

THE PROBLEM OF SHOPLIFTING

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL To THE GOVERNOR And THE GENERAL ASSEMBLY OF VIRGINIA



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COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1969

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THE PROBLEM OF SHOPLIFTING

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia
December 10, 1969

TO: HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*
and

THE GENERAL ASSEMBLY OF VIRGINIA

The rate of increase in the incidence of shoplifting throughout the Nation increases with mounting acceleration year after year, and results in an ever rising number of millions of dollars of losses to merchants. Virginia merchants experience this problem in equal intensity to the merchants of the other states. Aware of the fact that this is a matter rapidly getting out of control, the General Assembly of Virginia at its 1968 Regular Session adopted House Joint Resolution No. 56 directing the Virginia Advisory Legislative Council to study this problem and to recommend appropriate legislation. The text of this Resolution follows:

HOUSE JOINT RESOLUTION NO. 56

Directing the Virginia Advisory Legislative Council to study the problem of shoplifting and to recommend legislation for its abatement.

Whereas, the frequency and volume of thefts from retail merchants by shoplifting is increasing steadily each year; and

Whereas, a 1967 Task Force Report to the President's Commission on Law Enforcement and Administration of Justice revealed that the yearly value of reported shoplifting in the United States is in the millions of dollars and is growing steadily; and

Whereas, studies conducted by Virginia merchants and their associations indicate that the shoplifting problem is acute in Virginia cities and towns; and

Whereas, it is in the interest of the retail merchants and, ultimately, the consuming public of the Commonwealth that this frequency and volume of shoplifting and theft be abated; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study of the problem of shoplifting and theft from business establishments, including the frequency of such crimes, the ways in which the crimes are committed, the nature and effectiveness of methods for detecting and apprehending the criminals, the effectiveness of existing penalties as a deterrent, and to suggest legislation if any, which the Council may deem desirable and proper to reduce and prevent shoplifting and theft in the Commonwealth of Virginia.

The Council shall conclude its study and make its report to the Governor and the General Assembly not later than November one, nineteen hundred sixty-nine.

The Council selected Arthur H. Richardson of Dinwiddie, a member of the House of Delegates and a member of the Council, as Chairman of a Committee

to make the initial study and report to it. Selected to serve with Mr. Richardson were the following: E. B. Pendleton, Jr., Treasurer, Southern State Co-operative, Inc., and a member of the House of Delegates, Richmond; Stanley G. Bryan, Attorney at Law and a member of the House of Delegates, Chesapeake; Russell M. Carneal, Attorney at Law and member of the House of Delegates and of the Council, Williamsburg; John H. Clements, Merchant, Carson; Tom Frost, Automobile Dealer and a member of the House of Delegates and of the Council, Warrenton; James B. Fugate, Newspaper Publisher, Livestock Dealer and Farmer, and a member of the House of Delegates, Gate City; Anthony C. Gaudio, Chief Probation and Parole Officer of Virginia Parole District No. 10, Arlington; Eugene L. Holland, Secretary and Comptroller, Southern Department Stores, Inc., Petersburg; Leslie E. Kittredge, of the William J. Burns International Detective Agency, Richmond; Earl H. McClenny, President, St. Paul's College, Lawrenceville; Miss Anne Dobie Peebles, a member of the State Board of Education, Carson; William S. Peebles, Jr., Vice-President, W. S. Peebles & Company, a Chain of Department Stores, Lawrenceville; Sumpter T. Priddy, Jr., Executive Vice-President of the Virginia Retail Merchants Association, Richmond; Janipher W. Robinson, a retired School Principal, Ashland; Edward E. Willey, Pharmacist and Proprietor of a Drug Store, and a member of the Senate of Virginia and of the Council, Richmond; and C. W. Woodson, Jr., formerly Superintendent of the Virginia State Police and now Corporate Security Officer for Miller & Rhoads Department Stores, Richmond.

The Committee met and organized. Mr. Pendleton was elected Vice-Chairman. The Division of Statutory Research and Drafting, represented by Wildman S. Kincheloe, Jr., served as staff for the Committee.

The Committee held four public hearings, as follows: in the Capitol, in Richmond; in the conference room of the Board of County Supervisors in the Arlington County Courthouse; in the auditorium of the Appalachian Power Company Building in Roanoke; and in the Norfolk City Council Chamber. These hearings were given wide publicity and were well attended. A broad variety of opinions and suggestions, and valuable information and statistics, including descriptions of various methods and acts of shoplifting, were presented to the Committee by the speakers at these hearings. Also, ingenious devices utilized by shoplifters were exhibited.

The Committee was furnished and studied the shoplifting laws of many of the other states. In addition, the Committee had the benefit of informative printed material, furnished both by the speakers at the public hearings, and by other groups and individuals who did not appear at the hearings but forwarded material to the Committee.

The word "shoplifting," insofar as the State of Virginia is concerned, is a word of general meaning only, as it is not a specifically defined criminal offense as such. In the simplest terms, it consists of stealing from a mercantile establishment articles which are on display in such establishment for sale to the general public. A person who has committed the act of shoplifting may be prosecuted either for larceny or under the so-called "Concealment Statutes." Grand larceny is larceny of goods of the value of one hundred dollars or more, and is a felony punishable by confinement in the penitentiary not less than one nor more than twenty years; or by confinement in jail not exceeding twelve months or by a fine not exceeding one thousand dollars, either or both. Petit larceny is larceny of articles of the value of less than one hundred dollars and is a misdemeanor punishable by a fine not exceeding one thousand dollars or confinement in jail not exceeding twelve months, or both. An individual convicted of a violation of the Concealment Statutes is guilty of a misdemeanor. The prescribed punishment is the same as that set forth above for a convic-

tion of petit larceny. The Concealment Statutes are set forth in §§ 18.1-126, 18.1-127 and 18.1-128 of the Code of Virginia. The text of these sections follows:

§ 18.1-126. Concealment of merchandise on premises of store a misdemeanor.—Whoever, without authority, wilfully conceals the goods or merchandise of any store, while still upon the premises of such store, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

§ 18.1-127. Exemption from civil liability in connection with arrest of suspected person.—A merchant, agent or employee of the merchant, who causes the arrest of any person pursuant to the provisions of § 18.1-126, shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested, whether such arrest takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest of such person, the merchant, agent or employee of the merchant, had at the time of such arrest probable cause to believe that the person committed wilful concealment of goods or merchandise.

§ 18.1-128. "Agents of the merchant" defined.—As used in this article "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.

It can indeed be said that "shoplifting makes strange bedfellows." Those who indulge in this pastime are representative of many classes of individuals who commit this act for, respectively, a bewildering variety of motives.

There is, of course, the omnipresent motive of gain or enrichment by the unauthorized acquisition of the goods of another. The "professionals," often acting in groups, operate from locality to locality and from state to state. A speaker at one of the public hearings informed the Committee that there is a "school" in North Carolina for training people in shoplifting activities, methods and devices.

Distinguished from the professional, there is the amateur who is also inspired by the "profit" motive, albeit on a smaller scale. One merchant told the Committee that the amateurs are the ones who are "killing us," and this "eats up profits." Obviously, numerous thefts of small articles, selling for prices ranging from ten cents to one dollar, in the course of a year add up to considerable losses. This particular merchant said some of these amateurs steal articles and then bring them back to the store for refunds.

In addition to kleptomaniacs, there are those, often of better than average income families, who shoplift under the compulsion of psychiatric difficulties. A municipal court judge told the Committee at one of the public hearings that shoplifting is the most baffling subject he deals with. All sorts of unusual people come into his court on account of this offense, such as Sunday school superintendents, school teachers and executives. Many of these people had from fifty dollars to seventeen hundred fifty dollars in cash in their pockets when they committed the offense. He mentioned a case in which the accused had seventeen hundred fifty dollars in her pocketbook and had stolen an article worth one dollar and ninety-eight cents, and another case in which the accused had three hundred fifty dollars in her pocketbook and had stolen an article worth one dollar and ninety-four cents. Other than the human frailty of the temptation to pick up articles of merchandise, he said he has no explanation whatsoever, and that he has talked to people who are knowledgeable in this

field and they have no explanation. Another speaker at one of the public hearings stated that in his area there are fashionable residential subdivisions, of above average income families, which are "full of little thieves." At the same public hearing a security officer for one of the largest department stores in the area said the biggest offender in their stores is the white female adult, who averages thirty-three dollars per "lift." He added that, however, the whole strata of society is "represented."

At more than one of the public hearings, the Committee was told of shoplifting which occurred because high school fraternities, sororities or clubs prescribed as an initiation procedure the shoplifting of various types of articles.

From the statements made at the public hearings by merchants and store security officers, it would seem that some areas of the State, and some stores in the same general area, are "patronized" more by the professional. Other areas, and stores in the same areas above-mentioned, suffer more from the shoplifting activities of thrill-seeking juveniles, adults with psychiatric disorders and amateur thieves, respectively. In any event, whatever the area or particular store within an area, and regardless of the pattern of motivation, there is shoplifting aplenty everywhere.

A representative of one of the large national chains of stores stated that the mark-up of the goods in the stores in his chain takes shoplifting into consideration; that "it is a part of the operating expense." Thus, shoplifting not only causes known and unknown losses of great proportions to merchants, it also indirectly causes losses to the customers in the higher prices they pay for articles on account of the foregoing reason.

One of the complaints most frequently heard at the public hearings was that concerning the inconvenience caused merchants by the loss of time to themselves or their employees in going to court when they decide to prosecute a shoplifter. Apparently these prosecutions are mainly under the Concealment Statutes as the elements of the crime of larceny, either grand or petit, are more difficult to prove. Thus, being misdemeanor prosecutions, they are tried initially in the courts not of record. Therefore, the merchant, or his employee sometimes sits in court for several hours before his particular case is called.

Hard on the heels of the foregoing complaint was the complaint that the punishment is not severe enough, especially in the cases of second, third, etc. offenders. Many seemed bitter because of suspended sentences or imposition of relatively small fines. One merchant rather acidly asserted that those convicted under the Concealment Statutes are usually fined about ten dollars, and then he added the observation, with equal acidity, that "they can immediately thereafter more than make up for this loss to themselves by additional shoplifting."

Having considered the material, facts and suggestions placed before it, the Committee made its report to the Council. The Council, having carefully considered the report of the Committee, makes the following recommendations.

RECOMMENDATIONS

1. That § 18.1-126 of the Code of Virginia be amended to provide that the doing of any of the following acts, with the intention of converting goods to the use of one other than the owner or of defrauding the owner out of the value of the goods, shall constitute larceny: (a) willfully concealing or taking possession of the goods of a mercantile establishment; (b) altering the price marking on such goods or transferring the same from one container to another; or (c) counseling, aiding, etc., another in the performance of any of such acts.

2. That the punishment of one convicted of the offense of larceny by such means be prescribed on the basis of the value of the goods involved and whether this was such person's first, second, or third or more conviction for such offense in this State. Where the value of the goods taken is less than one hundred dollars, the punishment would be: (i) for a first offense, a fine of not less than the value of the goods nor more than one thousand dollars, or confinement in jail not less than five days or more than twelve months, or both; (ii) for a second offense, regardless of the value involved in the first offense, confinement in jail not less than thirty days nor more than one year; (iii) for a third or any subsequent offense, confinement in the penitentiary not less than one nor more than two years. When the value of the goods is one hundred dollars or more, regardless of the number of previous offenses, the offender shall be guilty of a felony and punished by confinement in the penitentiary not less than one nor more than twenty years, or by confinement in jail not less than thirty days nor more than twelve months and by a fine of not less than the value of the goods nor more than one thousand dollars. Repeated convictions of this felony would, like grand larceny, be subject to the general recidivism statute (§ 53-296).

3. That it be provided that in a case involving prosecution under § 18.1-126 a picture of the goods involved, supported by identifying affidavit, shall suffice at the first hearing and all subsequent hearings and proceedings, in order that the goods be returned to the owner or custodian.

4. That a joint resolution be adopted by the General Assembly (1) requesting the judges to pay more attention to the seriousness of the nature of cases of shoplifting and larceny which come before them, (2) commending the State Board of Education for providing instruction in the public schools concerning the serious consequences arising from commission of this offense, and (3) urging merchants to prosecute all detected instances of shoplifting.

REASONS FOR RECOMMENDATIONS

1. The acts loosely referred to as "shoplifting" are in fact stealing, and should be so designated. The offense of committing such acts should be called by its legal name. It could not then be regarded as tolerantly as it sometimes is now and has been in the past. If the usual means of "shoplifting" are legally made to constitute larceny, it will be less likely that they will be regarded in the light of a prank. The inclusion in the definition of this new offense of the acts of altering price markings and of transferring goods from one container to another (thus receiving the benefit of the lower prices as marked on the second container) and of taking possession of the goods, as well as wilfully concealing goods, will cover all related acts of shoplifting. Deeming one who counsels, aids, etc., another in the performance of these acts also guilty of larceny should prove of inestimable value in curbing cases such as those in which parents train their children in the commission of these acts and send them forth on "shoplifting expeditions".

2. The penalties for commission of this offense, based upon the factors above set forth, will in our opinion achieve many desirable objectives. When a merchant has decided, often for the sake of expediency, to prosecute under the present Concealment Statutes, it makes no difference whether the value of the article or articles so concealed amounts to ten cents, fifty dollars, one hundred dollars, two hundred dollars, or any larger amounts. It is only a misdemeanor. Classifying the crime on the basis of whether such value is less than one hundred dollars, or one hundred dollars or more, follows the same distinction as that between other forms of petit larceny and grand larceny. Furthermore, prescribing the minimum fine as an amount not less than the value of the goods which have been so stolen will preclude the imposition of

a fine relatively small in comparison with the value of the goods. Prescribing increasingly severe punishment, even though the value of the goods involved is less than one hundred dollars, when the offense is the second, or third or more offense committed in this State makes mandatory the imposition of more severe punishment on repeaters.

3. This recommendation will remove a great inconvenience from the shoulders of the merchant, in that his goods will not be tied up pending the date on which the case is set for trial and during the time involved in any appeals by the accused, if convicted.

4. It is our belief that the adoption by both Houses of this joint resolution will put the General Assembly on record as being gravely concerned about the ever-spreading epidemic of shoplifting; that it is the sense of that Body that shoplifting should no longer be regarded with tolerance, and is not a proper outlet for youthful exuberance and thrill seeking but that it is both an immoral act and a criminal offense; and that it is not an escape valve for psychiatric disorders, emotional disturbances and the like. This resolution will serve as a call to arms for an all-out war from all sectors against this menace to both private property and moral health.

CONCLUSION

We expressly record our appreciation to all individuals, officials and organizations who aided the Committee by furnishing information and giving their opinions and recommendations, both by correspondence and appearance and speaking at the public hearings. We also thank the Virginia Retail Merchants Association for its assistance in giving full publicity to the public hearings.

We especially express our gratitude to the members of the Committee for contributing their time to the pursuance of this study, for their deep concern with this serious problem, and for their suggestions looking towards its amelioration.

A bill and joint resolution to carry out the recommendations in this Report are attached. We urge passage of this bill and adoption of this joint resolution by the General Assembly at its 1970 Session.

Respectfully submitted,

C. W. Cleaton, *Chairman*
J. C. Hutcheson, *Vice-Chairman*
Russell M. Carneal
Robert C. Fitzgerald
J. D. Hagood
Edward E. Lane
Garnett S. Moore
Lewis A. McMurran, Jr.
Sam E. Pope
Arthur H. Richardson
William F. Stone
James M. Thomson
Edward E. Willey

The sudden and untimely death of Tom Frost on September 18, 1969 deprived the Committee and the Council of his participation in the final deliberations on this Report.

A BILL to amend and reenact § 18.1-126 of the Code of Virginia, relating to concealment of merchandise on premises of store, and to amend the Code of Virginia by adding sections numbered 18.1-126.1 and 18.1-126.2, to deem

certain acts larceny, prescribe punishments therefor, and permit use of authenticated photographs of merchandise as evidence in prosecutions for such offense.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-126 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding sections numbered 18.1-126.1 and 18.1-126.2, as follows:

§ 18.1-126. Whoever, without authority, *with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner thereof out of the value of the goods or merchandise, (i) willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, ~~while still on the premises of such store~~ or (ii) alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or (iii) counsels, assists, aids or abets another in the performance of any of the above acts, shall be deemed guilty of a ~~misdemeanor~~ larceny and upon conviction thereof shall be punished as provided by ~~law~~ § 18.1-126.1.*

§ 18.1-126.1. (a) *Any person convicted for the first time of an offense under § 18.1-126, when the value of the goods or merchandise involved in the offense is less than one hundred dollars, shall be guilty of a misdemeanor and shall be punished by a fine of not less than the value of the goods or merchandise involved nor more than one thousand dollars, or by confinement in jail not less than five days nor more than twelve months, or both, in the discretion of the jury or of the court trying the case without a jury.*

(b) *Any person convicted of an offense under § 18.1-126, when the value of the goods or merchandise involved in the offense is less than one hundred dollars, and it is alleged in the warrant or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the Commonwealth of Virginia for the like offense, regardless of the value of the goods or merchandise involved in the prior conviction, shall be confined in jail not less than thirty days nor more than one year; and for a third, or any subsequent offense, he shall be confined in the penitentiary not less than one nor more than two years.*

(c) *Any person convicted of an offense under § 18.1-126, when the value of the goods or merchandise involved in the offense is one hundred dollars or more, shall be guilty of a felony and shall be punished by confinement in the penitentiary not less than one nor more than twenty years, or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail not less than thirty days nor more than twelve months and by a fine of not less than the value of the goods or merchandise involved but not more than one thousand dollars.*

§ 18.1-126.2. *In any instance of prosecution under § 18.1-126, photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any and all proceedings, hearings and trials of the case to the same extent as the goods or merchandise themselves; and after such photographs have been so identified by the arresting police officer, and such writing supported by his affidavit, the goods or merchandise shall be returned to the proprietor or manager of the store or other mercantile establishment where the alleged offense occurred.*

HOUSE JOINT RESOLUTION NO. _____

Expressing the sense of the General Assembly as to the seriousness of shoplifting.

Whereas, the incidence of shoplifting has reached alarming proportions and continues to be on the rise; and

Whereas, the immoral and criminal aspects of this act are not fully recognized and tolerance is too often extended to those who engage in shoplifting; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That it is the sense of this Body that it should, and accordingly does: (1) Commend the State Board of Education for providing instruction in the public schools designed to impress upon the pupils the serious consequences of engaging in the act of shoplifting; (2) Urge merchants to prosecute all detected instances of larceny by shoplifting regardless of how small should be the value of the goods or merchandise involved in any particular instance; and (3) Request judges both of courts of record and courts not of record to be ever aware of the seriousness of the act of shoplifting and particularly of its epidemic nature.