

Sen. Judiciary 3/7/85

FILED FEB 19 1985

SENATE FILE 299

BY COMMITTEE ON JUDICIARY

*Formerly SSB 91
Approved 2/14/85 (p. 44)*

Passed Senate, Date 3-4-85 (p. 577) Passed House, Date _____
Vote: Ayes 44 Nays 5 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to create the crime of shoplifting, provide penalties
2 and establish special provisions governing evidence in
3 shoplifting cases.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 714.23 SHOPLIFTING.

2 A person who does any of the following is guilty of
3 shoplifting:

4 1. Takes possession or control of goods offered or kept
5 for sale with the intent to deprive the owner of the goods.

6 2. Knowingly attaches or alters a label to goods offered
7 or kept for sale so as to materially misrepresent the quality
8 or quantity of the goods, or the maker or source of the goods.

9 3. Knowingly conceals goods offered or kept for sale with
10 the intent not to pay for the goods.

11 4. Knowingly transfers possession of goods offered or kept
12 for sale with the intent not to pay for the goods.

13 Sec. 2. NEW SECTION. 714.24 DEGREES OF SHOPLIFTING.

14 1. The shoplifting of goods exceeding five thousand
15 dollars in value is shoplifting in the first degree.

16 Shoplifting in the first degree is a class "C" felony.

17 2. The shoplifting of goods exceeding five hundred dollars
18 but not exceeding five thousand dollars in value is
19 shoplifting in the second degree. Shoplifting in the second
20 degree is a class "D" felony.

21 3. The shoplifting of goods exceeding one hundred dollars
22 but not exceeding five hundred dollars in value, or the
23 shoplifting of goods not exceeding one hundred dollars in
24 value by one who has before been twice convicted of
25 shoplifting, is shoplifting in the third degree. Shoplifting
26 in the third degree is an aggravated misdemeanor.

27 4. The shoplifting of goods exceeding fifty dollars but
28 not exceeding one hundred dollars in value is shoplifting in
29 the fourth degree. Shoplifting in the fourth degree is a
30 serious misdemeanor.

31 5. The shoplifting of goods not exceeding fifty dollars in
32 value is shoplifting in the fifth degree. Shoplifting in the
33 fifth degree is a simple misdemeanor.

34 Sec. 3. NEW SECTION. 714.25 VALUE FOR PURPOSES OF
35 SHOPLIFTING.

1 The value of goods is their normal market or exchange value
2 in the community at the time the shoplifting is committed.

3 If the goods are shoplifted by a series of acts from the
4 same person or location, or from different persons by a series
5 of acts which occur in approximately the same location or time
6 period so that the shoplifting is attributable to a single
7 scheme, plan or conspiracy, the acts may be considered a
8 single shoplifting and the value may be the total value of all
9 the goods shoplifted.

10 Sec. 4. NEW SECTION. 714.26 EVIDENCE OF INTENTION.

11 The fact that a person has concealed unpurchased goods of a
12 store or other mercantile establishment either on the premises
13 or outside the premises, is material evidence of intent to
14 deprive the owner and intent not to pay for the goods, and the
15 finding of unpurchased goods concealed upon the person or
16 among the belongings of the person, is material evidence of
17 intent to deprive and intent not to pay. If the person
18 conceals or causes to be concealed unpurchased goods upon the
19 person or among the belongings of another, the finding of the
20 goods is also material evidence of intent to deprive and
21 intent not to pay on the part of the person concealing the
22 goods.

23 Sec. 5. NEW SECTION. 714.27 PHOTOGRAPHS OF PROPERTY AS
24 EVIDENCE.

25 1. In a prosecution for shoplifting, a photograph of the
26 property over which alleged unauthorized possession or control
27 was exercised or which was otherwise allegedly unlawfully
28 obtained, is admissible as evidence if both of the following
29 apply:

30 a. The photograph will serve the purpose of demonstrating
31 the nature of the property.

32 b. The photograph is otherwise admissible into evidence
33 under all other rules of law governing the admissibility of
34 photographs into evidence. The fact that it is impractical to
35 introduce into evidence the actual property for any reason,

1 including its size, weight, or unavailability, need not be
2 established for the court to find a photograph of that
3 property to be competent evidence.

4 2. If a photograph is found to be competent evidence under
5 this section, it is admissible into evidence in place of the
6 property and to the same extent as the property itself.

7 Sec. 6. Section 714.1, subsection 1, Code 1985, is amended
8 to read as follows:

9 1. Takes possession or control of the property of another,
10 or property in the possession of another, which property is
11 other than goods offered or kept for sale, with the intent to
12 deprive the other thereof of the property.

13 Sec. 7. Section 714.5, unnumbered paragraph 1, Code 1985,
14 is amended to read as follows:

15 The fact that a person has concealed library materials as
16 defined in section 702.22 ~~or-unpurchased-property-of-a-store~~
17 ~~or-other-mercantile-establishment~~, either on the premises or
18 outside the premises, is material evidence of intent to
19 deprive the owner, and the finding of library materials ~~or~~
20 ~~unpurchased-property~~ concealed upon the person or among the
21 belongings of the person, is material evidence of intent to
22 deprive ~~and, if~~. If the person conceals or causes to be
23 concealed library materials or-unpurchased-property, upon the
24 person or among the belongings of another, the finding of the
25 same materials is also material evidence of intent to deprive
26 on the part of the person concealing the ~~library materials or~~
27 ~~goods~~.

28 Sec. 8. Section 714.8, subsection 2, Code 1985, is amended
29 by striking the subsection.

30 Sec. 9. Section 808.12, Code 1985, is amended to read as
31 follows:

32 808.12 DETENTION AND SEARCH IN THEFT OF LIBRARY MATERIALS
33 AND SHOPLIFTING.

34 1. Persons A peace officer may detain and search a person
35 concealing property library materials or unpurchased goods as

1 set forth in ~~section~~ sections 714.5~~7-may-be-detained-and~~
2 ~~searched-by-a-peace-officer,~~ and 714.26. A person employed in
3 a facility containing library materials, may also detain and
4 search a person so concealing library materials, and a
5 ~~merchant,~~ or merchant's employee,~~provided-that-the~~ may also
6 detain and search a person so concealing unpurchased goods.
7 The detention is shall be for a reasonable length of time and
8 that the search is shall be conducted in a reasonable manner
9 by a person of the same sex and according to subsection 2 of
10 this section.

11 2. No A search of the person under this section shall not
12 be conducted by any person other than someone acting under the
13 direction of a peace officer except where permission of the
14 one to be searched has first been obtained.

15 3. The detention or search under this section by a peace
16 officer, person employed in a facility containing library
17 materials, merchant, or merchant's employee does not render
18 the person liable, in a criminal or civil action, for false
19 arrest or false imprisonment provided if the person conducting
20 the search or detention had reasonable grounds to believe the
21 person detained or searched had concealed or was attempting to
22 conceal property library materials or unpurchased goods as set
23 forth in section 714.5 or 714.26.

24 Sec. 10. NEW SECTION. 809.8 PHOTOGRAPHED PROPERTY IN
25 SHOPLIFTING CASES.

26 1. In a prosecution for shoplifting where a photograph of
27 the seized property may be admitted into evidence in place of
28 the property itself as provided in section 714.27, the
29 property may be returned to its owner if all of the following
30 conditions are met:

31 a. The property has been photographed in a manner that
32 will serve the purpose of demonstrating the nature of the
33 property.

34 b. The photographs are filed with or retained by the
35 appropriate law enforcement agency for admission into evidence

1 in place of the property.

2 c. A receipt for the property is obtained from the owner
3 upon delivery by the law enforcement agency.

4 d. The prosecuting attorney who is prosecuting a case that
5 involves the property has not requested the law enforcement
6 agency to decline requests for return of the property to its
7 owner.

8 e. The defense attorney is notified, if the value of the
9 property exceeds one hundred dollars, that the defense
10 attorney has fourteen days in which to examine the property in
11 the hands of the owner.

12 f. The property may be lawfully possessed by the owner.

13 2. If the value of the returned property exceeds one hun-
14 dred dollars, the owner shall retain possession and not alter
15 the property for at least fourteen days to allow the defense
16 attorney to examine the property.

17 EXPLANATION

18 This bill establishes shoplifting as a separate crime. The
19 penalties for shoplifting are parallel to the current
20 penalties established under the general theft statute. The
21 bill provides that under certain circumstances a photograph of
22 the shoplifted property may be admitted into evidence at the
23 trial in place of the property itself. In such a case the
24 property may be returned to the owner.

25 The bill creates new sections in chapter 714 and 809 and
26 contains internal references to some of the sections.

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1 Amend Senate File 299 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Rule of criminal procedure 20, Iowa
5 court rules, second edition, is amended by adding the
6 following new section:

7 NEW SECTION. 5. USE OF PHOTOGRAPHS AS EVIDENCE IN
8 PROSECUTIONS.

9 A. In a prosecution for robbery, burglary, theft
10 or fraudulent practice, the court shall receive as
11 competent evidence, a photograph of property over
12 which the accused is alleged to have exerted
13 unauthorized control or to have otherwise obtained
14 unlawfully, if the photograph:

15 1. Will serve the purpose of demonstrating the
16 nature of the property; and

17 2. Is otherwise admissible into evidence under all
18 other rules of law governing the admissibility of
19 photographs into evidence. The fact that it is
20 impractical to introduce into evidence the actual
21 property for any reason, including its size, weight,
22 or unavailability, need not be established for the
23 court to find a photograph of that property to be
24 competent evidence. If a photograph is found to be
25 competent evidence under this subsection, it is
26 admissible into evidence in place of the property and
27 to the same extent as the property itself.

28 B. A law enforcement agency that is holding as
29 evidence property over which a person is alleged to
30 have exerted unauthorized control or to have otherwise
31 obtained unlawfully, shall return that property to its
32 owner if:

33 1. The property has been photographed in a manner
34 that will serve the purpose of demonstrating the
35 nature of the property, and if these photographs are
36 filed with or retained by the law enforcement agency
37 in place of the property;

38 2. Receipt for the property is obtained from the
39 owner upon delivery by the law enforcement agency;

40 3. The prosecuting attorney who is prosecuting a
41 case that involves the property has not requested the
42 law enforcement agency to decline requests for return
43 of the property to its owners; and

44 4. The property may be lawfully possessed by the
45 owner.

46 C. Subsections a and b of this section apply only
47 to robbery, burglary, theft, or fraudulent practice of
48 tangible personal property which is displayed, held,
49 stored, or offered for sale to the public, by a person
50 or entity holding a retail sales tax permit number

SENATE 7
FEBRUARY 21, 1985

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1 issued in accordance with section 422.53.
2 D. A court may, if a motion so requesting is filed
3 by defendant within fourteen days of arrest, order the
4 law enforcement agency to hold the property as
5 evidence pending the completion of trial."
6 2. Title page, by striking lines 1 through 3, and
7 inserting the following: "An Act relating to the
8 admissibility of photographs in prosecutions for
9 robbery, burglary, theft, and fraudulent practices."

S-3150 Filed
February 20, 1985

By RITSEMA

Law 3/4/85 (p. 577)

SSB 91

JUDICIARY: Holt, Chair; Dieleman and Hester

SSB 91

Judiciary

*Now
SF 299*

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

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4 the community, actual value, or replacement value.

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23 belongings of the person, is material evidence of intent to
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4 searched-by-a-peace-officer7 and 714.26. A person employed in
5 a facility containing library materials7 may also detain and
6 search a person so concealing library materials, and a
7 merchant7 or merchant's employee7-provided-that-the may also
8 detain and search a person so concealing unpurchased goods.
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10 that the search is shall be conducted in a reasonable manner
11 by a person of the same sex and according to subsection 2 of
12 this section.

13 2. No A search of the person under this section shall not
14 be conducted by any person other than someone acting under the
15 direction of a peace officer except where permission of the
16 one to be searched has first been obtained.

17 3. The detention or search under this section by a peace
18 officer, person employed in a facility containing library
19 materials, merchant, or merchant's employee does not render
20 the person liable, in a criminal or civil action, for false
21 arrest or false imprisonment provided if the person conducting
22 the search or detention had reasonable grounds to believe the
23 person detained or searched had concealed or was attempting to
24 conceal property library materials or unpurchased goods as set
25 forth in section 714.5 or 714.26.

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