

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGOSSED

House Bill 4998

By Delegates Kirby, Nestor, Brooks, Hornbuckle, and

E. Pritt

[Introduced January 22, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-3A-3 of the Code of West Virginia, 1931, as amended, relating
2 to modifying the penalties for third offense conviction of shoplifting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. SHOPLIFTING.

§61-3A-3.

Penalties.

1 A person convicted of shoplifting shall be punished as follows:

2 (a) *First offense conviction.* — Upon a first shoplifting conviction:

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

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

8 (b) *Second offense conviction.* — Upon a second shoplifting conviction:

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

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

15 (c) *Third offense conviction.* — Upon a third or subsequent shoplifting conviction,
16 regardless of the value of the merchandise, the person is guilty of a felony and, shall be fined not
17 less than \$500 nor more than \$5000, and shall be imprisoned in the penitentiary for not less than
18 one year nor more than ten years. ~~At least one year shall actually be spent in confinement and not~~
19 ~~subject to probation: *Provided*, That an order for home detention by the court pursuant to the~~
20 ~~provisions of §62-11B-1 et seq. of this code may be used as an alternative sentence to the~~
21 ~~incarceration required by this subsection. As part of the presentence investigation, if the court~~

22 finds that evidence exists that the person convicted of third or subsequent offense was abusing
23 drugs or alcohol at the time of his or her arrest, the Court shall order an evaluation to determine
24 whether the person has a substance use disorder. Upon a finding by the Court that the person
25 convicted of third or subsequent offense has been diagnosed with a substance use disorder, in
26 addition to the other penalties provided pursuant to this subsection, the Court shall order the
27 person undergo treatment for the substance use disorder.

28 (d) *Mandatory penalty.* — In addition to the fines and imprisonment imposed by this
29 section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant
30 to pay a penalty to the mercantile establishment involved in the amount of \$50, or double the value
31 of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to
32 collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition
33 to the mercantile establishment's rights to recover the stolen merchandise.

34 (e) In determining the number of prior shoplifting convictions for purposes of imposing
35 punishment under this section, the court shall disregard all such convictions occurring more than
36 seven years prior to the shoplifting offense in question.