

1 **H. B. 2407**

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3 (By Delegate Ellem)

4 [Introduced February 13, 2013; referred to the  
5 Committee on the Judiciary then Finance.]  
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10 A BILL to amend and reenact §61-3A-3 of the Code of West Virginia,  
11 1931, as amended, relating to crimes and their punishment;  
12 shoplifting; penalties; and eliminating the third offense  
13 conviction of shoplifting and its corresponding felony  
14 penalty.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §61-3A-3 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 3A. SHOPLIFTING.**

19 **§61-3A-3. Penalties.**

20 A person convicted of shoplifting shall be punished as  
21 follows:

22 (a) *First offense conviction.* -- Upon a first shoplifting  
23 conviction:

1 (1) When the value of the merchandise is less than or equal to  
2 \$500, the person is guilty of a misdemeanor and, shall be fined not  
3 more than \$250.

4 (2) When the value of the merchandise exceeds \$500, the person  
5 is guilty of a misdemeanor and, shall be fined not less than \$100  
6 nor more than \$500, and such fine shall not be suspended, or the  
7 person shall be confined in jail not more than sixty days, or both.

8 (b) ~~Second~~ Subsequent offense conviction. -- Upon a second or  
9 any subsequent shoplifting conviction:

10 (1) When the value of the merchandise is less than or equal to  
11 \$500, the person is guilty of a misdemeanor and, shall be fined not  
12 less than \$100 nor more than \$500, and such fine shall not be  
13 suspended, or the person shall be confined in jail not more than  
14 six months or both.

15 (2) When the value of the merchandise exceeds \$500, the person  
16 is guilty of a misdemeanor and, shall be fined not less than \$500  
17 and shall be confined in jail for not less than six months nor more  
18 than one year.

19 ~~(c) Third offense conviction. -- Upon a third or subsequent~~  
20 ~~shoplifting conviction, regardless of the value of the merchandise,~~  
21 ~~the person is guilty of a felony and, shall be fined not less than~~  
22 ~~five hundred dollars nor more than five thousand dollars, and shall~~  
23 ~~be imprisoned in the penitentiary for not less than one year nor~~  
24 ~~more than ten years. At least one year shall actually be spent in~~

1 ~~confinement and not subject to probation: *Provided*, That an order~~  
2 ~~for home detention by the court pursuant to the provisions of~~  
3 ~~article eleven b, chapter sixty two of this code may be used as an~~  
4 ~~alternative sentence to the incarceration required by this~~  
5 ~~subsection.~~

6       ~~(d)~~ (c) *Mandatory penalty.* -- In addition to the fines and  
7 imprisonment imposed by this section, in all cases of conviction  
8 for the offense of shoplifting, the court shall order the defendant  
9 to pay a penalty to the mercantile establishment involved in the  
10 amount of \$50, or double the value of the merchandise involved,  
11 whichever is higher. The mercantile establishment shall be  
12 entitled to collect such mandatory penalty as in the case of a  
13 civil judgment. This penalty shall be in addition to the  
14 mercantile establishment's rights to recover the stolen  
15 merchandise.

16       ~~(e)~~ (d) In determining the number of prior shoplifting  
17 convictions for purposes of imposing punishment under this section,  
18 the court shall disregard all ~~such~~ shoplifting convictions  
19 occurring more than seven years prior to the shoplifting offense in  
20 question.

NOTE: The purpose of this bill is to eliminate the third  
offense conviction of shoplifting and its corresponding felony  
penalty.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.