

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2090

AN ACT

AMENDING SECTION 13-1805, ARIZONA REVISED STATUTES; RELATING TO SHOPLIFTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-1805, Arizona Revised Statutes, is amended to
3 read:
4 13-1805. Shoplifting; detaining suspect; defense to wrongful
5 detention; civil action by merchant; public
6 services; classification
7 A. A person commits shoplifting if, while in an establishment in
8 which merchandise is displayed for sale, the person knowingly obtains such
9 goods of another with the intent to deprive that person of such goods by:
10 1. Removing any of the goods from the immediate display or from any
11 other place within the establishment without paying the purchase price; or
12 2. Charging the purchase price of the goods to a fictitious person
13 or any person without that person's authority; or
14 3. Paying less than the purchase price of the goods by some trick
15 or artifice such as altering, removing, substituting or otherwise
16 disfiguring any label, price tag or marking; or
17 4. Transferring the goods from one container to another; or
18 5. Concealment.
19 B. A person is presumed to have the necessary culpable mental state
20 pursuant to subsection A of this section if the person does either of the
21 following:
22 1. Knowingly conceals on himself or another person unpurchased
23 merchandise of any mercantile establishment while within the mercantile
24 establishment.
25 2. Uses an artifice, instrument, container, device or other article
26 to facilitate the shoplifting.
27 C. A merchant, or a merchant's agent or employee, with reasonable
28 cause, may detain on the premises in a reasonable manner and for a
29 reasonable time any person who is suspected of shoplifting as prescribed
30 in subsection A of this section for questioning or summoning a law
31 enforcement officer.
32 D. Reasonable cause is a defense to a civil or criminal action
33 against a peace officer, a merchant or an agent or employee of the
34 merchant for false arrest, false or unlawful imprisonment or wrongful
35 detention.
36 E. If a minor engages in conduct that violates subsection A of this
37 section, notwithstanding the fact that the minor may not be held
38 responsible because of the person's minority, any merchant who is injured
39 by the shoplifting of the minor may bring a civil action against the
40 parent or legal guardian of the minor under either section 12-661 or
41 12-692.
42 F. Any merchant who is injured by the shoplifting of an adult or
43 emancipated minor in violation of subsection A of this section may bring a
44 civil action against the adult or emancipated minor pursuant to section
45 12-691.

1 G. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION DOES NOT PRECLUDE A
2 MERCHANT FROM DOING ANY OF THE FOLLOWING, INCLUDING WHILE A PERSON WHO IS
3 SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION IS DETAINED BY THE
4 MERCHANT:

5 1. OFFERING A PERSON WHO IS SUSPECTED OF VIOLATING SUBSECTION A OF
6 THIS SECTION AN OPPORTUNITY TO COMPLETE A PRECOMPLAINT EDUCATION PROGRAM
7 IN LIEU OF MAKING OR FILING A REPORT OF THEFT WITH A LAW ENFORCEMENT
8 AGENCY.

9 2. INFORMING THE PERSON OF RELEVANT CRIMINAL AND CIVIL REMEDIES
10 THAT ARE AVAILABLE TO THIS STATE AND THE MERCHANT WITHOUT THE USE OF FORCE
11 OR UNLAWFUL INTIMIDATION.

12 3. REDUCING OR WAIVING THE FEE FOR THE PRECOMPLAINT EDUCATION
13 PROGRAM BASED ON THE PERSON'S ABILITY TO PAY.

14 H. A MERCHANT WHO OFFERS PRECOMPLAINT EDUCATION PROGRAMS:

15 1. MAY NOT RECEIVE REMUNERATION FROM AN EDUCATIONAL PROVIDER OR A
16 PERSON SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION FOR OFFERING A
17 PRECOMPLAINT EDUCATION PROGRAM. A MERCHANT WHO OFFERS A PRECOMPLAINT
18 EDUCATION PROGRAM SHALL PROVIDE THE PROGRAM THROUGH AN INDEPENDENT THIRD
19 PARTY.

20 2. MAY NOT OFFER THE PROGRAM TO A PERSON WHO THE MERCHANT KNOWS HAS
21 PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBSECTION A OF THIS SECTION
22 OR WAS PREVIOUSLY OFFERED AN OPPORTUNITY TO PARTICIPATE IN A PRECOMPLAINT
23 EDUCATION PROGRAM.

24 3. SHALL PROVIDE, AT THE TIME THE PROGRAM IS OFFERED TO A PERSON
25 SUSPECTED OF VIOLATING SUBSECTION A OF THIS SECTION, THE TERMS OF THE
26 PROGRAM IN WRITING, INCLUDING WHAT ACTIONS ARE REQUIRED TO COMPLETE THE
27 COURSE, THE TIMEFRAME IN WHICH THE COURSE MUST BE COMPLETED, THE PAYMENT
28 OPTIONS AND A POINT OF CONTACT FOR THE PROGRAM.

29 4. MAY NOT RESCIND AN OFFER TO A PERSON TO PARTICIPATE IN THE
30 PRECOMPLAINT EDUCATION PROGRAM IF THE PERSON PARTICIPATING IN THE PROGRAM
31 IS MEETING THE TERMS OF THE AGREEMENT.

32 5. MAY NOT SEEK PROSECUTION AGAINST A PERSON SUSPECTED OF VIOLATING
33 SUBSECTION A OF THIS SECTION IF THE PERSON SUSPECTED OF THAT VIOLATION HAS
34 SUCCESSFULLY COMPLETED A PRECOMPLAINT EDUCATION PROGRAM IN CONNECTION WITH
35 THAT INCIDENT.

36 6. SHALL PROVIDE OR REQUIRE THE INDEPENDENT EDUCATIONAL PROVIDER TO
37 PROVIDE TO ALL LOCAL LAW ENFORCEMENT AGENCIES AND THE COUNTY OR MUNICIPAL
38 ATTORNEY IN THE JURISDICTION WRITTEN NOTICE THAT THE MERCHANT IS OFFERING
39 A PRECOMPLAINT EDUCATION PROGRAM BEFORE IMPLEMENTING THE PROGRAM.

40 7. SHALL COORDINATE WITH LOCAL LAW ENFORCEMENT AND PROSECUTORS AND
41 ON REQUEST PROVIDE INFORMATION REGARDING THE PRECOMPLAINT EDUCATION
42 PROGRAM, INCLUDING CRITERIA FOR PARTICIPATION AND COURSE CONTENT. ANY
43 INFORMATION RECEIVED BY LAW ENFORCEMENT AND PROSECUTORS IS CONFIDENTIAL
44 BUSINESS INFORMATION AND IS NOT A PUBLIC RECORD, EXCEPT THAT THE
45 INFORMATION MAY BE USED FOR OFFICIAL PURPOSES BY A PUBLIC ENTITY,
46 INCLUDING FOR THE ARREST AND PROSECUTION OF INDIVIDUALS.

1 8. SHALL FACILITATE DATA SHARING WITH LAW ENFORCEMENT TO ASSIST THE
2 INVESTIGATION AND PROSECUTION OF CRIMINAL ACTIVITY.

3 9. SHALL OFFER ANY PERSON WHO QUALIFIES FOR THE PRECOMPLAINT
4 EDUCATION PROGRAM AN OPPORTUNITY TO PARTICIPATE REGARDLESS OF AGE, GENDER,
5 DISABILITY, RACE, COLOR OR RELIGION. A PERSON WHO IS BELOW TWO HUNDRED
6 PERCENT OF THE FEDERAL POVERTY GUIDELINES MAY BE OFFERED AN OPPORTUNITY TO
7 HAVE THE PROGRAM FEE REDUCED OR WAIVED.

8 10. SHALL ON REQUEST PROVIDE IDENTIFYING INFORMATION TO LAW
9 ENFORCEMENT AND PROSECUTORS FOR ALL PERSONS WHO MEET THE ELIGIBILITY
10 CRITERIA FOR PARTICIPATION IN A PRECOMPLAINT EDUCATION PROGRAM AND HAVE:

11 (a) BEEN DETAINED BY THE MERCHANT ON SUSPICION OF VIOLATING
12 SUBSECTION A OF THIS SECTION.

13 (b) BEEN OFFERED PARTICIPATION IN THE PROGRAM.

14 (c) CONSENTED TO PARTICIPATE IN THE PROGRAM.

15 (d) COMPLETED THE PROGRAM.

16 (e) FAILED TO COMPLETE THE PROGRAM.

17 ~~G.~~ I. In imposing sentence on a person who is convicted of
18 violating this section, the court may require any person to perform public
19 services designated by the court in addition to or in lieu of any fine
20 that the court might impose.

21 J. A MERCHANT MAY NOT SEEK REMEDY UNDER SECTION 12-691 OR 13-3981
22 FOR AN OFFENSE FOR WHICH THE SUSPECT AGREES TO PARTICIPATE IN AND
23 COMPLETES A PRECOMPLAINT DIVERSION PROGRAM.

24 ~~H.~~ K. Shoplifting property with a value of two thousand dollars or
25 more, shoplifting property during any continuing criminal episode or
26 shoplifting property if done to promote, further or assist any criminal
27 street gang or criminal syndicate is a class 5 felony. Shoplifting
28 property with a value of one thousand dollars or more but less than two
29 thousand dollars is a class 6 felony. Shoplifting property valued at less
30 than one thousand dollars is a class 1 misdemeanor, unless the property is
31 a firearm in which case the shoplifting is a class 6 felony. For the
32 purposes of this subsection, "continuing criminal episode" means theft of
33 property with a value of one thousand five hundred dollars or more if
34 committed during at least three separate incidences within a period of
35 ninety consecutive days.

36 ~~I.~~ L. A person who in the course of shoplifting uses an artifice,
37 instrument, container, device or other article with the intent to
38 facilitate shoplifting or who commits shoplifting and who has previously
39 committed or been convicted within the past five years of two or more
40 offenses involving burglary, shoplifting, robbery, organized retail theft
41 or theft is guilty of a class 4 felony.