawfully takes property of another with intention of depriving him of the property.

PROOF

262 S.E.2d 636 states that when the defendant removes merchandise from a display area, crime of theft by taking was complete. The fact that he had not left the store was of no legal consequence.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Whenever a merchant shall detain or arrest any person reasonably thought to be engaged in shoplifting and the person shall institute suit for false arrest or false imprisonment against the merchant, no recovery shall be had where it is established that the plaintiff had conducted himself to cause a man of reasonable prudence to believe that he was committing shoplifting, provided that the manner of detention or arrest and the length of time of detention were under all of the circumstances reasonable.
2. Where a device has been installed for the purpose of detecting the removal of specially marked merchandise, activation of the device shall constitute reasonable cause for detention, if a notice has been posted in a clear and visible manner advising patrons of the device.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft by shoplifting where the value is less than \$100 is a misdemeanor, punishable by imprisonment up to 1 year and/or a fine of up to \$1,000.
2. Upon conviction of a second such offense, in addition to any imprisonment which may be imposed, the defendant shall be fined not less than \$250 and such fine shall not be suspended or probated.
3. Upon conviction of a third such offense, in addition to any fine which might be imposed, the defendant shall be imprisoned for not less than 30 days and such sentence shall not be suspended, probated, deferred or withheld.
4. Theft by shoplifting where value exceeds \$100 is a felony punishable by imprisonment for 1 to 10 years.
5. The judge has authority in all misdemeanor cases to provide that the sentence be served on weekends or during nonworking hours of the defendant.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

GA. CODE ANNO.	§26-1802.1	Theft by shoplifting.
	§26-1802	Theft by taking.
	§105-1006	Detention of persons leaving mercantile establishment equipped with anti-shoplifting or inventory control device.
	§105-1005	Operator of mercantile establishment, when free of liability for false arrest or false imprisonment.
	§27-2506	Misdemeanors, how punished.

HAWAII

ELEMENTS OF THE OFFENSE

1. A person commits theft if he obtains or exerts control over the property of another with intent to deprive him of the property.
2. A person commits shoplifting if:
 - a. he conceals or takes possession of merchandise of any store, with intent to defraud;
 - b. he alters a price tag, with intent to defraud; or
 - c. he transfers goods from one container to another, with intent to defraud.

PROOF

1. The unaltered price or name tag on merchandise shall be prima facie evidence of ownership.
2. Photographs of merchandise, duly identified in writing by the arresting officer, shall be admissible to the same extent as the merchandise itself.

DEFENSES OF THE SUSPECT

- It is a defense to a prosecution for theft that the defendant:
- a. was unaware that the property belonged to another; or
 - b. believed that he was entitled to the property under a claim of right.

MERCHANT RIGHTS AND DEFENSES

1. A person commits the offense of unlawful imprisonment in the second degree (a misdemeanor) if he knowingly restrains another person.
2. It is an affirmative defense to such a prosecution that the person restrained:
 - a. was on or near the premises of a store for the purpose of investigation or questioning as to the ownership of any merchandise;
 - b. was restrained in a reasonable manner for not more than a reasonable time;
 - c. was restrained to permit such investigation or questioning by a merchant or a police officer; and

- d. that the police officer or merchant had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises.
3. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by a person detained on or near premises of a store for purposes of investigation or questioning as to the ownership of merchandise, it shall be a defense to the action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a police officer or by the merchant, and that such officer or merchant had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of merchandise.

"Reasonable grounds" includes but is not limited to knowledge that a person has concealed possession of unpurchased merchandise of the store, and a "reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft where the value exceeds \$200 is in the first degree, and is a class C felony for which the maximum sentence is imprisonment for 5 years.
2. Theft where the value is \$50-\$200 is in the second degree, and is a misdemeanor, punishable by imprisonment up to 1 year and/or a fine of up to \$1,000.
3. Theft where the value is under \$50 is in the third degree, and is a petty misdemeanor, punishable by imprisonment up to 30 days and/or a fine of up to \$500.
4. Shoplifting where the aggregate value exceeds \$200 is a class C felony. The minimum fine shall be the lesser of \$5,000 or four times the aggregate value involved.
5. Shoplifting where the aggregate value is \$50-\$200 is a misdemeanor. The minimum fine shall be three times the aggregate value.
6. Shoplifting where the aggregate value is less than \$50 is a petty misdemeanor. The minimum fine shall be twice the aggregate value.
7. A defendant not in contemptuous default of payment of a fine may alternatively be ordered to report to one of several government agencies for purposes of cleaning public property, picking up litter, etc. The agency must certify the work performance to the court.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

HAWAII REV. STAT.	\$708-830	Theft.
	\$708-831	Theft in the first degree.
	\$708-832	Theft in the second degree.
	\$708-833	Theft in the third degree.
	[\$708-833.5]	Shoplifting.
	\$707-721	Unlawful imprisonment in the first degree.
	\$707-722	Unlawful imprisonment in the second degree.
	\$663-2	Defense of lawful detention.
	\$706-660	Sentence of imprisonment for felony; ordinary term.

IDAHO

ELEMENTS OF THE OFFENSE

Whoever, without authority, willfully conceals the merchandise of any merchant while still in the store shall be guilty of a misdemeanor.

PROOF

Merchandise found concealed upon the person shall be prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Any merchant detaining a person in or near a store for the purpose of investigation as to the ownership of merchandise shall have as a defense in any civil or criminal action, that such detention was in a reasonable manner and for not more than a reasonable time to permit such investigation by the merchant, and that he had probable cause to believe that the person detained was committing or attempting to commit willful concealment. "Reasonable time" means the time necessary to permit the person detained to make a statement or refuse to make a statement, and the time necessary to examine employees and records of the store or merchant relative to ownership of the merchandise.
 - a. A merchant may request a person on his premises to keep in full view any merchandise the person may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere. No merchant shall be criminally or civilly liable on account of having made such a request.
 - b. Any merchant who has reason to believe that merchandise has been taken by a person in violation of this act and that he can recover such merchandise by taking such person into custody and detaining him may, for the purpose of attempting recovery or for informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.
 - c. No merchant shall be entitled to immunity provided for in this act unless he has displayed in a conspicuous place a clearly legible sign at least 13" by 21" containing a warning specified in the statute.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

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PENALTIES

1. Willful concealment is a misdemeanor punishable by a fine of up to \$300 and imprisonment for up to 6 months.
2. Any person who knowingly removes merchandise from a merchant's premises without paying or knowingly conceals merchandise to avoid paying shall be civilly liable to the merchant for the retail value of the merchandise, plus damages of \$100-\$250, costs of suit and reasonable attorneys fees.
3. Parents or the legal guardian of a minor who knowingly removes or conceals merchandise as above shall be civilly liable to the merchant for the retail value of the merchandise plus damages of \$100-\$250, costs of suit, and reasonable attorneys fees.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

IDAHO CODE	§18-4626	Willful concealment of goods, wares or merchandise—defense for detention.
	§48-701	Liability for removing or concealing merchandise.
	§48-702	Liability for acts of minors.
	§48-703	Definitions.
	§48-704	Authorized actions of merchants.
	§48-705	Notice of right of detention.

ILLINOIS

ELEMENTS OF THE OFFENSE

1. A person commits the offense of retail theft when he:
 - a. takes merchandise displayed in a store with the intention of retaining it or with the intention of depriving the merchant permanently of the possession of the merchandise without paying for full retail value;
 - b. alters or removes a label or price tag on merchandise in a store and attempts to purchase the merchandise at less than full retail value with the intention of depriving the merchant of the full retail value; or
 - c. transfers any merchandise between containers with the intention of depriving the merchant of the full retail value of the merchandise.

PROOF

If any person conceals unpurchased merchandise in a store and removes it beyond the last known station for receiving payments for that merchandise, he shall be presumed to have carried away the merchandise with the intention of depriving the merchant permanently of his possession without paying the full retail value.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has reasonable grounds to believe that a person has committed retail theft may detain the person, on or off the store premises, in a reasonable manner and for a reasonable time for any of the following purposes:
 - a. to request identification;
 - b. to verify such identification;
 - c. to make reasonable inquiry as to whether such person has unpurchased merchandise, and to make a reasonable investigation of the ownership of such merchandise;
 - d. to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; or
 - e. in the case of a minor, to inform a peace officer, the parents or guardian of that minor of his detention and to surrender custody to such person.

- Such a detention does not constitute an arrest, nor shall it render the merchant liable to the person detained.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

- Retail theft where the value is under \$150 is a class A misdemeanor, punishable by imprisonment for up to 1 year.
- A second retail theft offense where the value is under \$150 is a class 4 felony, punishable by imprisonment for 1-3 years.
- Retail theft where the value exceeds \$150 is a class 3 felony, punishable by imprisonment for 2-5 years.
- The parents or guardian of a minor who commits retail theft shall be civilly liable for the value of the merchandise and actual damages not to exceed the limitations in the "Parental Responsibility Law".

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ILL. ANN. STAT. Ch. 38 (Smith-Hurd)	§16A-2	Definitions.
	§16A-3	Offense of Retail Theft.
	§16A-4	Presumptions.
	§16A-5	Detention.
	§16A-6	Affirmative Defense.
	§16A-7	Civil Liability.
	§16A-8	Severability.
	§16A-10	Sentence.
	§10-3	Unlawful Restraint.

INDIANA

ELEMENTS OF THE OFFENSE

A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft.

PROOF

- Evidence that a person altered or substituted a label or price tag, or transferred merchandise between containers, constitutes prima facie evidence of intent to deprive the owner of the property or a part of its value.
- Evidence that a person concealed property displayed for sale, or removed property from any place within the business premises to a point beyond that at which payment should be made, constitutes prima facie evidence of intent to deprive the owner of the property or a part of its value.
- A photograph of the property stolen may be used as evidence at trial to the same extent as the property itself.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

- A merchant who has probable cause to believe that a theft has occurred or is occurring in the store and who has probable cause to believe that a specific person has committed or is committing the theft may detain that person to require the person to identify himself, to verify the identification, to determine whether the person has in his possession unpurchased merchandise taken from the store, to inform law enforcement officers, and to inform the parents or other persons interested in the welfare of the person detained. Such a detention must be reasonable and must last only for a reasonable time, not to extend beyond the arrival of a law enforcement officer or one hour, whichever first occurs.
- A merchant who informs a police officer about such a detention is not presumed to be charging the person detained with a crime.
- A civil or criminal action against a merchant may not be based on a lawful detention as described above.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft is a class D felony, punishable by imprisonment up to 4 years and/or a fine of up to \$10,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

IND. CODE ANN. (West)	§35-43-4-1	Definitions.
	§35-43-4-2	Theft.
	§35-43-4-4	Evidence.
	§35-43-4-5	Defenses.
	§35-3-2.1-1	Definitions.
	§35-3-2.1-2	Probable cause; detention; purposes and limitations.
	§35-3-2.1-3	Presumptions as to placing of information before law enforcement officer.
	§35-3-2.1-5	Reliance upon information received from employee; probable cause as condition.
	§35-3-2.1-6	Lawful detention or arrest not limited.

IOWA

ELEMENTS OF THE OFFENSE

A person commits theft when he takes possession or control of property of another with intent to deprive the other of it.

PROOF

The fact that a person has concealed unpurchased property of a store is material evidence of intent to deprive the owner.

DEFENSES OF THE SUSPECT

No person who takes or otherwise acquires property is guilty of theft if he reasonably believes that he has the right to do so, or if he does in fact have that right.

MERCHANT RIGHTS AND DEFENSES

1. Persons concealing property may be detained and searched by a merchant, provided that the detention is for a reasonable length of time and that the search is conducted in a reasonable manner by a person of the same sex; but no search shall be conducted unless it is either under the direction of a peace officer or consented to by the person searched.
2. Such detention does not render the merchant liable in a criminal or civil action for false arrest or false imprisonment provided the person conducting the search had reasonable grounds to believe the person detained or searched was attempting to conceal property.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft of property where the value exceeds \$5,000 is theft in the first degree, a class C felony, punishable by imprisonment up to 10 years and a fine of up to \$5,000.
2. Theft of property where the value is \$500-\$5,000, or any third or subsequent conviction for theft of any amount, is in the second degree, a class D felony, punishable by imprisonment up to 5 years and a fine of up to \$1,000.
3. Theft of property where the value is \$100-\$500 is in the third degree, an aggravated misdemeanor, punishable by imprisonment up to 2 years and/or a fine of up to \$5,000.

4. Theft of property where the value is \$50-\$100 in the fourth degree, a serious misdemeanor, punishable by imprisonment up to 1 year and/or a fine of up to \$1,000.
5. Theft of property where the value is under \$50 is in the fifth degree, a simple misdemeanor, punishable by imprisonment up to 30 days and/or a fine of up to \$100.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

IOWA CODE ANN. (West)	§714.1	Theft defined.
	§714.4	Claim of right.
	§714.5	Evidence of intention.
	§808.12	Detention and search in shoplifting.

KANSAS

ELEMENTS OF THE OFFENSE

Theft is obtaining or exerting unauthorized control over property with intent to deprive the owner permanently of the possession, use, or benefit of his property.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

No mention.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft where the value is over \$50 is a class D felony, punishable by 1 to 10 years in prison.
2. Theft where the value is under \$50 is a class A misdemeanor, punishable by up to one year in prison.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

KAN. STAT. ANN.	§21-3701	Theft.
	§21-3705	Unlawful deprivation of property.
	§21-4501	Classification of felonies and terms of imprisonment.
	§21-4502	Classification of misdemeanors and terms of confinement; possible disposition.
	§21-4503	Fines.

KENTUCKY

ELEMENTS OF THE OFFENSE

A person is guilty of theft by unlawful taking or disposition when he unlawfully takes or exercises control over movable property of another with intent to deprive him of it.

PROOF

Willful concealment of unpurchased merchandise of any store shall be prima facie evidence of an intent to deprive the owner of his property without paying the purchase price.

DEFENSES OF THE SUSPECT

1. It is a defense to prosecution for theft that the actor:
 - a. was unaware that the property was that of another;
 - b. acted under a claim of right to the property involved; or
 - c. took property exposed for sale intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause for believing that goods held for sale by the merchant have been unlawfully taken by the person may take the person into custody and detain him in a reasonable manner for a reasonable length of time, on or off the premises, if in fresh pursuit:
 - a. to request identification;
 - b. to verify such identification;
 - c. to make reasonable inquiry as to whether such person has in his possession unpurchased merchandise, and to make reasonable investigation of the ownership of such merchandise;
 - d. to attempt to recover goods taken; and
 - e. to inform a peace officer of the detention and to surrender custody to him, and in the case of a minor, to inform the parents or guardian of the detention.

PEACE OFFICER RIGHTS AND DEFENSES

Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

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PENALTIES

1. Theft where the value is over \$100 is a class D felony, punishable by imprisonment for 1-5 years and/or a fine of up to \$10,000 or double the amount involved, whichever is higher.
2. Theft where the value is under \$100 is a class A misdemeanor, punishable by imprisonment up to 12 months and/or a fine of up to \$500.

MISCELLANEOUS

All city and county law enforcement agencies shall cause to be made a photograph, a set of fingerprints and a general descriptive report of all persons except juveniles arrested for theft through an act of shoplifting. If convicted, 2 copies of each item shall be forwarded within 30 days to the Bureau of State Police and the Department of Justice.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

KY. REV. STAT.	\$514.010	Definitions.
	\$514.020	General provisions.
	\$514.030	Theft by unlawful taking or disposition.
	\$433.234	Shoplifting.
	\$433.236	Detention and arrest of shoplifting suspects.

LOUISIANA

ELEMENTS OF THE OFFENSE

Theft is the misappropriation or taking of anything of value which belongs to another, without his consent and with intent to deprive him permanently of the property.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant may use reasonable force to detain a person for questioning on the merchant's premises, for a length of time not to exceed sixty minutes, when he has reasonable cause to believe that the person has committed a theft of goods held for sale, regardless of their value. The detention shall not constitute an arrest.
2. If a merchant uses electronic devices which are designed to detect the unauthorized removal of marked merchandise from the store, and if sufficient notice is posted that such device is being used, a signal from the device to the merchant or his employee indicating the removal of specially marked merchandise shall constitute reasonable cause to detain the person.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as for merchants.
2. In addition, a peace officer may, without a warrant, arrest a person when he has reasonable grounds to believe the person has committed a theft of goods held for sale by a merchant, regardless of the actual value of the goods. A complaint made to a peace officer by a merchant shall constitute reasonable cause for the officer making the arrest.

PENALTIES

1. Theft where the aggregate value is over \$500 is punishable by imprisonment for up to 10 years and/or a fine of up to \$3,000.
2. Theft where the aggregate value is \$100-\$500 is punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000.
3. Theft where the aggregate value is under \$100 is punishable by imprisonment for up to 6 months and/or a fine of up to \$500. If the offender in such a case has been convicted of theft twice previously, he shall be imprisoned for up to 2 years and/or fined up to \$1,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

LA. REV. STAT. ANN. (West) §67 Theft.
LA. CIV. CODE ANN. art. 215 (West) Detention and arrest of shoplifters.

MAINE

ELEMENTS OF THE OFFENSE

A person is guilty of theft if he obtains or exercises unauthorized control over the property of another with intent to deprive him of it.

PROOF

1. Proof that the defendant was in exclusive possession of property that had recently been taken under circumstances constituting theft shall give rise to the presumption that the defendant is guilty of the theft.
2. Proof that the defendant concealed unpurchased property offered for sale while in or near the store shall give rise to the presumption that he obtained unauthorized control over the property with the intent to deprive the owner.

DEFENSES OF THE SUSPECT

It is an affirmative defense to prosecution that the defendant acted in good faith under a claim of right to the property.

MERCHANT RIGHTS AND DEFENSES

1. A merchant may detain on the premises in a reasonable manner and for a period of time not to exceed 1/2 hour any person he has probable cause to believe is unlawfully concealing merchandise. The purposes of such detention shall be:
 - a. to require the person detained to identify himself;
 - b. to verify such identification;
 - c. to inform a law enforcement officer of the detention and to surrender such person to the officer; and
 - d. when the person detained is a minor, to inform a law enforcement officer or the parents or guardian of the minor and to surrender him to the person so informed.

PEACE OFFICER RIGHTS AND DEFENSES

A peace officer who has probable cause to believe that a person has unlawfully concealed merchandise may arrest such person without a warrant, whether or not concealment was committed in his presence.

PENALTIES

1. Theft where the value is \$1,000-\$5,000, or where the actor has committed theft or other specified crimes twice before, is a class C crime, punishable by imprisonment up to 5 years and/or a fine of up to \$2,500.
2. Theft where the value is \$500-\$1,000 is a class D crime, punishable by imprisonment up to 1 year and/or a fine up to \$1,000.
3. Theft where the value is under \$500 is a class E crime, punishable by imprisonment up to 6 months and/or a fine up to \$500.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

ME. REV. STAT. ANN.	tit. 17	§3521	Detention of shoplifters.
	tit. 17A	§351	Consolidation.
		§352	Definitions.
		§353	Theft by unauthorized taking or transfer.
		§361	Claim of right; presumptions.
		§362	Classification of theft offenses.

MARYLAND

ELEMENTS OF THE OFFENSE

A person commits the offense of theft when he willfully or knowingly obtains or exerts control which is unauthorized over property of the owner and has the purpose of depriving the owner of the property.

PROOF

No mention.

DEFENSES OF THE SUSPECT

It is a defense to the offense of theft that the defendant acted under a good faith claim of right to the property involved, or that he acted in the honest belief that he had the right to obtain or exert control over the property as he did.

MERCHANT RIGHTS AND DEFENSES

A merchant who detains or causes the arrest of any person shall not be held civilly liable for detention, slander, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, if in detaining the person he had probable cause to believe that the person committed the crime of "theft" of property from the merchant's premises.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft when the value exceeds \$300 is a felony, and the person convicted shall restore the property to the owner or pay him the value of it, and be fined not more than \$1,000 and/or imprisoned not more than 15 years.
2. Theft where the value is under \$300 is a misdemeanor, and the person convicted shall restore the property to the owner or pay him its value, and be fined not more than \$100 and/or imprisoned not more than 18 months.

MISCELLANEOUS

Prosecutions for theft where the value is less than \$300 must be commenced within 2 years of the commission of the offense.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MD. [CRIM. LAW] CODE ANN.	§340	Definitions.
	§341	Acts constituting theft.
	§342	Theft.
	§343	Defenses and presumptions.
MD. [CTS. & JUD. PROC.] CODE ANN.	§5-207	Civil liability of merchant for detention or arrest of person for "theft".

MASSACHUSETTS

ELEMENTS OF THE OFFENSE

Whoever steals the property of another shall be guilty of larceny.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

In an action for false arrest or false imprisonment brought by any person by reason of having been detained for questioning in or near the premises of a merchant, if he was detained in a reasonable length of time by the merchant and if there were reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of goods for sale on such premises, or larceny of the personal property of employees or customers or other present on such premises, it shall be a defense to such action. If such goods had not been purchased and were concealed on or amongst the belongings of the person detained it shall be presumed that there were reasonable grounds for such belief.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Larceny where the value exceeds \$100 is punishable by imprisonment for up to 5 years, or by a fine of up to \$600 and imprisonment for up to 2 years.
2. Larceny where the value is under \$100 is punishable by imprisonment for up to 1 year or a fine of up to \$300.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MASS. ANN. LAWS (Michie/Law. Co-op)

ch. 266	§30	Larceny, etc.
ch. 231	§94B	Certain Acts, etc., to Constitute Defense in Actions for False Arrest, etc., by Persons Suspected of Shoplifting.

MICHIGAN

ELEMENTS OF THE OFFENSE

Larceny is stealing the property of another.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

In any civil action against a merchant for false imprisonment, unlawful arrest, assault, battery, libel or slander, if the claim arose out of conduct involving a person suspected of removing or attempting to remove from a store without right goods held for sale, where the merchant had probable cause for believing that the plaintiff had committed or aided the larceny of the goods, no damages from mental anguish, no punitive, exemplary or aggravated damages shall be allowed to a plaintiff, except when it is proved that the merchant used unreasonable force, detained the plaintiff an unreasonable length of time, acted with unreasonable disregard for his rights or sensibilities, or acted with intent to injure the plaintiff.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Larceny where the value exceeds \$100 is a felony, punishable by imprisonment for up to 5 years or a fine of up to \$2,500.
2. Larceny where the value is under \$100 is a misdemeanor, punishable by imprisonment up to 90 days and/or a fine of up to \$100.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MICH. COMP. LAWS ANN. §750.356 Larceny.
 §600.2917 Suspected shoplifting; probable cause
 as defense in civil action.

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MINNESOTA

ELEMENTS OF THE OFFENSE

1. Whoever intentionally and without claim of right takes possession of movable property of another without his consent and with intent to deprive him permanently of possession of the property commits theft.
2. Whoever has in his possession any device, gear, or instrument specially designed to assist in shoplifting with intent to use the same to shoplift and thereby commit theft may be sentenced to imprisonment.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has reasonable cause for believing that a person has taken, or is in the act of taking, any article of value without paying, from the premises under his control, with the intent wrongfully to deprive the merchant of his property or the use and benefit of it may detain the person for the sole purpose of delivering him to a peace officer without unnecessary delay and then and there making a charge against such person to the peace officer. The person detained shall be informed promptly of the purpose of the detention and shall not be subjected to unnecessary or unreasonable force, nor to interrogation against his will.
2. No merchant or peace officer shall be criminally or civilly liable for false arrest or false imprisonment or wrongful detention under the above if his action was based upon reasonable cause.

PEACE OFFICER RIGHTS AND DEFENSES

Upon a charge being made, a peace officer may, without a warrant, arrest any person who he has reasonable cause for believing has committed or attempted to commit theft from a merchant.

PENALTIES

1. Theft where the aggregate value over any 6-month period is \$150 to \$2,500 is punishable by imprisonment for up to 5 years and/or a fine of up to \$5,000.
2. Theft where the aggregate value is under \$150 is punishable by imprisonment for up to 90 days and/or a fine of up to \$500.

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LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MINN. STAT. ANN. (West)

§609.52	Theft.
§609.521	Possession of shoplifting gear.
§629.365	Definitions.
§629.366	Theft in business establishments; detention of suspects.

MISSISSIPPI

ELEMENTS OF THE OFFENSE

1. Any person who shall willfully and unlawfully take possession of any merchandise displayed for sale by a store with the intention of converting such goods to his own use without paying the purchase price shall be guilty of the crime of shoplifting.
2. Every person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of \$100 or more, shall be guilty of grand larceny.
3. If any person shall feloniously take, steal and carry away any personal property of another, under the value of \$100, he shall be guilty of petit larceny.

PROOF

If any person shall willfully conceal unpurchased goods, wares or merchandise owned or held by a store, whether such concealment be on his person or otherwise and whether on or off the premises, such concealment shall constitute prima facie evidence that he intended to convert same to his own use without paying the purchase price for it within the meaning of the shoplifting statute; and the finding of such unpurchased merchandise concealed upon the person or among his effects shall constitute prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

If any person shall commit or attempt to commit shoplifting, or shall willfully conceal unpurchased goods, the merchant, acting in good faith and upon probable cause based upon reasonable grounds may question such person in a reasonable manner to ascertain whether he is guilty of shoplifting. Such questioning by a merchant shall not render him civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or otherwise in any case where he acts in good faith and upon reasonable grounds to believe that the person questioned is committing or attempting to commit shoplifting.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Shoplifting first offense where the value is under \$100 is a misdemeanor, punishable by imprisonment for 5 days to 6 months and/or a fine of \$25-\$300.

CONTINUED

1 OF 2

2. Shoplifting second or subsequent offense, where the value is under \$100, is a misdemeanor, punishable by imprisonment for 30 days to 1 year and/or a fine of \$50-\$500.
3. Shoplifting where the value exceeds \$100 is a felony, punishable by imprisonment for up to 5 years and/or a fine of up to \$1,000.

MISCELLANEOUS

The shoplifting provisions shall be construed to be cumulative and supplemental to all other laws of Mississippi, and offense and presumptions thereby defined shall be in addition to existing offenses and presumptions provided by law.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MISS. CODE ANN.	§97-23-45	Shoplifting--elements of the offense.
	§97-17-41	Larceny--grand larceny defined--penalty.
	§97-17-43	Larceny--petit larceny defined--penalty.
	§97-23-49	Shoplifting--concealment of goods as prima facie evidence of crime.
	§97-23-53	Shoplifting--construction.

MISSOURI

ELEMENTS OF THE OFFENSE

A person commits the crime of stealing if he appropriates property of another with the purpose to deprive him of it without his consent or by means of deceit or coercion.

PROOF

Any person willfully concealing unpurchased merchandise of any mercantile establishment, either on the premises or outside the premises, shall be presumed to have so concealed such merchandise with the intention of committing a wrongful taking.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Any merchant who has reasonable grounds or probable cause to believe that a person has committed or is committing a wrongful taking of merchandise or money from a store, may detain the person in a reasonable manner and for a reasonable length of time for the purpose of investigating whether there has been a wrongful taking of such merchandise or money. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant criminally or civilly liable to the person so detained.
2. The finding of unpurchased merchandise concealed upon the person shall be evidence of reasonable grounds and probable cause for the detention in a reasonable manner and for a reasonable length of time of such person by a merchant, in order that recovery may be effected. Any such reasonable detention shall not be deemed to be unlawful, nor render such merchant criminally or civilly liable.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Stealing where the value is over \$150, or for any third or subsequent offense, is a class C felony, punishable by imprisonment up to 7 years and/or a fine of up to \$5,000 or double the amount, whichever is higher, but not more than \$20,000.
2. Every person who has previously been convicted of stealing two times and who is subsequently convicted of stealing is guilty of a class C felony.

MO. ANN. STAT. (Vernon) §570.010 Chapter definitions.
§570.020 Determination of value.
§570.030 Stealing.
§570.040 Stealing, third offense.
§557.016 Classification of offenses.
§537.0125 Shoplifting; detention of suspects
by merchant--liability presumption.

MONTANA

ELEMENTS OF THE OFFENSE

A person commits theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and has the purpose of depriving the owner of the property.

PROOF

Concealment of merchandise shall not constitute proof of the commission of theft.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A private person may arrest another when:
 - a. he believes on reasonable grounds that an offense is being committed or attempted in his presence;
 - b. a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or
 - c. he is a merchant and has probable cause to believe that the other is committing shoplifting in his store.
2. A merchant may stop and temporarily detain a suspected shoplifter. The merchant in such event:
 - a. shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;
 - b. may demand of the person his name and address and may question the person in a reasonable manner for the purpose of ascertaining whether such person is guilty of shoplifting;
 - c. may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and
 - d. may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

3. Any such detention shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, this section shall not authorize a search other than a search of his coat or other outer garments and any package or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.
4. Such a detention, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant detaining a person in the belief that he is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.
5. For purposes of this section, "shoplifting" means the theft of any goods offered for sale by a store.
6. For purposes of this section, "concealment" means any act or deception done knowingly in or near this store with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts shall be prima facie evidence of concealment:
 - a. concealing merchandise on the person or in a container or otherwise removing such merchandise from full view while upon the premises;
 - b. removing or altering a price tag;
 - c. transferring the merchandise in the store to obtain a lower price than was offered for sale by the merchant; or
 - d. abandoning or disposing of the merchandise in such a manner that the merchant will be deprived of all or part of its value.

NOTE: Portions of this law were held unconstitutional under the Montana Constitution by the Montana Supreme Court in Duran v. Butrey Food, Inc., decided September 2, 1980.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft where the aggregate value exceeds \$150 is punishable by imprisonment for up to 10 years.
2. Theft where the aggregate value is under \$150 is punishable by imprisonment up to 6 months and/or a fine of up to \$150.

MISCELLANEOUS

A city or town council may define shoplifting and punish persons found guilty.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

MONT. REV. CODES ANN.	\$45-6-301	Theft.
	\$46-6-501	Definitions.
	\$46-6-502	When arrest by private person authorized.
	\$46-6-503	Restrictions on arrests by merchants--liability.
	\$46-6-504	Concealment not proof of theft.
	\$7-32-4303	Control of shoplifting.

NEBRASKA

ELEMENTS OF THE OFFENSE

1. A person is guilty of theft if he takes or exercises control over movable property of another with intent to deprive him of it.
2. Whoever steals any money or goods and chattels of any kind which are the property of another of the value of \$300 or more shall be guilty of grand larceny. The total value of the money or property stolen by a series of acts from the same owner shall be considered as stolen in one act, and he shall be punished accordingly.
3. If any person shall steal any money or goods or chattels of any kind of less value than \$300 which are the property of another, he shall be guilty of petit larceny.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Any person not an officer may, without warranty, arrest any person if a petit larceny or a felony has been committed and there is reasonable ground to believe the person arrested is guilty of the offense, and may detain him until a legal warrant can be obtained.
2. A merchant who has probable cause for believing that goods held for sale by the merchant have been unlawfully taken by a person and that he can recover them by taking the person into custody may, for the purpose of attempting to recover the goods, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention by a merchant shall not render him criminally or civilly liable for slander, liable, false arrest, false imprisonment, or unlawful detention.
3. A merchant who causes the arrest of a person for larceny of goods held for sale shall not be criminally or civilly liable for slander, libel, false arrest, or false imprisonment where the merchant has probable cause for believing that the person committed larceny of the goods held for sale.

PEACE OFFICER RIGHTS AND DEFENSES

1. Every peace officer shall arrest and detain any person found violating any law until a legal warrant can be obtained provided that:

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- a. within 24 hours of the arrest of a child under 18, the parent or guardian of the child shall be notified of the arrest; and
 - b. the court in which the child is to appear shall not accept a plea from the child until finding that the parents have been notified or that reasonable efforts to notify them have been made.
2. The provisions for detaining a shoplifting suspect are the same as in section 1 above.
 3. Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

PENALTIES

1. Grand larceny is punishable by imprisonment for 1-7 years. Restitution may also be ordered.
2. For petit larceny, twofold restriction shall be ordered, and a first offense shall be punishable by imprisonment for up to 6 months and/or a fine of up to \$500. Subsequent offense felonies are punishable by imprisonment for 1-2 years and in all cases the offender shall pay the costs of prosecution.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

NEB. REV. STAT.	§28-509	Terms, defined.
	§28-510	Consolidation of theft offenses.
	§28-506	Grand larceny; series of acts; penalty.
	§28-512	Petit larceny defined; penalty.
	§28-518	Grading of theft offenses.
	§29-401	Law violators; arrest by sheriff or other peace officer; child under eighteen years; requirements.
	§29-402	Arrest by person not an officer.
	§29-402.01	Shoplifters; detention; no criminal or civil liability.
	§29-402.02	Shoplifters; peace officer; arrest without warrant.
	§29-402.03	Shoplifters; arrest; merchant or employee not liable.

NEVADA

ELEMENTS OF THE OFFENSE

1. Every person who feloniously steals property of another of a value of \$100 or more is guilty of grand larceny.
2. Every person who steals the property of another under the value of \$100 commits petit larceny and is guilty of a misdemeanor.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Any merchant may request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. No merchant shall be criminally or civilly liable for having made such a request.
2. Any merchant who has reason to believe that merchandise has been wrongfully taken by an individual and that he can recover such merchandise by taking him into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention take him into custody and detain him, on the premises, in a reasonable manner and for a reasonable length of time. Such detention shall not render the merchant criminally or civilly liable for arrest, false imprisonment, slander or unlawful detention unless such detention is unreasonable under all the circumstances.
3. No merchant shall be entitled to immunity unless there is displayed in a conspicuous place on his premises a notice about the merchant's right to detain and the liability of minors, in boldface type clearly legible and in a form described in the statute. The notice shall be prepared and supplied on demand by the superintendent of the state printing division, who may charge a fee for each copy supplied.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Grand larceny is punishable by imprisonment for 1-10 years and a fine of up to \$10,000.
2. Petit larceny is a misdemeanor, punishable by imprisonment up to 6 months and/or a fine of up to \$500.
3. An adult who steals merchandise from a merchant's premises are civilly liable for the retail value of the merchandise, plus damages of \$100-\$250, costs of suit and reasonable attorneys fees.
4. The parents or guardian of a minor who steals merchandise from a merchant's premises is civilly liable for the retail value of the merchandise plus damages of \$100-\$250, costs of suit and reasonable attorneys fees.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

NEV. REV. STAT.	§205.220	Grand larceny: Definitions; punishment.
	§205.240	Petit larceny; Definition; punishment.
	§598.030	Merchants may request individuals on premises to keep merchandise in full view; detention of individuals to recover merchandise, inform peace officers; immunity of merchant from criminal, civil liability; display of notice.
	§598.033	Civil liability of adult who steals merchandise from merchant's premises.
	§598.035	Civil liability of parent, guardian of minor who steals merchandise from merchant's premises.

NEW HAMPSHIRE

ELEMENTS OF THE OFFENSE

1. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him of it.
2. Whoever, without authority, willfully conceals the merchandise of any store while still upon the premises of such store shall be guilty of a misdemeanor.

PROOF

Merchandise found upon a person shall be prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

No mention.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft where the value is \$100-\$1,000, or where the actor has twice before been convicted of theft where the value is less than \$100, is a class B felony, punishable by imprisonment for 3-1/2 to 7 years and/or a fine of up to \$2,000 or double the amount gained in the felony.
2. Theft where the value is under \$100 is a misdemeanor, punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.H. REV. STAT. ANN.	§637:1	Consolidation.
	§637:2	Definitions.
	§637:11	Penalties.
	§644:17	Concealment of merchandise.
	§651:2	Sentences and limitations.

NEW JERSEY

ELEMENTS OF THE OFFENSE

1. Shoplifting shall consist of any of the following acts:
 - a. for any person purposely to take possession of or carry away merchandise offered for sale by any store with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting it to the use of such person without paying to the merchant the full retail value;
 - b. for any person purposely to conceal upon his person or otherwise merchandise offered for sale by a store with the intention of depriving the merchant of the benefit of the merchandise or converting it to the use of such person without paying the merchant for its value;
 - c. for any person to alter or remove price tags or labels on merchandise offered for sale by any store and to attempt to purchase the merchandise at less than the full retail value with the intention of depriving the merchant of all or some part of its value;
 - d. for any person purposely to transfer between containers any merchandise offered for sale by any store with the intent to deprive the merchant of all or a part of the value of the merchandise; or
 - e. for any person purposely to under-ring with the intention of depriving the merchant of the full retail value of the merchandise.

PROOF

Any person concealing unpurchased merchandise of any store on or outside the premises of the store shall be presumed to have concealed the merchandise with the intention of depriving the merchant of the possession of it without paying the full retail value, and the finding of such merchandise concealed upon the person or among his belongings shall be prima facie evidence of purposeful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

A merchant who has probable cause for believing that a person has willfully concealed unpurchased merchandise and that he can recover the merchandise by taking the person into custody may, for the purpose of attempting to effect recovery, take the person into custody and detain him in a reasonable manner

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for a reasonable time. The taking into custody shall not render the merchant criminally or civilly liable in any manner whatsoever. A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as for merchants.
2. A law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting.

PENALTIES

1. Shoplifting first offense is punishable by a fine of up to \$500.
2. Shoplifting second offense is punishable by a fine of \$100-\$500.
3. Shoplifting third offense is punishable by a fine of \$250-\$1,000 plus at least 30 days imprisonment.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.J. STAT. ANN. §2C: 20-11 Shoplifting (West)

NEW MEXICO

ELEMENTS OF THE OFFENSE

1. Shoplifting consists of one of the following acts:
 - a. willfully taking possession of any merchandise with the intention of converting it without paying for it;
 - b. willfully concealing any merchandise with the intention of converting it without paying for it;
 - c. willfully altering any label or price tag on merchandise with the intent of depriving the merchant of all or some of its value; or
 - d. willfully transferring merchandise between containers with the intention of depriving the merchant of all or some of the value of the merchandise.

PROOF

Any person who willfully conceals merchandise on his person or on the person of another or among his or another's belongings in or near the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his belongings it shall be prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

If any merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise, and that he can recover the merchandise by detaining the person or taking him into custody, the merchant may, for the purpose of attempting to affect a recovery of the merchandise take the person into custody and detain him in a reasonable manner for a reasonable time. Such detention shall not subject the merchant to any criminal or civil liability. Any merchant who causes an arrest for shoplifting shall not be criminally or civilly liable if he has probable cause for believing the person arrested has committed the crime of shoplifting.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as for merchants.
2. Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of shoplifting.

PENALTIES

1. Shoplifting when the value is over \$2,500 is a third degree felony, punishable by imprisonment for 2-10 years and/or a fine of up to \$5,000.
2. Shoplifting when the value is \$100-\$2,500 is a fourth degree felony, punishable by imprisonment for 1-5 years and/or a fine of up to \$5,000.
3. Shoplifting where the value is under \$100 is a petty misdemeanor, punishable by imprisonment for 1-6 months and/or a fine of up to \$100.
4. Any person who has reached the age of majority and who has been convicted of shoplifting may be civilly liable for the retail value of the merchandise, punitive damages of \$100-\$250, costs of the suit and reasonable attorneys fees. However, the merchant shall not be able to recover damages for the retail value of any recovered undamaged merchandise.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.M. STAT. ANN.	§30-16-19	[Shoplifting] definitions.
	§30-16-20	Crime of Shoplifting created.
	§30-16-21	Civil liability of adult shoplifter; penalty.
	§30-16-22	Presumptions created.
	§30-16-23	Reasonable detention.
	§30-1-7	Degrees of felonies.
	§30-1-8	Time limitations for commencing prosecution.
	§31-18-3	Sentencing authority for non-capital felonies; imprisonment and fines.
	§31-19-1	Sentencing authority; misdemeanors; imprisonment and fines.

NEW YORK

ELEMENTS OF THE OFFENSE

1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains, or withholds the property from the owner.
2. Grand larceny in the third degree is larceny where the value of the property is \$250-\$1,500.
3. Petit larceny is larceny where the value is under \$250.

PROOF

No mention.

DEFENSES OF THE SUSPECT

In any prosecution for larceny committed by trespassory taking, it is an affirmative defense that the property was appropriated under a claim of right made in good faith.

MERCHANT RIGHTS AND DEFENSES

1. Any person may arrest another person:
 - a. for a felony when the latter has in fact committed such felony; and
 - b. for any offense when the latter has in fact committed such offense in his presence.
2. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or near a store for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by the merchant, and that the merchant had reasonable grounds to believe that the person detained was committing or attempting to commit larceny in the store. "Reasonable grounds" includes but is not limited to knowledge that a person has concealed possession of unpurchased merchandise of a retail mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Grand larceny in the third degree is a class E felony, punishable by imprisonment for up to 4 years, and/or a fine of up to \$5,000 or double the amount involved, whichever is higher.
2. Petit larceny is a class A misdemeanor, punishable by imprisonment up to 1 year, and/or a fine of up to \$1,000.

MISCELLANEOUS

A new statute regulates the keeping in files of information about thefts committed by children under 16, including rights of the parents to notification, rights to add information to the file, and preventing the contents of the file from being divulged to consumer reporting agencies.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.Y. PENAL LAW (McKinney)	\$155.05	Larceny; defined.
	\$155.10	Larceny; no defense.
	\$155.15	Larceny; defenses.
	\$155.20	Larceny; value of stolen property.
	\$155.25	Petit larceny.
	\$155.30	Grand larceny in the third degree.
	\$155.35	Grand larceny in the second degree.
	\$155.40	Grand larceny in the first degree.
	\$155.45	Larceny; pleading and proof.
N.Y. CRIM. PROC. LAW (McKinney)	\$140.27	Arrest without warrant; when and how made; procedure after arrest by peace officer other than police officer.
N.Y. GEN. BUS. LAW (McKinney)	\$218	Defense of lawful detention.
1980 N.Y. Laws Ch. 161 (amending labor law)	\$215b	Children; adverse information; notification.

NORTH CAROLINA

ELEMENTS OF THE OFFENSE

1. The larceny of property when the value is less than \$400 is a misdemeanor.
2. Whoever without authority willfully conceals the merchandise of any store not purchased by the person, while still on the premises, shall be punished by a fine of up to \$100 and/or imprisonment up to 6 months.
3. Whoever without authority willfully transfers any price tag from merchandise to other merchandise having a higher selling price or marks such goods at a lower price and then presents the merchandise for purchase shall be guilty of a misdemeanor.

PROOF

Goods or merchandise found concealed upon or about the person and which have not been purchased shall be prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

Nothing shall be construed provided that the mere possession of goods or the production by shoppers of improperly priced merchandise for check-out shall constitute prima facie evidence of guilt.

MERCHANT RIGHTS AND DEFENSES

A merchant 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 in a reasonable manner for a reasonable length of time, if in detaining or causing the arrest, the merchant had at that time probable cause to believe that the person committed willful concealment. If the person detained is under 16, the merchant shall make a reasonable effort to notify the parent or guardian during the detention.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Larceny where the value is under \$400 is a misdemeanor punishable by imprisonment for up to 2 years and/or a fine of unspecified amount.

2. Willful concealment is a misdemeanor punishable by a fine of up to \$100 and/or imprisonment up to 6 months.
3. Transferring price tags, etc., is a misdemeanor punishable by a fine of up to \$100 and/or imprisonment up to 6 months.
4. When personal property is wrongfully taken and carried away from the owner or person in lawful possession of the property without his consent and with the intent to deprive him permanently of it, a right of action arises for recovery of actual and punitive damages from any person who has or has had possession of the property knowing it to be stolen.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.C. GEN. STAT.	§14-72	Larceny of property; receiving stolen goods or possessing stolen goods not exceeding \$400 in value.
	§14-72.1	Concealment of merchandise in mercantile establishments.
	§14-2	Punishment of felonies.
	§99A-1	Recovery of damages for interference with property rights.

NORTH DAKOTA

ELEMENTS OF THE OFFENSE

A person is guilty of theft if he knowingly takes or exercises unauthorized control over the property of another with intent to deprive the owner of it.

PROOF

Any person concealing upon his person or among his or another's belongings unpurchased merchandise displayed in a store and removing it to a point beyond the last station for receiving payments in that store shall be prima facie presumed to have the intention of permanently depriving the merchant of the possession of full retail value of the merchandise.

DEFENSES OF THE SUSPECT

It is a defense to a prosecution that the actor honestly believed he had a claim to the property involved which he was entitled to assert in the manner which forms the basis for the charge against him.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who reasonably believes that a person has committed or is committing theft may detain him in or near the store in a reasonable manner and for a reasonable length of time for the following purposes:
 - a. to require the person to identify himself;
 - b. to verify such identification;
 - c. to determine whether he has in his possession unpurchased merchandise and to recover such merchandise; and
 - d. to inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.
2. Any merchant who detains a person shall not be held civilly or criminally liable for any cause of action allegedly arising from such detention.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft where the aggregate value is \$100-\$10,000 is a class C felony, punishable by up to 5 years imprisonment and/or up to a \$5,000 fine.
2. Theft where the aggregate value is \$50-\$100 is a class A misdemeanor, punishable by up to 1 year imprisonment and/or up to a \$1,000 fine.

3. Theft where the aggregate value is under \$50 is a class B misdemeanor, punishable by up to 30 days imprisonment or up to a \$500 fine.
4. An adult who commits theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise plus exemplary damages of up to \$250, costs of suit, and reasonable attorneys fees. The parent or guardian of an unemancipated minor who while living with the parent or guardian commits theft from a merchant shall be civilly liable to the merchant for the retail value plus exemplary damages of up to \$250, costs of suit, and reasonable attorneys fees. A conviction or a plea of guilty is not a prerequisite to the bringing of a suit. A parent or guardian of an unemancipated minor shall not be civilly liable under this section if it is determined by a court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause his parent or guardian to be liable under this section.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

N.D. CENT. CODE	§51-21-01	Definitions.
	§51-21-02	Presumption.
	§51-21-03	Detention of suspect--Procedure.
	§51-21-04	Civil and criminal immunity for acts of detention.
	§51-21-05	Civil remedy against adult shoplifters or the parent of a minor shoplifter.
	§12.1-23-01	Consolidation of theft offenses.
	§12.1-23-02	Theft of property.
	§12.1-23-05	Grading of theft offenses.
	§12.1-23-09	Defenses and proof as to theft and related offenses.
	§12.1-23-10	Definitions for theft and related offenses.
	§12.1-32-01	Classification of offenses--Penalties.
	§12.1-32-02	Sentencing alternatives--Credit for time and custody--Diagnostic testing.

OHIO

ELEMENTS OF THE OFFENSE

No person with the purpose of depriving the owner of property shall knowingly obtain or exert control over it without the consent of the owner or person authorized to give consent. Whoever violates this is guilty of theft.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause to believe that items offered for sale in a store have been unlawfully taken may detain the person in a reasonable manner for a reasonable length of time in or near the store.
2. Such detention may be for the following purposes:
 - a. to recover the property;
 - b. to cause an arrest to be made by a peace officer; or
 - c. to obtain a warrant of arrest.
3. The merchant shall not search the person, search or seize any property belonging to him without his consent, or use undue restraint upon the person detained.

PEACE OFFICER RIGHTS AND DEFENSES

A peace officer may arrest without a warrant any person that he has probable cause to believe has committed unlawful taking in a retail establishment. An arrest under this division shall be made within a reasonable time after the commission of the unlawful taking.

PENALTIES

1. Theft where the value exceeds \$150, or where the offender has previously been convicted of theft, is grand theft, a felony of the fourth degree, punishable by imprisonment for 6 months to 5 years and/or a fine of up to \$2,500.

2. Theft where the value is under \$150 is petty theft, a misdemeanor of the first degree, punishable by imprisonment up to 6 months and/or a fine of up to \$1,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

OHIO REV. CODE ANN. (Page)	§2913.02	Theft.
	[\$2935.04.1]	
	§2935.041	Detention, arrest of shoplifters; Protection of library, museum and archival institution property.

1980 OHIO Laws S. 191, amending OHIO REV. CODE ANN.
§2913.02 (Page), above.

OKLAHOMA

ELEMENTS OF THE OFFENSE

Larceny is the taking of personal property by fraud or stealth with intent to deprive another of the property.

PROOF

Any person concealing unpurchased merchandise of any mercantile establishment, in or near the establishment, shall be presumed to have concealed the merchandise with the intention of committing a wrongful taking. Such concealment or the finding of unpurchased merchandise concealed upon the person or among his belongings shall be conclusive evidence of reasonable grounds and probable cause for detention by a merchant in a reasonable manner and for a reasonable length of time.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause for believing that merchandise held for sale has been unlawfully taken by a person and that he can recover such merchandise by taking the person into custody may, for the purpose of effecting recovery, take the person into custody and detain him in a reasonable manner for a reasonable length of time, until a duly authorized officer can be summoned. Such reasonable detention shall not be deemed to be unlawful, nor render the merchant criminally or civilly liable.
2. Such detention may be for the following purposes:
 - a. conducting an investigation, including reasonable interrogation of the detained person, as to whether there has been a wrongful taking;
 - b. informing the police of the facts relevant to such detention;
 - c. performing a reasonable search of the detained person and his belongings when it appears that the merchandise or money may otherwise be lost; and
 - d. recovering the merchandise or money believed to have been taken wrongfully. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant criminally or civilly liable to the person detained.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as for merchants.

2. A peace officer may arrest without warrant any person he has probable cause for believing has committed larceny of merchandise held for sale in retail or wholesale establishments, when the arrest is made in a reasonable manner.

PENALTIES

Larceny of goods held for sale in retail or wholesale establishments shall be punishable as follows:

1. For the first conviction, where the value is under \$20, punishment shall be imprisonment up to 30 days and a fine of up to \$100.
2. A second such conviction is punishable by imprisonment for 30 days to 1 year and a fine up to \$1,000.
3. A third or subsequent such conviction is punishable by imprisonment for 2-5 years.
4. Where the value exceeds \$20, punishment shall be imprisonment for 1-5 years.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

OKLA. STAT. ANN. tit. 22 (West)	§1341	Definitions
	§1343	Detention of suspect--Purposes.
	§1344	Concealing unpurchased merchandise--Presumption.
OKLA. STAT. ANN. tit. 21 (West)	§1701	Larceny defined.
	§1731	Larceny of merchandise from retailer or wholesaler--Punishment--recidivists.

OREGON

ELEMENTS OF THE OFFENSE

A person commits theft when, with intent to deprive another of property or to appropriate property to himself or a third person, he takes, appropriates, obtains or withholds such property from an owner.

PROOF

No mention.

DEFENSES OF THE SUSPECT

In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, where he was unaware that the property was that of another, or he reasonably believed that he was entitled to the property involved or had a right to acquire or dispose of it as he did.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause for believing that a person has committed theft of property of a store may detain and interrogate that person in a reasonable manner and for a reasonable time.
2. If a merchant with probable cause for believing that a person has committed theft of property of the store detains and interrogates the person, and the person brings against the merchant any civil or criminal action based upon the detention and interrogation, such probable cause shall be a defense to the action, if the action were done in a reasonable manner and for a reasonable time.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Theft where the aggregate value is over \$200 is theft in the first degree, a class C felony punishable by imprisonment for up to 5 years and/or a fine of up to \$2,500, or double the amount involved, whichever is higher.
2. Theft where the aggregate value is under \$200 is theft in the second degree, a class A misdemeanor punishable by imprisonment for up to 1 year and/or a fine of up to \$1,000.
3. An adult or emancipated minor who takes merchandise without consent of the owner and with the intention of converting it to his own use without paying the purchase price, or who alters the price indicia of the merchandise, shall be civilly liable to the owner for actual damages. The penalty to the owner shall not exceed the lesser of the retail value or \$500, plus an additional penalty to the owner of \$100-\$250.

4. The parents having custody of a minor are liable for the minor's actions in the manner described in section 3 above.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

OR. REV. STAT.	§30.870	Definitions for ORS 30.870 and 30.875.
	§30-875	Civil damages for shoplifting; court jurisdiction; assignment of judgments.
	§164.015	"Theft" described.
	§164.025	Consolidation of theft offenses; pleading and proof.
	§164.035	Defenses to theft.
	§164.045	Theft in the second degree.
	§164.055	Theft in the first degree.
	§131.655	Detention and interrogation of persons suspected of theft committed in a store; probable cause.

PENNSYLVANIA

ELEMENTS OF THE OFFENSE

1. A person is guilty of retail theft if he:
 - a. takes possession of or carries away any merchandise offered for sale by any store with the intention of depriving the merchant of possession without paying the full retail value;
 - b. alters or removes any label or price tag on merchandise and attempts to purchase the merchandise personally or in consort with another at less than full retail value with intention of depriving the merchant of the full retail value;
 - c. transfers merchandise between containers with intent to deprive the merchant of all or part of the retail value; or
 - d. under-rings with the intention of depriving the merchant of the full retail value of the merchandise.

PROOF

1. Any person intentionally concealing unpurchased property of a store, in or near such store, shall be prima facie presumed to have so concealed such property with the intention of depriving the merchant of possession of it without paying the full retail value, and the finding of such unpurchased property concealed upon the person or among his or another's belongings shall be prima facie evidence of intentional concealment.
2. To the extent that there is other competent evidence to substantiate the offense, the conviction shall not be avoided because the prosecution cannot produce the stolen merchandise.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause to believe that retail theft has occurred or is occurring on or about a store and who has probable cause to believe that a specific person has committed or is committing the retail theft may detain the suspect in a reasonable manner for a reasonable time on or off the premises for the following purposes:
 - a. to require the suspect to identify himself;
 - b. to verify such identification;

- c. to determine whether such suspect has in his possession unpurchased merchandise taken from the establishment, and, if so, to recover such merchandise;
 - d. to inform a peace officer; or
 - e. to institute criminal proceedings against the suspect.
2. Such detention shall not impose civil or criminal liability upon the merchant.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Retail theft constitutes a:
 - a. summary offense when it is a first offense and the aggregate value is under \$150, punishable by imprisonment for up to 90 days and/or a fine up to \$300;
 - b. misdemeanor of the second degree when it is a second offense and the aggregate value is under \$150, punishable by imprisonment up to 2 years and/or a fine up to \$500;
 - c. misdemeanor of the first degree when the aggregate value is over \$150, punishable by imprisonment up to 5 years and/or a fine up to \$10,000; or
 - d. felony of the third degree when the offense is a third or subsequent offense, punishable by imprisonment up to 7 years and/or a fine up to \$15,000.
2. No justice of the peace or other magistrate shall have the power to reduce any other charge of theft to a charge of retail theft.
3. The offender may also be sentenced to make restitution.

MISCELLANEOUS

Persons over 16 tried for retail theft shall be fingerprinted and the prints will be used to determine previous retail theft history.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

18 PA. CONS. STAT. ANN. (Purdon)	§3929	Retail theft.
	§1101	Fines.
	§1103	Sentence of imprisonment for felony.
	§1104	Sentence of imprisonment for misdemeanor.
	§1106	Restitution for injuries to person or property.

RHODE ISLAND

ELEMENTS OF THE OFFENSE

Whoever shall willfully take possession of any merchandise offered for sale by a store, or shall willfully conceal upon his or another's person or belongings unpurchased merchandise of a store in or near the store with the intention of converting it to his own use without paying the purchase price, or shall alter a label or price tag, or transfer goods from one container to another with the intention of depriving the owner of all or some part of the value shall be guilty of shoplifting.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

No mention.

PEACE OFFICER RIGHTS AND DEFENSES

Any person about whom there is reasonable grounds to believe has committed or is committing shoplifting shall be subject to detention by a peace officer, whether such person is abroad or in any public place.

PENALTIES

Shoplifting shall be deemed a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for 1 year.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

R.I. GEN. LAWS	§11-41-20	Shoplifting.
	§11-41-21	Shoplifting -- enforcement.
	§11-41-22	Severability.

SOUTH CAROLINA

ELEMENTS OF THE OFFENSE

1. A person is guilty of shoplifting if he:
 - a. takes merchandise offered for sale by a store with the intention of depriving the merchant of possession of the merchandise without paying the full retail value;
 - b. alters or transfers any price tag or label on merchandise offered for sale in a store and attempts to purchase such merchandise personally or in consort with another at less than full retail value, with the intention of depriving the merchant of the full retail value of the merchandise; or
 - c. transfers merchandise between containers with intent to deprive the merchant of full retail value of the merchandise.

PROOF

Any person willfully concealing unpurchased goods or merchandise of any store, in or near the store, shall be prima facie presumed to have concealed the article with the intention of converting it to his own use without paying the purchase price. The finding of such unpurchased goods or merchandise concealed on the person or his or another's belongings shall be prima facie evidence of willful concealment.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

In any action brought by reason of having been delayed by a merchant on or near the premises of such mercantile establishment for the purpose of investigation concerning the ownership of any merchandise, it shall be a defense to such action if:

- a. the person was delayed in a reasonable manner and for a reasonable time to permit such investigation; and
- b. reasonable cause existed to believe that the person delayed had committed shoplifting.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

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PENALTIES

1. Shoplifting is a misdemeanor.
2. Shoplifting for a first offense where the value is under \$50 is punishable by imprisonment for up to 30 days or a fine of up to \$100.
3. Shoplifting for a first offense where the value exceeds \$50 is punishable by imprisonment for up to 6 months and/or a fine of up to \$600.
4. Shoplifting for any second offense is punishable by imprisonment for up to 1 year and a fine of up to \$1,000.
5. Shoplifting for a third or subsequent offense is punishable by imprisonment for up to 5 years.

MISCELLANEOUS

A first offense shoplifting prosecution or second offense resulting in conviction shall be reported to the South Carolina Records Commission which shall keep a record so that any law enforcement agency can inquire into a defendant's prior record.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

S.C. CODE	§16-13-105	Definitions as to shoplifting and similar offenses.
	§16-13-110	Shoplifting.
	§16-13-111	Reports of shoplifting convictions.
	§16-13-120	Shoplifting; presumptions from concealment of unpurchased goods.
	§16-13-130	Sections 16-13-110 and 16-13-120 are cumulative.
	§16-13-140	Defense to action for delay to investigate ownership of merchandise.

SOUTH DAKOTA

ELEMENTS OF THE OFFENSE

Any person who takes or exercises control over property of another with the intent to deprive him of it is guilty of theft.

PROOF

No mention.

DEFENSES OF THE SUSPECT

1. It is an affirmative defense to a prosecution for theft that the actor:
 - a. was unaware that the property taken was that of another; or
 - b. acted under an honest and reasonable claim of right to the property involved or that he had a right to acquire or dispose of it as he did.

MERCHANT RIGHTS AND DEFENSES

Any person who intentionally conceals property offered for sale by a store, whether on his person or otherwise, in or near the store, may be detained in a reasonable manner for a reasonable length of time by the merchant until the arrival of a law enforcement officer who shall have been promptly notified. Such detention shall not render the merchant or merchant's employee criminally or civilly liable for false arrest, false prosecution, or unlawful detention, provided that this exemption shall not apply if the merchant refuses to sign a formal complaint and testify at any legal proceedings if requested to do so by the prosecuting attorney in any prosecutions later arising out of the matter.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Theft where the value is over \$200 is grand theft, a class 4 felony, punishable by up to 10 years imprisonment and a fine of up to \$10,000.
2. Theft where the value is \$100-\$200 is petty theft in the first degree, a class 1 misdemeanor, punishable by imprisonment up to 1 year and/or a fine of up to \$1,000.
3. Theft where the value is under \$100 is petty theft in the second degree, a class 2 misdemeanor, punishable by imprisonment up to 30 days and/or a fine up to \$100.

4. Return of the property before the indictment or information is filed may be considered in mitigation of punishment, but is not a defense to the crime.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

S.D. CODIFIED LAWS ANN.	§22-30A-1	Theft defined.
	§22-30A-10.1	Return of appropriated property considered in mitigation of punishment—Return not a defense.
	§22-30A-15	Theft as a single offense incorporating previous separate offenses—Terms used in alleging theft.
	§22-30A-17	Grand theft and petty theft distinguished—degrees of petty theft.
	§22-30A-19	Concealment by shoplifter as cause for detention until arrival of police—Merchant not liable except upon refusal to prosecute.
	§22-6-1	Felony classes and penalties.
	§22-6-2	Misdemeanor classes and penalties.

TENNESSEE

ELEMENTS OF THE OFFENSE

1. Any person who shall willfully take possession of any goods, wares or merchandise not exceeding the value of \$100 offered for sale by any store with the intention of converting the same to his own use without paying the purchase price shall be guilty of the offense of shoplifting.
2. Any person found guilty of shoplifting merchandise over the value of \$100 shall be punished as in the case of grand larceny.

PROOF

Any person willfully concealing unpurchased goods or merchandise of any store or mercantile establishment, either on the premises or outside the premises, shall be prima facie presumed to have concealed the article with the intention of converting it to his own use without paying the purchase price. The finding of such unpurchased goods or merchandise on the person or among his or another's belongings shall also be prima facie evidence of willful concealment on the part of the person concealing the goods.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant who has probable cause for believing that goods held for sale have been unlawfully taken and that he can recover them by taking the person into custody may, for the purpose of attempting to effect recovery, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention shall not render the merchant criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.
2. A merchant who causes an arrest for shoplifting shall not be criminally or civilly liable for false arrest or false imprisonment where he has probable cause for believing that the person arrested committed larceny of goods held for sale.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as section 1 above.
2. Any peace officer may arrest without warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments.

PENALTIES

1. Shoplifting first offense where the value is under \$100 is punishable by a fine up to \$300 and/or imprisonment up to 6 months.
2. Shoplifting second offense where the value is under \$100 is punishable by a fine of up to \$500 and/or imprisonment up to 1 year.
3. Shoplifting third offense where the value is under \$100 is punishable by imprisonment for 1-5 years.
4. Shoplifting where the value is over \$100 is punishable as in the case of grand larceny: imprisonment for 3-10 years.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

TENN. CODE ANN.	§39-4235	Shoplifting--Penalty.
	§39-4236	Concealment of unpurchased goods on or outside premises of store--Presumptions.
	§40-824	Larceny of goods held for sale--Detention of person in attempt to recover goods--Nonliability.
	§40-825	Larceny in retail or wholesale establishment--Arrest by police officer without warrant.
	§40-826	Larceny of goods held for sale--Merchant or employee causing arrest of person--Nonliability for false arrest or false imprisonment.

TEXAS

ELEMENTS OF THE OFFENSE

A person commits theft if, with intent to deprive the owner of property, he obtains or exercises control over property without the owner's effective consent.

PROOF

Evidence that the actor has previously participated in recent transactions other than, but similar to, that upon which the prosecution is based is admissible for the purpose of showing knowledge or intent, and the issues of knowledge or intent are raised by the actor's plea of not guilty.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A person reasonably believing another has stolen or is attempting to steal property is privileged to detain the person in a reasonable manner and for a reasonable period of time for the purpose of investigating ownership of the property.
2. A peace officer or any other person may without a warrant arrest an offender when the offense is committed within his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

PEACE OFFICER RIGHTS AND DEFENSES

A peace officer may arrest an offender for any offense committed in his presence or within his view.

PENALTIES

1. Theft where the aggregate value is \$200-\$10,000, or where it is a third or subsequent conviction, is a felony of the third degree, punishable by imprisonment for 2-10 years and/or a fine of up to \$5,000.
2. Theft where the aggregate value is \$20-\$200 is a class A misdemeanor, punishable by imprisonment up to 1 year and/or a fine up to \$2,000.
3. Theft where the aggregate value is \$5-\$20, or where it is a second offense and the value is under \$5, is a class B misdemeanor, punishable by imprisonment up to 180 days and/or a fine up to \$1,000.
4. Theft where the aggregate value is under \$5 is a class C misdemeanor, punishable by a fine up to \$200.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

TEX. PENAL CODE ANN. tit. 7 (Vernon) §31.01 Definitions
§31.02 Consolidation of theft offenses.
§31.03 Theft.

TEX. PENAL CODE ANN. tit. 3 (Vernon) §12.21 Class A Misdemeanor.
§12.22 Class B Misdemeanor.
§12.23 Class C Misdemeanor.
§12.33 Second-Degree felony punishment.
§12.34 Third-Degree felony punishment.

TEX. REV. CIV. STAT. ANN. art. 1d (Vernon) Offense within view.

TEX. CODE CRIM. PROC. ANN. art 14.01 (Vernon) Privilege to investigate theft.

UTAH

ELEMENTS OF THE OFFENSE

1. A person commits the offense of retail theft when he knowingly:
 - a. takes, conceals, or carries away merchandise offered for sale in a store with the intention of retaining such merchandise or depriving the merchant of its possession without paying the retail value;
 - b. alters or removes any label or price tag of merchandise in a store and attempts to purchase such merchandise at less than retail value with the intention of depriving the merchant of its retail value;
 - c. transfers merchandise between containers with the intention of depriving the merchant of the retail value; or
 - d. under-rings with the intention of depriving the merchant of the retail value of the merchandise.

PROOF

Photographs of merchandise may be used as evidence in the same manner as the merchandise itself.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. Any merchant who has probable cause to believe that a person has committed retail theft may detain the person, on or off the store premises in a reasonable manner for a reasonable length of time, for the following purposes:
 - a. to make reasonable inquiry as to whether the person has in his possession unpurchased merchandise and to make reasonable investigation of the ownership of the merchandise;
 - b. to request and verify identification;
 - c. to make a reasonable request to place in full view merchandise which the merchant has reason to believe he may have removed from its place of display;
 - d. to inform a peace officer of the detention and surrender the person to his custody; and
 - e. in the case of a minor, to inform a peace officer, the parents or guardian of the person of the detention and surrender custody of the minor to that person.

NOTE: A merchant may make such detention off the premises only if pursuant to an immediate pursuit of the person he suspects committed retail theft.

2. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by a merchant, it shall be a defense to such action that the merchant had probable cause to believe that the person committed retail theft and that the merchant acted reasonably under all circumstances.
3. A merchant who has reasonable and probable grounds for believing that goods held for sale have been taken by a person with intent to steal may, for the purpose of investigating such unlawful act and attempting to effect a recovery of said goods, detain the person in a reasonable manner for a reasonable length of time.
4. A merchant who causes detention or arrest of a person for larceny of goods held for sale shall not be criminally or civilly liable where he has reasonable and probable grounds for believing that the person detained or arrested committed larceny of goods held for sale.
5. Any merchant may request any individual on his premises to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere. No merchant shall be criminally or civilly liable for having made such a request.
6. Any merchant who has reason to believe that merchandise has been wrongfully taken by an individual and that he can recover the merchandise by taking him into custody and detaining him may, for the purpose of effecting recovery or informing a peace officer, take the individual into custody and detain him, on the premises, in a reasonable manner and for a reasonable length of time. Such detention shall not render the merchant criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention, unless it is unreasonable under all of the circumstances.

PEACE OFFICER RIGHTS AND DEFENSES

1. Same as sections 3 and 4 above.
2. A peace officer may arrest, without warrant, any person who he has reasonable grounds to believe has committed larceny of goods held for sale. A charge of larceny of goods made to a peace officer by a merchant shall constitute a reasonable ground for such arrest, and the police officer acting bona fide shall be relieved from any civil or criminal liability provided, however, the person making such charge shall in no case be a minor.

PENALTIES

1. Retail theft where the value exceeds \$1,000 is a felony of the second degree, punishable by imprisonment for 1-15 years and/or a fine up to \$10,000.

2. Retail theft where the value is \$250-\$1,000, or where the actor has twice before been convicted of theft of property or services where the value is under \$250, is a felony of the third degree, punishable by imprisonment up to 5 years and/or a fine up to \$5,000.
3. Retail theft where the value is \$100-\$250 is a class A misdemeanor, punishable by imprisonment up to 1 year and/or a fine up to \$1,000.
4. Retail theft where the value is under \$100 is a class B misdemeanor, punishable by imprisonment up to 6 months and/or a fine up to \$299.
5. An adult who wrongfully takes merchandise from a merchant's premises is civilly liable for the retail value of the merchandise plus court costs and reasonable attorneys fees.
6. Any minor and the parents or guardian of the minor who wrongfully takes merchandise from a store are jointly and severally liable for the retail value of the merchandise plus court costs and reasonable attorneys fees. No parent or guardian shall be so liable if he made reasonable effort to restrain the wrongful taking and did not fail to report it to the store or the proper law enforcement agency after he knew of the taking. No report shall be required for a parent or guardian if the minor was apprehended by a police officer or the merchant involved in order to avoid liability. The court may award the prevailing party reasonable attorneys fees for instituting or defending such action.
7. The parents or guardian of a minor are liable for damages not to exceed \$1,000 when such minor takes the property of another. No parent or guardian shall be liable if he made a reasonable effort to supervise and direct the minor, or in the event he knew in advance of the taking and made a reasonable effort to restrain it.
8. Nothing in this act shall be construed to preclude the court in a proper case from assessing exemplary damages against any or all defendants.

MISCELLANEOUS

Any arrest made for retail theft shall be reported by the appropriate jurisdiction to the state bureau of criminal identification which shall keep a record together with the disposition of the case for purposes of inquiry by any law enforcement agency.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

UTAH CODE ANN.	§76-6-601	Definitions.
	§76-6-602	Retail theft, acts constituting.
	§76-6-603	Detention of suspected violator by merchant--Purposes.
	§76-6-604	Defense to action by person detained.
	§76-6-605	Photographs of merchandise allegedly taken or converted--Admissibility--Procedure.
	§76-6-606	Penalty.
	§76-6-607	Report of arrest to state bureau.
	§77-13-30	Detaining person suspected of shoplifting--Persons authorized.
	§77-13-32	Person causing detention or arrest of person suspected of shoplifting--civil and criminal immunity.
	§78-11-14	Shoplifting--Definitions.
	§78-11-15	Shoplifting--Liability.
	§78-11-16	Shoplifting--Minors--Parents' and Guardians' liability--Exception.
	§78-11-17	Shoplifting--Authority to search.
	§78-11-18	Shoplifting--Authority to detain.
	§78-11-19	Shoplifting--Exemplary damages.
	§78-11-20	Property damage caused by minor--liability of parent or guardian.
	§78-11-21	Property damage caused by minor--When parent or guardian not liable.

VERMONT

ELEMENTS OF THE OFFENSE

1. A person commits the offense of retail theft when he, with intent of depriving the merchant wrongfully of the lawful possession of his merchandise:
 - a. takes and carries away or aids and abets the carrying away of merchandise from a retail mercantile establishment without paying the retail value of the merchandise;
 - b. alters or removes a label or price tag from merchandise and purchases the merchandise for less than its retail value; or
 - c. transfers or aids and abets the transfers of merchandise between containers and purchases the merchandise for less than its retail value.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

1. A merchant has the right to request in a reasonable manner any person at his store to place and keep in full view any merchandise which the person has removed from its place of display, for any purpose. Notice of this request shall be conspicuously posted.
2. Any merchant who has reasonable cause to believe that a person has committed or attempted to commit retail theft may detain the person on or in the immediate vicinity of the premises of a retail mercantile establishment, affording the person the opportunity to be detained out of public view if available, in a reasonable manner which may include a reasonable use of force and for a reasonable length of time for any of the following purposes:
 - a. to request and verify identifications;
 - b. to make reasonable inquiry as to whether the person has unpurchased merchandise, and to recover such merchandise;
 - c. to inform a law enforcement officer, and to surrender the person to him; or

- d. in the case of a minor, to inform a law enforcement officer and the parents or guardian, and to surrender custody of the minor to such person.
- 3. Any person so detained shall have the right to make one local phone call of reasonable duration. The merchant shall inform the person of this right.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

- 1. Retail theft first offense where the value is under \$100 is punishable by a fine up to \$300 and/or imprisonment up to 6 months.
- 2. Retail theft, second or subsequent offense where the value is under \$100, is punishable by a fine of up to \$500 and/or imprisonment up to 2 years.
- 3. Retail theft where the value exceeds \$100 is punishable by a fine up to \$5,000 and/or imprisonment up to 10 years.
- 4. Restitution of the retail value may be ordered where the merchandise is damaged or not recoverable.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

VT. STAT. ANN. tit. 13	§2573	Definitions.
	§2574	Right of merchant to request merchandise to be kept in view.
	§2575	Offense of retail theft.
	§2576	Detention.
	§2577	Penalty.
	§2578	Restitution.

VIRGINIA

ELEMENTS OF THE OFFENSE

- 1. Whoever, without authority, with the intention of converting merchandise to his own use without paying the full purchase price, or of defrauding the owner of the value of the merchandise, shall be guilty of larceny if he:
 - a. willfully conceals or takes merchandise of any store;
 - b. alters the price tag on merchandise or transfers goods from one container to another; or
 - c. aids another in the above acts.

PROOF

- 1. Willful concealment of merchandise, while still on the store premises, shall be prima facie evidence of an intent to convert and defraud the owner of the value of the merchandise.
- 2. Photographs of the merchandise may be used at a trial in place of the actual merchandise.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

- 1. A merchant who has probable cause to believe that a person has shoplifted may detain such person for a period not to exceed 1 hour pending arrival of a law enforcement officer.
- 2. A merchant who causes the arrest or detention of any person for shoplifting shall not be held civilly liable for unlawful detention, if such detention does not exceed 1 hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery, whether such detention or arrest takes place on the premises or after close pursuit, provided that the merchant had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment.

PEACE OFFICER RIGHTS AND DEFENSES

Peace officers may arrest without a warrant any person who commits any crime in the presence of such officer and any person he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence. Arrests may be made without warrant for an alleged misdemeanor not committed in their presence involving shoplifting when such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense.

PENALTIES

1. Larceny from a store first offense when the value is under \$200 is a class 1 misdemeanor, punishable by imprisonment up to 1 year and/or a fine up to \$100.
2. Larceny from a store second offense when the value is under \$200 is punishable by 30 days to 1 year imprisonment.
3. Larceny from a store, third or subsequent offense, when the value is under \$200, is a class 6 felony, punishable by either 1-5 years imprisonment, or by imprisonment up to 1 year and/or a fine up to \$1,000.
4. Larceny from a store where the value exceeds \$200 is a class 5 felony, punishable either by imprisonment for 1-10 years, or imprisonment for up to 1 year and a fine up to \$1,000.
5. Any person convicted of larceny from a store shall be civilly liable to the owner for the value of goods not recovered, and for costs of the suit, such costs not to exceed \$250.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

VA. CODE	§18.2-103	Concealing or taking possession of merchandise; altering price tags; transferring goods from one container to another; counseling, etc., another in performance of such acts.
	§18.2-104	Punishment for conviction under 18.2-103.
	§18.2-104.1	Liability upon conviction under 18.2-103.
	§18.2-105	Exemption from civil liability in connection with arrest or detention of suspected person.
	§18.2-105.1	Detention of suspected shoplifters.
	§18.2-106	"Agents of the merchant" defined.
	§18.2-10	Punishment for conviction of felony.
	§18.2-11	Punishment for conviction of misdemeanor.
	§19.2-270.1	Use of photographs as evidence in certain larceny prosecutions.
	§19.2-81	Arrest without warrant authorized in certain cases.

WASHINGTON

ELEMENTS OF THE OFFENSE

Theft means to wrongfully obtain or exert unauthorized control over the property of another or its value with intent to deprive him of the property.

PROOF

No mention.

DEFENSES OF THE SUSPECT

In any prosecution for theft, it shall be a sufficient defense that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable.

MERCHANT RIGHTS AND DEFENSES

1. In any civil or criminal action brought by reason of any person having been detained in or near a store for questioning as to the ownership of merchandise, it shall be a defense that he was detained in a reasonable manner for not more than a reasonable time to permit such questioning by the merchant, and that the merchant had reasonable grounds to believe that the person detained was committing or attempting to commit shoplifting. Reasonable grounds shall include, but not be limited to, knowledge that a person had concealed unpurchased merchandise, and reasonable time shall mean the time necessary to permit the person detained to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.
2. The use of force upon the person of another is not unlawful whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody.

PEACE OFFICER RIGHTS AND DEFENSES

Same as section 1 for merchants.

PENALTIES

1. Theft where the value is \$250-\$1,500 is in the second degree, which is a class C felony punishable by imprisonment up to 5 years and/or a fine up to \$5,000.
2. Theft where the value is under \$250 is in the third degree, which is a gross misdemeanor punishable by imprisonment up to 1 year and/or a fine up to \$1,000.

3. An adult or emancipated minor who takes merchandise from a store without consent of the owner or seller, with the intention of converting it to his own use without having paid the purchase price shall be liable, in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value not to exceed \$1,000, plus an additional penalty of \$100-\$200.
4. The parent or guardian of an unemancipated minor shall be similarly liable, not to exceed \$500 plus a penalty of \$100-\$200.

NOTE: A criminal shoplifting conviction shall not be a condition precedent to maintenance of a civil action.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

WASH. REV. CODE ANN.	§9A.56.010	Definitions.
	§9A.56.020	Theft-Detention, defense.
	§9A.56.030	Theft in the first degree.
	§9A.56.040	Theft in the second degree.
	§9A.56.050	Theft in the third degree.
	§9A.20.020	Authorized sentences of offenders.
	§4.24.220	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
	§4.24.230	Liability for conversion of goods of merchandise from store or mercantile establishment--Adults, minors--Parents, guardians.
	§9A.16.080	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
	§9A.16.020	Use of force--when lawful.

WEST VIRGINIA

ELEMENTS OF THE OFFENSE

1. Shoplifting consists of any of the following acts:
 - a. for any person willfully to take possession of any merchandise offered for sale by any store with the intention of converting it to his use without paying the owner for its value;
 - b. for any person willfully to conceal upon his person or otherwise any merchandise with the intention of converting the same to his use without paying the owner for its value;
 - c. for any person willfully to alter any label or price tag with the intention of depriving the owner of all or some part of its value; or
 - d. for any person willfully to transfer merchandise between containers with intent to deprive the owner of all or some part of the value of the merchandise.

PROOF

If any person shall willfully conceal upon his person or otherwise merchandise belonging to any store and for which he has not paid the purchase price in full, either upon or away from the store premises, there shall be a prima facie presumption that he concealed such merchandise with the intent of converting it to his own use within the meaning of the shoplifting definition.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

Any owner of merchandise who has reasonable grounds to believe that a person has committed shoplifting may detain that person in a reasonable manner for a reasonable length of time not to exceed 30 minutes, for the purpose of investigating whether or not the person has committed or is attempting to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner liable to the person detained.

PENALTIES

1. Shoplifting first offense where the value is under \$50 is a misdemeanor, punishable by imprisonment up to 90 days and/or a fine up to \$300.

2. Shoplifting second offense where the value is less than \$50 is a misdemeanor punishable by imprisonment for 30-180 days and/or a fine up to \$500.
3. Shoplifting third offense, regardless of value, is a felony punishable by imprisonment for 1-10 years.
4. Shoplifting where the value exceeds \$50 is a felony, punishable by imprisonment for 1-10 years.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

W. VA. CODE	§61-3A-1	Definitions.
	§61-3A-2	Penalties; process; compensation of officers and witnesses.
	§61-3A-3	Concealment of merchandise.
	§61-3A-4	Shoplifting to constitute breach of peace; detention.

WISCONSIN

ELEMENTS OF THE OFFENSE

1. Whoever intentionally alters indicia of price or value of merchandise or who takes such merchandise held for resale by a merchant without his consent, and with intent to deprive the merchant permanently of possession or the full purchase price of such merchandise may be penalized for shoplifting.
2. Whoever intentionally removes a shopping cart or stroller from either the shopping area or parking area adjacent to it without authorization of the owner and with intent to deprive him permanently of possession shall forfeit an amount not to exceed \$50.

PROOF

Intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of such merchandise without paying the purchase price. The discovery of unpurchased merchandise concealed on the person or among his or another's belongings is evidence of intentional concealment on the part of the person concealing the goods.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

A merchant who has probable cause for believing that a person has shoplifted in his presence may detain such person in a reasonable manner for a reasonable length of time to deliver him to a peace officer, or to his parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he shall not be interrogated or searched against his will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this section entitles the merchant effecting the detention to make the same defense in any action as is available to a peace officer making an arrest in the line of duty.

PEACE OFFICER RIGHTS AND DEFENSES

No mention.

PENALTIES

1. Shoplifting where the value is \$500-\$2,500 is a class E felony, punishable by imprisonment up to 2 years and/or a fine up to \$10,000.

2. Shoplifting where the value is less than \$500 is a class A misdemeanor, punishable by imprisonment up to 9 months or a fine up to \$10,000.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

WIS. STAT. ANN. (West)	§943.50	Shoplifting.
	§943.55	Removal of shopping cart.
	§943.50	Classification of felonies.
	§939.51	Classification of misdemeanors.

WYOMING

ELEMENTS OF THE OFFENSE

Any person who willfully conceals or takes possession of goods from a store without the knowledge or consent of the owner and with intent to convert the goods to his own use without paying the purchase price is guilty of shoplifting.

PROOF

No mention.

DEFENSES OF THE SUSPECT

No mention.

MERCHANT RIGHTS AND DEFENSES

Any merchant who has reasonable cause for believing that a person has committed shoplifting may detain and interrogate that person in a reasonable manner and for a reasonable time. If such person brings against the merchant a civil criminal action [sic] for slander, false arrest, false imprisonment, assault, battery, or wrongful detention based upon the detention, such reasonable cause shall be a defense to the action if the detention and interrogation were done in a reasonable manner and for a reasonable time.

PEACE OFFICER RIGHTS AND DEFENSES

Same as for merchants.

PENALTIES

1. Shoplifting where the value is under \$100 is a misdemeanor punishable by imprisonment up to 6 months and/or a fine up to \$100. The shoplifter may also be required to make restitution to the victim.
2. Shoplifting where the value is over \$100 is a felony punishable by imprisonment up to 10 years.

LISTING OF STATE STATUTES RELEVANT TO SHOPLIFTING

WYO STAT.	§6-7-401	Defined.
	§6-7-402	Reasonable detention and interrogation of persons suspected.
	§6-7-403	Reasonable cause a defense against action brought by person detained.
	§6-7-404	Penalty.

APPLICATION OF THE MODEL CODE
TO THE JUVENILE JUSTICE SYSTEM

In several sections of the Model Code, and in the COMMENTS which follow them, special references are made to juveniles and their parents or guardians. Distinctions are drawn between adult and juvenile shoplifters, in terms of their arrest, prosecution, trial and final disposition. The reasons for these differences are not always understood clearly, particularly in view of the very extensive diversity in the language of state codes. In order to implement the Model Code correctly and to be fully aware of how it will apply to juveniles in your state, the following discussion is offered. In addition, some options that are especially appropriate for juvenile shoplifters are included at the end of the Chapter.

Who is a Juvenile?

The way we normally define a "juvenile" or a "minor" in America is any person under the age of 18. However, this is not always true, particularly in the case of legal proceedings based upon alleged criminal offenses. There are several ways in which persons under the age of 18 will be considered "adults" for purposes of criminal prosecution. In fact, every state has one or more legal procedures which will permit under-18 year olds to be treated as adults. The problem is that it is extremely difficult to find two states with exactly the same laws regarding juvenile court jurisdiction. See Youth in Adult Courts: A National Survey (Academy for Contemporary Problems, Columbus, Ohio, 1981). By defining out or separating away these groups of under-18 year olds who are considered "adults", the remaining groups will be those juveniles who would be subject to the procedures of the juvenile justice system.

In 38 states and the District of Columbia, the initial age of criminal court jurisdiction is 18, subject to certain exceptions which will be discussed later. In four states, Connecticut, New York, North Carolina, and Vermont, the age of criminal responsibility is 16; in the remaining eight states, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina and Texas, the age is 17. Any person over the ages specified above are "adults" in their respective states.

In a large majority of the states and in the District of Columbia, juveniles can be transferred to criminal courts to be tried as adults. These transfers are known by different

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terminology in the various states, such as waivers, remands, bindovers or certifications. Once transferred out of the juvenile system into the criminal system, these juveniles, in some states as young as 13, are legally transformed into adults and would be subject to the same penalties as are applicable to adults. This condition applies to situations where, in certain states, prosecutors may initiate prosecution in either juvenile or criminal courts against certain juveniles. It also applies to situations, in other states, where the legislatures have excluded certain crimes from juvenile court jurisdiction.

In the 12 states which have lower ages of criminal court jurisdiction and in the many states which exclude certain crimes from juvenile courts, prosecution as adults is automatic. For example, 16 and 17 year old shoplifters would be treated as adults in such states as New York or Vermont.

In the states which either provide for transfers from juvenile courts or for prosecutorial decisions, the treatment of juveniles (as either juveniles or adults) depends upon the discretionary judgments of either juvenile court judges or prosecuting attorneys. These decisions are usually limited by the legislatures in one way or another. For example, in Ohio the judicial transfer (bindover) statute requires that, before a juvenile can be transferred to adult court, the juvenile court judge must make the following determinations:

- The accused juvenile is over the age of 15;
- There is "probable cause" to believe the accused juvenile committed the offense;
- The offense charged would be a felony if committed by an adult;
- The juvenile is a threat to public safety, and he or she is not amenable to treatment as a juvenile.

The Ohio statute is typical of the legislative preconditions placed upon such transfers; it also typifies the types of restraints placed upon prosecutors as well. Under such legislative limitations, one could expect that most juveniles accused of shoplifting would remain in the juvenile justice system.

One final note needs to be added to this rather complicated picture. In some states where juveniles are automatically tried as adults, the criminal courts have the authority to transfer these cases back to juvenile courts when, in the opinion of the judges, justice would be better served by treating underaged defendants as juveniles.

We are now ready to answer the question, "Who is a Juvenile?" A juvenile is, for the purpose of this discussion, anyone who is arrested for shoplifting, referred to and tried in juvenile court. This definition, while constant, will clearly apply to different individuals in the various states.

How Do Juvenile Courts Differ from Criminal Courts?

Every state has a juvenile court system, although it may not always be readily apparent. Juvenile courts may be separate courts, hearing only cases affecting juveniles. On the other hand, they may be courts of general jurisdiction, transforming themselves into juvenile courts when the need arises. When they are separate, they are normally known by several names, such as Juvenile Courts, Family Courts, or Children's Courts. When they are parts of larger and broader courts, they are generally known as juvenile divisions or sessions of district, superior, circuit, trial, common pleas or parish courts. However they are structured, they are governed by those statutes applicable to the trial of juveniles in their respective states. As such, they are special courts with special powers.

It is at this point that much of the diversity of our federal system fades away and a common framework for handling juvenile offenders emerges. It is also at this same point that the distinctions between juvenile courts and criminal courts become critical. Before we discuss its effect on juveniles charged with shoplifting, it is important to understand the nature of the juvenile justice system and the reasoning behind its creation.

Juvenile courts, as special courts, are accorded special powers. While they will somewhat vary from state to state, most of them possess the following salient characteristics:

- The language used in juvenile courts is intended to alter the character of the procedures, in order to distinguish and contrast them from criminal court procedures. For example, the "petitions" charge that offenses committed were acts of "delinquency," regardless of the nature of the crimes (as defined in the state criminal code). Juvenile cases are "heard", "adjudications" are made, and "dispositions" are ordered. In contrast, adults are "charged" in "complaints or criminal informations" with "crimes". They are "tried", "convicted" and "sentenced";

- At the time of "intake", when petitions alleging delinquency are filed, the courts may accept the petitions or reject them. They may informally "adjust" the cases or they may even refer the cases to other agencies in the community which are better equipped to properly handle the juveniles involved. This latter procedure is commonly known as diversion;
- Dispositions available to juvenile courts are much more flexible than sentencing options available to criminal courts. For example, while juvenile courts typically lack the authority to impose fines and need not incarcerate adjudicated delinquents for specific offenses, they may place children with their parents, with foster parents, in group homes, private boarding schools in other states, or in state or local facilities. They may order special community service, restitution, or tailored programs of instruction or remediation. In other words, instead of making the "punishment fit the crime," juvenile courts are permitted the extra-ordinary power to make their dispositions fit the needs of the children who come before them.

Reduced to its most basic terms, it means that, while juvenile courts are agencies of the judicial branch of government, they also exercise many powers normally associated with social agencies. They do not simply hear the facts and apply the pertinent laws; their task is to balance the needs of the community for order and safety with the needs of children who get into trouble as they are growing up. So, while the state's criminal code may be the basis for granting to the juvenile court jurisdiction over juveniles charged with criminal-type offenses, the penalties imposed upon convicted adult shoplifters are neither binding upon nor frequently used by juvenile courts.

Why Do These Differences Exist?

The juvenile court system is truly an American invention. It has been in existence for approximately 80 years.

Since its inception, questions have been raised about the relative merits of punishment and rehabilitation. Whatever the validity of either school of thought, the fact remains that juvenile courts exist in every state. They are all predicated upon similar social values, which form the bases for their existence and operation. The more prominent of these values may be stated as follows:

- Society has a duty to train, protect and control its children;
- In controlling them, society is willing to view youthful actions, even criminal behavior, as the result of inexperience, curiosity and impulsiveness, until evidence to the contrary is incontrovertibly established;
- Because children are impressionable, they are more susceptible to change than are adults. They can be "turned around" toward productive lives more easily. Of course, this is not always the case, but it does occur frequently enough to conclude that adult punishments aren't always necessary to accomplish the desired changes in erring children.
- The avoidance of harsh punishments and criminal records allows juveniles to live down their mistakes and to become adults without the handicaps of criminal histories.

How Does This Relate to Juvenile Shoplifting?

As these social values are put into practice, it is understandable that people will differ as to their relevance and effectiveness. Retail merchants sustain extensive losses. Arrests are made, many times involving juveniles and, many times, these teen-age shoplifters return to the stores to shoplift again. Questions are naturally asked and the answers are not very heartening.

Juvenile courts in large cities hear thousands of cases a year, ranging from offenses as minor as school truancy to cases involving murder. Theft by shoplifting, while a clearly serious offense, does not generally receive the attention it deserves from judges and court workers. The result is that, in many communities, little, if anything, is done to address either the needs of the community or the needs of juveniles in these situations. Alleged shoplifters are frequently turned over to their parents without even a hearing. It is not uncommon to find that, until a teen-age shoplifter is referred to juvenile court three or four times, there is no concerted action to intervene decisively. By that time, the dispositions will begin to resemble adult punishments. Juveniles are likely to be sent to state training schools for three to six months. The opportunities available to implement the social values discussed above are lost because they were never tried. The system simply breaks down because there are so many juvenile offenders and so few resources to deal with them.

There is another, equally perplexing problem. Juvenile courts, in the great majority of cases, do not know what to do with shoplifters. They have no programs to deal with the problem because, in addition to the lack of resources, they don't know what works. As a consequence, they rely on stern warnings and calling parents as means to curb the behavior. To be sure, in a number of instances, these techniques do work. Many juveniles are caught once and, because of the guilt and embarrassment associated with the whole process of court referral and parental contact, never shoplift again. At the same time, the juvenile court records in any urban center in America will reveal that a large number of teen-agers who are referred for shoplifting have been in court before.

What Are the Alternatives?

The most critical time for effective juvenile court intervention is the first time a juvenile is referred to court. This principle seems particularly applicable to shoplifting, because of the ways in which such cases are typically handled.

Research into the literature of juvenile shoplifting revealed a number of interesting findings:

- There appears to be a correlation between teen-age shoplifting and such conditions as poverty and poor home life. Other studies found psychological factors, --rebellion toward authority, arousal and peer influences-- to be very important as well. It has also been found that teen-age drug users are also heavy shoplifters.
- Several studies suggest that the severity of punishments make very little difference to teen-age shoplifters. In fact, studies tend to verify the frequently expressed view that, the deeper a juvenile goes into the juvenile justice system, the more likely he is to get into trouble again. However, teen-agers who express strong beliefs in the certainty of punishment or that shoplifting is morally wrong are less likely to steal.
- Programs that involve parents as well as the juveniles have extremely positive success rates in reducing teen-age shoplifting.

Reports of this research are available from the National Coalition to Prevent Shoplifting, upon request.

Juvenile shoplifting prevention programs have been undertaken in many parts of the country. Sometimes they are operated by social agencies, sometimes by police departments and sometimes by the courts themselves. Generally speaking, these programs are classified as forms of "diversion"; that is to say, programs intended to divert juveniles away from the need for formal court dispositions. The two most popular types of diversion programs involve the use of restitution and the use of family counseling.

Restitution, as a form of rehabilitation and victim compensation, requires the offender to pay either the value of the goods taken or a specified amount to the retailer. They are sometimes applied informally, through conferences between retailers, parents and law enforcement officers. In other states, they are more structured, --authorized by statute and used by court intake workers as alternatives to formal court hearings. If restitution is made, the case does not proceed to trial. However they are created and utilized, restitution programs are, by and large, very acceptable to citizens, police officers, social workers, attorneys and judges. The theory of restitution is consistent with the philosophy of letting the punishment fit the crime.

The other prominent diversion program consists of family counseling. Again, programs can be informal or formal. They can be operated by store security personnel, police juvenile bureaus, social agencies, universities, or the courts themselves. They may be voluntary, used as alternatives to formal court hearings or even ordered by the courts as forms of disposition. The essence of these family counseling programs is the grouping of juveniles who share a common problem of shoplifting. In the process of group discussions, sometimes involving parents as well, teen-agers learn to explore the reasons for their behavior and ways in which they can change their lives. This approach is not based upon letting the punishment fit the crime. Rather, it attempts to determine and meet the needs of those juveniles who need help in growing up.

The National Coalition to Prevent Shoplifting has developed a pilot program, based upon the theme of family counseling. This highly successful program, known as Project First Stop is currently operating through the Fulton County Juvenile Court in Atlanta, Georgia. A description of Project First Stop has been included below for your consideration. Additional information is available through the National Coalition to Prevent Shoplifting.

Report to the National Coalition
Project First Shop

Project First Stop consists of 6 weekly sessions of group counseling for juvenile shoplifters and their parents. Admission is limited to juveniles between the ages of 10 and 17. They must not have been referred to Juvenile Court before, for any type of offense, and certain other conditions must be met for the referral to take place. Most of these conditions are either known to or within the control of the retailer who apprehends the juvenile. Consequently, the retailer can help determine whether Project First Stop is appropriate for the apprehended juvenile. A referral form enables the retailer to make that view known to the Juvenile Court. All of the forms developed for Project First Stop are available from NCPS. While the Court is not bound to follow this recommendation, one would normally expect that the intake worker would protect the retailer's right to prosecute someone he did not believe should be in the program. The referral form would be delivered, along with the suspect, to the arresting officer, who would transfer the child and the arrest and referral forms, to the Juvenile Court. Up to this point, there has been no substantial changes introduced into the behavior of either the store owner or security personnel, with the exception of filling out and transmission our forms.

Once at the Juvenile Court, the intake worker is responsible for interviewing the child and the child's parents. The purpose of this interview is to determine the appropriate procedure in that case. If the child has no previous court record, admits the taking and, along with his parents, agrees to attend Project First Stop, he will be referred to Child Service and Family Counseling. In order for this to occur, the intake worker will call CSFCC for the next available space in the program. A date, time and place will be assigned. If on the other hand, the child does not meet the Project First Stop criteria, the intake officer would refer the case to court. Again the disruption in the normal routine of intake is minimal. Little additional effort is required to fill out the forms, contact CSFCC and advise the retailer that the case is being adjusted at intake.

END