

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5314**

By Delegates Steele, Kirby, Foggin, Akers, Garcia,  
Fluharty, Hanshaw (Mr. Speaker), McGeehan,  
Ellington, C. Pritt and Young

[Introduced January 29, 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 punishment upon conviction of third offense shoplifting; eliminating the mandatory  
 3 sentence of one year of confinement in the penitentiary upon conviction of third offense  
 4 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~~

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

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

NOTE: The purpose of this bill is to remove the prohibition on alternative sentencing and probation for the offense of third offense shoplifting.

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