

SENATE, No. 3587

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED SEPTEMBER 19, 2024

Sponsored by:

Senator JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Senator HOLLY T. SCHEPISI

District 39 (Bergen)

Co-Sponsored by:

**Senators Bramnick, A.M.Bucco, Henry, Corrado, Stack, Greenstein,
O'Scanlon, Gopal, Amato and Diegnan**

SYNOPSIS

Concerns retail theft, establishes retail theft unit, and appropriates \$1 million.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/14/2025)

1 AN ACT concerning retail theft, amending and supplementing
2 various parts of the statutory law, and making an appropriation.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 7 of P.L.1981, c.167 (C.2C:20-7.1) is amended to
8 read as follows:

9 7. Fencing. a. Possession of altered property. Any dealer in
10 property who knew or should have known that the identifying
11 features such as serial numbers and permanently affixed labels of
12 property in his possession have been removed or altered without the
13 consent of the manufacturer is guilty of possession of altered
14 property. It is a defense to a prosecution under this subsection that
15 a person lawfully possesses the usual indicia of ownership in
16 addition to mere possession.

17 b. (1) Dealing in stolen property. A person is guilty of dealing in
18 stolen property if he traffics in, or initiates, organizes, plans,
19 finances, directs, manages or supervises trafficking in stolen
20 property, including through the use of an online platform via any
21 electronic device or through a social media site. This paragraph
22 shall not apply to dealing in stolen property consisting of a
23 domestic companion animal, addressed in paragraph (2) of this
24 subsection.

25 (2) Dealing in stolen domestic companion animals. A person is
26 guilty of dealing in stolen domestic companion animals if he
27 trafficks in, or initiates, organizes, plans, finances, directs, manages
28 or supervises trafficking in stolen property consisting of a domestic
29 companion animal.

30 c. (1) For any violation of this section, other than dealing in
31 stolen domestic companion animals, the value of the property
32 involved in the violation shall be determined by the trier of fact for
33 the purpose of determining the grade of the offense, and the value
34 of the property involved in the violation may be aggregated in
35 determining the grade of the offense where the acts or conduct
36 constituting a violation were committed pursuant to one scheme or
37 course of conduct, whether from the same person or several
38 persons.

39 (2) A violation of this section for dealing in stolen domestic
40 companion animals constitutes a crime of the third degree.

41 d. It is an affirmative defense to a prosecution under this
42 section that the actor:

43 (1) Was unaware that the property or service was that of
44 another;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) Acted under an honest claim of right to the property or
2 service involved or that he had a right to acquire or dispose of it as
3 he did.

4 e. In addition to the presumptions contained in subsection b. of
5 N.J.S.2C:20-7, the following presumptions are available in the
6 prosecution for a fencing offense:

7 (1) Proof of the purchase or sale of property at a price
8 substantially below its fair market value, unless satisfactorily
9 explained, gives rise to an inference that the person buying or
10 selling the property knew that it had been stolen;

11 (2) Proof of the purchase or sale of property by a dealer in that
12 property, out of the regular course of business, or without the usual
13 indicia of ownership other than mere possession, or the property or
14 the job lot of which it is a part was bought, received, possessed or
15 controlled in broken succession of title, so that it cannot be traced,
16 by appropriate documents, in unbroken succession to the
17 manufacturer, in all cases where the regular course of business
18 reasonably indicates records of purchase, transfer or sale, unless
19 satisfactorily explained, gives rise to an inference that the person
20 buying or selling the property knew that it had been stolen; and

21 (3) Proof that a person buying or selling property of the sort
22 received obtained such property without having ascertained by
23 reasonable inquiry that the person from whom he obtained it had a
24 legal right to possess or control it gives rise to an inference that
25 such person knew that it had been stolen.

26 (cf: P.L.2017, c.156, s.1)

27

28 2. (New section) a. A person is guilty of fostering the sale of
29 stolen property, a disorderly persons offense, if the person:

30 (1) hosts, advertises, or otherwise assists in the sale of stolen
31 goods, including through an online platform; and

32 (2) knows or reasonably should know that the property was
33 stolen. The requisite knowledge is presumed in the case of a person
34 who undertook a substantial and unjustifiable risk that the persons
35 actions would result in the sale of stolen property.

36 b. As defined in this act:

37 “Online platform” means any public-facing Internet website,
38 Internet web application, or computer or mobile application,
39 including a social networking website or publication.

40 “Sale” means any sale, transfer, exchange, barter, or offer for
41 sale and distribution, in any manner or by any means whatsoever,
42 including, but not limited to, via an online platform.

43 “Stolen property” shall have the same meaning as defined
44 pursuant to N.J.S.2C:20-1.

45

46 3. N.J.S.2C:12-1 is amended as follows:

47 2C:12-1. Assault. a. Simple assault. A person is guilty of
48 assault if the person:

- 1 (1) Attempts to cause or purposely, knowingly or recklessly
2 causes bodily injury to another; or
- 3 (2) Negligently causes bodily injury to another with a deadly
4 weapon; or
- 5 (3) Attempts by physical menace to put another in fear of
6 imminent serious bodily injury.
- 7 Simple assault is a disorderly persons offense unless committed
8 in a fight or scuffle entered into by mutual consent, in which case it
9 is a petty disorderly persons offense.
- 10 b. Aggravated assault. A person is guilty of aggravated assault
11 if the person:
- 12 (1) Attempts to cause serious bodily injury to another, or causes
13 injury purposely or knowingly or under circumstances manifesting
14 extreme indifference to the value of human life recklessly causes
15 such injury; or
- 16 (2) Attempts to cause or purposely or knowingly causes bodily
17 injury to another with a deadly weapon; or
- 18 (3) Recklessly causes bodily injury to another with a deadly
19 weapon; or
- 20 (4) Knowingly under circumstances manifesting extreme
21 indifference to the value of human life points a firearm, as defined
22 in subsection f. of N.J.S.2C:39-1, at or in the direction of another,
23 whether or not the actor believes it to be loaded; or
- 24 (5) Commits a simple assault as defined in paragraph (1), (2), or
25 (3) of subsection a. of this section upon:
- 26 (a) Any law enforcement officer acting in the performance of
27 the officer's duties while in uniform or exhibiting evidence of
28 authority or because of the officer's status as a law enforcement
29 officer; or
- 30 (b) Any paid or volunteer firefighter acting in the performance
31 of the firefighter's duties while in uniform or otherwise clearly
32 identifiable as being engaged in the performance of the duties of a
33 firefighter; or
- 34 (c) Any person engaged in emergency first-aid or medical
35 services acting in the performance of the person's duties while in
36 uniform or otherwise clearly identifiable as being engaged in the
37 performance of emergency first-aid or medical services; or
- 38 (d) Any school board member, school administrator, teacher,
39 school bus driver, or other employee of a public or nonpublic
40 school or school board while clearly identifiable as being engaged
41 in the performance of the person's duties or because of the person's
42 status as a member or employee of a public or nonpublic school or
43 school board or any school bus driver employed by an operator
44 under contract to a public or nonpublic school or school board while
45 clearly identifiable as being engaged in the performance of the
46 person's duties or because of the person's status as a school bus
47 driver; or

- 1 (e) Any employee of the Division of Child Protection and
2 Permanency while clearly identifiable as being engaged in the
3 performance of the employee's duties or because of the status as an
4 employee of the division; or
- 5 (f) Any justice of the Supreme Court, judge of the Superior
6 Court, judge of the Tax Court or municipal judge while clearly
7 identifiable as being engaged in the performance of judicial duties
8 or because of the status as a member of the judiciary; or
- 9 (g) Any operator of a motorbus or the operator's supervisor or
10 any employee of a rail passenger service while clearly identifiable
11 as being engaged in the performance of the person's duties or
12 because of the status as an operator of a motorbus or as the
13 operator's supervisor or as an employee of a rail passenger service;
14 or
- 15 (h) Any Department of Corrections employee, county
16 correctional police officer, juvenile correctional police officer, State
17 juvenile facility employee, juvenile detention staff member,
18 juvenile detention officer, probation officer or any sheriff,
19 undersheriff, or sheriff's officer acting in the performance of the
20 person's duties while in uniform or exhibiting evidence of the
21 person's authority or because of the status as a Department of
22 Corrections employee, county correctional police officer, juvenile
23 correctional police officer, State juvenile facility employee, juvenile
24 detention staff member, juvenile detention officer, probation
25 officer, sheriff, undersheriff, or sheriff's officer; or
- 26 (i) Any employee, including any person employed under
27 contract, of a utility company as defined in section 2 of P.L.1971,
28 c.224 (C.2A:42-86) or a cable television company subject to the
29 provisions of the "Cable Television Act," P.L.1972, c.186
30 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in
31 the performance of the employee's duties in regard to connecting,
32 disconnecting, or repairing or attempting to connect, disconnect, or
33 repair any gas, electric, or water utility, or cable television or
34 telecommunication service; or
- 35 (j) Any health care worker employed by a licensed health care
36 facility to provide direct patient care, any health care professional
37 licensed or otherwise authorized pursuant to Title 26 or Title 45 of
38 the Revised Statutes to practice a health care profession, except a
39 direct care worker at a State or county psychiatric hospital or State
40 developmental center or veterans' memorial home, while clearly
41 identifiable as being engaged in the duties of providing direct
42 patient care or practicing the health care profession; or
- 43 (k) Any direct care worker at a State or county psychiatric
44 hospital or State developmental center or veterans' memorial home,
45 while clearly identifiable as being engaged in the duties of
46 providing direct patient care or practicing the health care
47 profession, provided that the actor is not a patient or resident at the

1 facility who is classified by the facility as having a mental illness or
2 developmental disability; or

3 (1) Any employee of a retail mercantile establishment.
4 “Employee of a retail mercantile establishment” means any person,
5 while clearly identifiable as being engaged in the performance of
6 the person’s duties, engaged in the sale, display, or offering for sale
7 of consumer commodities and who is employed by any place of
8 business where merchandise is displayed, held, stored, or sold or
9 offered at retail to members of consuming public; or

10 (6) Causes bodily injury to another person while fleeing or
11 attempting to elude a law enforcement officer in violation of
12 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
13 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
14 other provision of law to the contrary, a person shall be strictly
15 liable for a violation of this paragraph upon proof of a violation of
16 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
17 violation of subsection c. of N.J.S.2C:20-10 which resulted in
18 bodily injury to another person; or

19 (7) Attempts to cause significant bodily injury to another or
20 causes significant bodily injury purposely or knowingly or, under
21 circumstances manifesting extreme indifference to the value of
22 human life recklessly causes such significant bodily injury; or

23 (8) Causes bodily injury by knowingly or purposely starting a
24 fire or causing an explosion in violation of N.J.S.2C:17-1 which
25 results in bodily injury to any emergency services personnel
26 involved in fire suppression activities, rendering emergency
27 medical services resulting from the fire or explosion or rescue
28 operations, or rendering any necessary assistance at the scene of the
29 fire or explosion, including any bodily injury sustained while
30 responding to the scene of a reported fire or explosion. For
31 purposes of this paragraph, "emergency services personnel" shall
32 include, but not be limited to, any paid or volunteer firefighter, any
33 person engaged in emergency first-aid or medical services and any
34 law enforcement officer. Notwithstanding any other provision of
35 law to the contrary, a person shall be strictly liable for a violation of
36 this paragraph upon proof of a violation of N.J.S.2C:17-1 which
37 resulted in bodily injury to any emergency services personnel; or

38 (9) Knowingly, under circumstances manifesting extreme
39 indifference to the value of human life, points or displays a firearm,
40 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of
41 a law enforcement officer; or

42 (10) Knowingly points, displays or uses an imitation firearm, as
43 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a
44 law enforcement officer with the purpose to intimidate, threaten, or
45 attempt to put the officer in fear of bodily injury or for any unlawful
46 purpose; or

47 (11) Uses or activates a laser sighting system or device, or a
48 system or device which, in the manner used, would cause a

1 reasonable person to believe that it is a laser sighting system or
2 device, against a law enforcement officer acting in the performance
3 of the officer's duties while in uniform or exhibiting evidence of the
4 officer's authority. As used in this paragraph, "laser sighting system
5 or device" means any system or device that is integrated with or
6 affixed to a firearm and emits a laser light beam that is used to
7 assist in the sight alignment or aiming of the firearm; or

8 (12) Attempts to cause significant bodily injury or causes
9 significant bodily injury purposely or knowingly or, under
10 circumstances manifesting extreme indifference to the value of
11 human life, recklessly causes significant bodily injury to a person
12 who, with respect to the actor, meets the definition of a victim of
13 domestic violence, as defined in subsection d. of section 3 of
14 P.L.1991, c.261 (C.2C:25-19); or

15 (13) Knowingly or, under circumstances manifesting extreme
16 indifference to the value of human life, recklessly obstructs the
17 breathing or blood circulation of a person who, with respect to the
18 actor, meets the definition of a victim of domestic violence, as
19 defined in subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-
20 19), by applying pressure on the throat or neck or blocking the nose
21 or mouth of such person, thereby causing or attempting to cause
22 bodily injury.

23 Aggravated assault under paragraphs (1) and (6) of subsection b.
24 of this section is a crime of the second degree; under paragraphs
25 (2), (7), (9), and (10) of subsection b. of this section is a crime of
26 the third degree; under paragraphs (3) and (4) of subsection b. of
27 this section is a crime of the fourth degree; and under paragraph (5)
28 of subsection b. of this section is a crime of the third degree if the
29 victim suffers bodily injury, otherwise it is a crime of the fourth
30 degree, except that any aggravated assault under subparagraph (g)
31 of paragraph (5) of subsection b. of this section shall be a crime of
32 the third degree. Aggravated assault under paragraph (8) of
33 subsection b. of this section is a crime of the third degree if the
34 victim suffers bodily injury; if the victim suffers significant bodily
35 injury or serious bodily injury it is a crime of the second degree.
36 Aggravated assault under paragraph (11) of subsection b. of this
37 section is a crime of the third degree. Aggravated assault under
38 paragraph (12) of subsection b. of this section is a crime of the third
39 degree but the presumption of non-imprisonment set forth in
40 subsection e. of N.J.S.2C:44-1 for a first offense of a crime of the
41 third degree shall not apply. Aggravated assault under paragraph
42 (13) of subsection b. of this section is a crime of the second degree.

43 c. (1) A person is guilty of assault by auto or vessel when the
44 person drives a vehicle or vessel recklessly and causes either
45 serious bodily injury or bodily injury to another. Assault by auto or
46 vessel is a crime of the fourth degree if serious bodily injury results
47 and is a disorderly persons offense if bodily injury results. Proof
48 that the defendant was operating a hand-held wireless telephone

1 while driving a motor vehicle in violation of section 1 of P.L.2003,
2 c.310 (C.39:4-97.3) may give rise to an inference that the defendant
3 was driving recklessly.

4 (2) Assault by auto or vessel is a crime of the third degree if the
5 person drives the vehicle while in violation of R.S.39:4-50 or
6 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily
7 injury results and is a crime of the fourth degree if the person drives
8 the vehicle while in violation of R.S.39:4-50 or section 2 of
9 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

10 (3) Assault by auto or vessel is a crime of the second degree if
11 serious bodily injury results from the defendant operating the auto
12 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,
13 c.512 (C.39:4-50.4a) while:

14 (a) on any school property used for school purposes which is
15 owned by or leased to any elementary or secondary school or school
16 board, or within 1,000 feet of such school property;

17 (b) driving through a school crossing as defined in R.S.39:1-1 if
18 the municipality, by ordinance or resolution, has designated the
19 school crossing as such; or

20 (c) driving through a school crossing as defined in R.S.39:1-1
21 knowing that juveniles are present if the municipality has not
22 designated the school crossing as such by ordinance or resolution.

23 Assault by auto or vessel is a crime of the third degree if bodily
24 injury results from the defendant operating the auto or vessel in
25 violation of this paragraph.

26 A map or true copy of a map depicting the location and
27 boundaries of the area on or within 1,000 feet of any property used
28 for school purposes which is owned by or leased to any elementary
29 or secondary school or school board produced pursuant to section 1
30 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under
31 subparagraph (a) of paragraph (3) of this subsection.

32 It shall be no defense to a prosecution for a violation of
33 subparagraph (a) or (b) of paragraph (3) of this subsection that the
34 defendant was unaware that the prohibited conduct took place while
35 on or within 1,000 feet of any school property or while driving
36 through a school crossing. Nor shall it be a defense to a prosecution
37 under subparagraph (a) or (b) of paragraph (3) of this subsection
38 that no juveniles were present on the school property or crossing
39 zone at the time of the offense or that the school was not in session.

40 (4) Assault by auto or vessel is a crime of the third degree if the
41 person purposely drives a vehicle in an aggressive manner directed
42 at another vehicle and serious bodily injury results and is a crime of
43 the fourth degree if the person purposely drives a vehicle in an
44 aggressive manner directed at another vehicle and bodily injury
45 results. For purposes of this paragraph, "driving a vehicle in an
46 aggressive manner" shall include, but is not limited to,
47 unexpectedly altering the speed of the vehicle, making improper or
48 erratic traffic lane changes, disregarding traffic control devices,

1 failing to yield the right of way, or following another vehicle too
2 closely.

3 As used in this subsection, "vessel" means a means of
4 conveyance for travel on water and propelled otherwise than by
5 muscular power.

6 d. A person who is employed by a facility as defined in section
7 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
8 defined in paragraph (1) or (2) of subsection a. of this section upon
9 an institutionalized elderly person as defined in section 2 of
10 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
11 degree.

12 e. (Deleted by amendment, P.L.2001, c.443).

13 f. A person who commits a simple assault as defined in
14 paragraph (1), (2), or (3) of subsection a. of this section in the
15 presence of a child under 16 years of age at a school or community
16 sponsored youth sports event is guilty of a crime of the fourth
17 degree. The defendant shall be strictly liable upon proof that the
18 offense occurred, in fact, in the presence of a child under 16 years
19 of age. It shall not be a defense that the defendant did not know
20 that the child was present or reasonably believed that the child was
21 16 years of age or older. The provisions of this subsection shall not
22 be construed to create any liability on the part of a participant in a
23 youth sports event or to abrogate any immunity or defense available
24 to a participant in a youth sports event. As used in this act, "school
25 or community sponsored youth sports event" means a competition,
26 practice, or instructional event involving one or more
27 interscholastic sports teams or youth sports teams organized
28 pursuant to a nonprofit or similar charter or which are member
29 teams in a youth league organized by or affiliated with a county or
30 municipal recreation department and shall not include collegiate,
31 semi-professional or professional sporting events.

32 (cf: P.L.2021, c.352, s.1)

33

34 4. N.J.S.2C:20-11 is amended to read as follows:

35 a. Definitions. The following definitions apply to this section:

36 (1) "Shopping cart" means those push carts of the type or types
37 which are commonly provided by grocery stores, drug stores or
38 other retail mercantile establishments for the use of the public in
39 transporting commodities in stores and markets and, incidentally,
40 from the stores to a place outside the store;

41 (2) "Store or other retail mercantile establishment" means a
42 place where merchandise is displayed, held, stored or sold or
43 offered to the public for sale;

44 (3) "Merchandise" means any goods, chattels, foodstuffs or
45 wares of any type and description, regardless of the value thereof;

46 (4) "Merchant" means any owner or operator of any store or
47 other retail mercantile establishment, or any agent, servant,

1 employee, lessee, consignee, officer, director, franchisee or
2 independent contractor of such owner or proprietor;

3 (5) "Person" means any individual or individuals, including an
4 agent, servant or employee of a merchant where the facts of the
5 situation so require;

6 (6) "Conceal" means to conceal merchandise so that, although
7 there may be some notice of its presence, it is not visible through
8 ordinary observation;

9 (7) "Full retail value" means the merchant's stated or advertised
10 price of the merchandise;

11 (8) "Premises of a store or retail mercantile establishment"
12 means and includes but is not limited to, the retail mercantile
13 establishment; any common use areas in shopping centers and all
14 parking areas set aside by a merchant or on behalf of a merchant for
15 the parking of vehicles for the convenience of the patrons of such
16 retail mercantile establishment;

17 (9) "Under-ring" means to cause the cash register or other sale
18 recording device to reflect less than the full retail value of the
19 merchandise;

20 (10) "Antishoplifting or inventory control device
21 countermeasure" means any item or device which is designed,
22 manufactured, modified, or altered to defeat any antishoplifting or
23 inventory control device;

24 (11) "Organized retail theft enterprise" means any association of
25 two or more persons who engage in the conduct of or are associated
26 for the purpose of effectuating the transfer or sale of shoplifted
27 merchandise.

28 b. Shoplifting. Shoplifting shall consist of any one or more of
29 the following acts:

30 (1) For any person purposely to take possession of, carry away,
31 transfer or cause to be carried away or transferred, any merchandise
32 displayed, held, stored or offered for sale by any store or other retail
33 mercantile establishment with the intention of depriving the
34 merchant of the possession, use or benefit of such merchandise or
35 converting the same to the use of such person without paying to the
36 merchant the full retail value thereof.

37 (2) For any person purposely to conceal upon his person or
38 otherwise any merchandise offered for sale by any store or other
39 retail mercantile establishment with the intention of depriving the
40 merchant of the processes, use or benefit of such merchandise or
41 converting the same to the use of such person without paying to the
42 merchant the value thereof.

43 (3) For any person purposely to alter, transfer or remove any
44 label, price tag or marking indicia of value or any other markings
45 which aid in determining value affixed to any merchandise
46 displayed, held, stored or offered for sale by any store or other retail
47 mercantile establishment and to attempt to purchase such
48 merchandise personally or in consort with another at less than the

1 full retail value with the intention of depriving the merchant of all
2 or some part of the value thereof.

3 (4) For any person purposely to transfer any merchandise
4 displayed, held, stored or offered for sale by any store or other retail
5 merchandise establishment from the container in or on which the
6 same shall be displayed to any other container with intent to deprive
7 the merchant of all or some part of the retail value thereof.

8 (5) For any person purposely to under-ring with the intention of
9 depriving the merchant of the full retail value thereof.

10 (6) For any person purposely to remove a shopping cart from the
11 premises of a store or other retail mercantile establishment without
12 the consent of the merchant given at the time of such removal with
13 the intention of permanently depriving the merchant of the
14 possession, use or benefit of such cart.

15 c. Gradation. (1) Shoplifting constitutes a crime of the second
16 degree under subsection b. of this section if the full retail value of
17 the merchandise is \$75,000 or more, or the offense is committed in
18 furtherance of or in conjunction with an organized retail theft
19 enterprise and the full retail value of the merchandise is \$1,000 or
20 more.

21 (2) Shoplifting constitutes a crime of the third degree under
22 subsection b. of this section if the full retail value of the
23 merchandise exceeds \$500 but is less than \$75,000, or the offense
24 is committed in furtherance of or in conjunction with an organized
25 retail theft enterprise and the full retail value of the merchandise is
26 less than \$1,000.

27 (3) Shoplifting constitutes a crime of the fourth degree under
28 subsection b. of this section if the full retail value of the
29 merchandise is at least \$200 but does not exceed \$500.

30 (4) Shoplifting is a disorderly persons offense under subsection
31 b. of this section if the full retail value of the merchandise is less
32 than \$200.

33 The total value of the merchandise involved in a violation or
34 multiple violations of this section may be aggregated within the
35 previous one-year period in determining the grade of the offense
36 where the acts or conduct constituting a violation were committed
37 pursuant to one scheme or course of conduct, whether from the
38 same person or several persons, or were committed in furtherance
39 of or in conjunction with an organized retail theft enterprise.

40 Additionally, notwithstanding the term of imprisonment provided
41 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
42 offense shall be sentenced to perform community service as
43 follows: for a first offense, at least ten days of community service;
44 for a second offense, at least 15 days of community service; and for
45 a third or subsequent offense, a maximum of 25 days of community
46 service and any person convicted of a third or subsequent
47 shoplifting offense shall serve a minimum term of imprisonment of
48 not less than 90 days.

1 d. Presumptions. Any person purposely concealing
2 unpurchased merchandise of any store or other retail mercantile
3 establishment, either on the premises or outside the premises of
4 such store or other retail mercantile establishment, shall be prima
5 facie presumed to have so concealed such merchandise with the
6 intention of depriving the merchant of the possession, use or benefit
7 of such merchandise without paying the full retail value thereof,
8 and the finding of such merchandise concealed upon the person or
9 among the belongings of such person shall be prima facie evidence
10 of purposeful concealment; and if such person conceals, or causes
11 to be concealed, such merchandise upon the person or among the
12 belongings of another, the finding of the same shall also be prima
13 facie evidence of willful concealment on the part of the person so
14 concealing such merchandise.

15 e. A law enforcement officer, or a special officer, or a
16 merchant, who has probable cause for believing that a person has
17 willfully concealed unpurchased merchandise and that he can
18 recover the merchandise by taking the person into custody, may, for
19 the purpose of attempting to effect recovery thereof, take the person
20 into custody and detain him in a reasonable manner for not more
21 than a reasonable time, and the taking into custody by a law
22 enforcement officer or special officer or merchant shall not render
23 such person criminally or civilly liable in any manner or to any
24 extent whatsoever.

25 Any law enforcement officer may arrest without warrant any
26 person he has probable cause for believing has committed the
27 offense of shoplifting as defined in this section.

28 A merchant who causes the arrest of a person for shoplifting, as
29 provided for in this section, shall not be criminally or civilly liable
30 in any manner or to any extent whatsoever where the merchant has
31 probable cause for believing that the person arrested committed the
32 offense of shoplifting.

33 f. Any person who possesses or uses any antishoplifting or
34 inventory control device countermeasure within any store or other
35 retail mercantile establishment is guilty of a disorderly persons
36 offense.

37 (cf: P.L.2006, c.56, s.1)

38

39 5. Section 2 of P.L.2006, c.56 (C.2C:20-11.2) is amended to
40 read as follows:

41 2. A person is a leader of an organized retail theft enterprise if
42 he conspires with others as an organizer, supervisor, financier or
43 manager, to engage for profit in a scheme or course of conduct to
44 effectuate the transfer or sale of shoplifted merchandise. Leader of
45 organized retail theft enterprise is a crime of the **second** first
46 degree. Notwithstanding the provisions of subsection a. of
47 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000

1 or five times the retail value of the merchandise seized at the time
2 of the arrest, whichever is greater.

3 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
4 leader of organized retail theft enterprise shall not merge with the
5 conviction for any offense which is the object of the conspiracy.
6 Nothing contained in this section shall prohibit the court from
7 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
8 section be construed in any way to preclude or limit the prosecution
9 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
10 any prosecution or conviction for any other offense.

11 It shall not be necessary in any prosecution under this section for
12 the State to prove that any intended profit was actually realized. The
13 trier of fact may infer that a particular scheme or course of conduct
14 was undertaken for profit from all of the attending circumstances,
15 including but not limited to the number of persons involved in the
16 scheme or course of conduct, the actor's net worth and his
17 expenditures in relation to his legitimate sources of income, the
18 amount of merchandise involved, or the amount of cash or currency
19 involved.

20 It shall not be a defense to a prosecution under this section that
21 any shoplifted merchandise was brought into or transported in this
22 State solely for ultimate distribution in another jurisdiction; nor
23 shall it be a defense that any profit was intended to be made in
24 another jurisdiction.

25 (cf: P.L.2006, c.56, s.2)

26

27 6. (New section) a. Upon request of the prosecutor, a person
28 who has been convicted of shoplifting pursuant to N.J.S.2C:20-11,
29 receiving stolen property pursuant to N.J.S.2C:20-7, leader of
30 organized retail theft enterprise pursuant to section 2 of P.L.2006,
31 c.56 (C.2C:20-11.2); or theft as defined in chapter 20 of Title 2C of
32 the New Jersey Statutes that involves the stealing of merchandise
33 from a retail mercantile establishment shall be sentenced to an
34 extended term of imprisonment pursuant to N.J.S.2C:43-7 if the
35 person has previously been convicted on two or more prior and
36 separate occasions, regardless of the dates of the convictions, in
37 accordance with the provisions of subsection b. of this section, for a
38 violation of paragraphs (1) or (2) of subsection c. of N.J.S.2C:20-
39 11, N.J.S.2C:20-7, section 2 of P.L.2006, c.56 (C.2C:20-11.2), or
40 theft as defined in chapter 20 of Title 2C of the New Jersey Statutes
41 involving the stealing of merchandise, or a crime under any statute
42 of the United States, this State, or any other state for a crime that is
43 substantially equivalent to a violation of shoplifting, leader of
44 organized retail theft enterprise, or theft involving merchandise.

45 b. The provisions of this section shall not apply unless the prior
46 convictions are for crimes committed on separate occasions and the
47 crime for which the defendant is being sentenced was committed
48 either:

1 (1) within 10 years of the date of the defendant's last release
2 from confinement for the commission of any crime; or

3 (2) within 10 years of the date of the commission of the most
4 recent of the crimes enumerated in subsection a. of this section for
5 which the defendant has a prior conviction.

6 c. Prior convictions shall be defined and proven in accordance
7 with N.J.S.2C:44-4.

8 d. The court shall not impose a sentence of imprisonment
9 pursuant to this section unless the ground therefor has been
10 established at a hearing after the conviction of the defendant and on
11 written notice to the defendant of the ground proposed. The
12 defendant shall have the right to hear and controvert the evidence
13 against him and to offer evidence upon the issue.

14

15 7. (New section) a. The Attorney General shall, in consultation
16 with the Director of the Division of Criminal Justice, establish a
17 retail theft unit or other appropriate office in the Department of Law
18 and Public Safety to combat organized retail theft in this State. The
19 Attorney General shall investigate, coordinate, and supply resources
20 to prosecute organized retail theft.

21 b. (1). In a manner prescribed by the Attorney General, a
22 county prosecutor, law enforcement officer, special officer, or retail
23 merchant may notify the Division of Criminal Justice of allegations
24 that a crime of retail theft was committed.

25 (2) In a manner prescribed by the Attorney General, a county
26 prosecutor shall notify the Division of Criminal Justice that a crime
27 of retail theft was allegedly committed by a defendant if:

28 (a) there is probable cause that the defendant has committed two
29 or more acts of retail theft in the State;

30 (b) there is probable cause that the defendant has committed one
31 or more acts of retail theft in this State and one or more acts of
32 retail theft in another state; or

33 (c) the defendant has previously been convicted of retail theft in
34 this State or another state.

35 c. The Division of Criminal Justice shall have the authority to:

36 (1) investigate and, if warranted, prosecute cases concerning
37 acts of retail theft; and

38 (2) assist county prosecutors in the investigation and prosecution
39 of acts of retail theft.

40 d. As used in this section, "retail theft" shall include the crimes
41 of shoplifting pursuant to N.J.S.2C:20-11; leader of organized retail
42 theft enterprise pursuant to section 2 of P.L.2006, c.56 (C.2C:20-
43 11.2); or theft as defined in chapter 20 of Title 2C of the New
44 Jersey Statutes that involves the stealing of merchandise.

45

46 8. Section 19 of P.L.1987, c.76 (C.54:52-9) is amended to read
47 as follows:

1 19. a. A person is guilty of a crime of the third degree if he
2 fails to pay or turn over when due any tax, fee, penalty or interest or
3 any part thereof required to be paid pursuant to the provisions of the
4 State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., as amended
5 and supplemented, or any State tax law, with the intent to evade,
6 avoid or otherwise not make timely payment or deposit of any tax,
7 fee, penalty or interest or any part thereof. The crime shall be of
8 the second degree if a person fails to pay or turn over when due any
9 tax, fee, penalty or interest or any part thereof required to be paid in
10 connection with the person being a leader of an organized retail
11 theft enterprise in violation section 2 of P.L.2006, c.56 (C.2C:20-
12 11.2).

13 b. The fact that any payment was made with a subsequently
14 dishonored negotiable instrument shall constitute prima facie
15 evidence that the actor failed to pay within the meaning of
16 subsection a. of this section, and the trier of fact may draw a
17 permissive inference therefrom that the actor did not intend to make
18 the payment.

19 (cf: P.L.1987, c.76, s.19)

20

21 9. Section 25 of P.L.1987, c.76 (C.54:52-15) is amended to
22 read as follows:

23 25. A person is guilty of a crime of the third degree if he, after
24 having collected or withheld taxes as required by any State tax law,
25 whether or not he is authorized, licensed, or registered to collect or
26 withhold taxes, purposely fails to turn over the taxes to the Director
27 of the Division of Taxation in the manner and at the time prescribed
28 by law. The crime shall be of the second degree if the amount of
29 the tax collected or withheld is \$75,000.00 or more, or if the person
30 is a leader of an organized retail theft enterprise in violation of
31 section 2 of P.L.2006, c.56 (C.2C:20-11.2).

32 (cf: P.L.1987, c.76, s.25)

33

34 10. Section 1 of P.L.2021, c.431 (C.56:8-110.1) is amended to
35 read as follows:

36 1. a. Every retail mercantile establishment in this State that
37 displays open-loop gift cards or closed-loop gift cards for sale shall
38 train employees on how to identify and respond to open- loop gift
39 card or closed-loop gift card fraud. A retail mercantile
40 establishment shall conduct the training in accordance with
41 guidelines issued pursuant to section 2 of **[this act]** P.L.2021, c.431
42 (C.56:8-110.2).

43 b. A retail mercantile establishment that violates the provisions
44 of this section or section 11 of P.L. , c. (C.) (pending
45 before the Legislature as this bill) shall be subject to a civil penalty
46 of \$1,000, which may be collected and enforced by the Director of
47 the Division of Consumer Affairs in the Department of Law and
48 Public Safety in a summary proceeding pursuant to the "Penalty

1 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
2 The Superior Court shall have jurisdiction of proceedings for the
3 enforcement of the penalty provided by this section.

4 A violation of this section shall not be considered an unlawful
5 practice in violation of P.L.1960, c.39 (C.56:8-1 et seq.).

6 c. As used in this **section** P.L.2021, c.431, and section 11 of
7 P.L. , c. (C.) (pending before the Legislature as this bill):

8 "Closed-loop gift card" means a gift card, code or device that is:

9 (1) issued to a consumer on a prepaid basis primarily for
10 personal, family, or household purposes in a specified amount,
11 regardless of whether that amount may be increased or reloaded in
12 exchange for payment; and

13 (2) redeemable on presentation by a consumer at a single retail
14 mercantile establishment or a group of affiliated retail mercantile
15 establishments.

16 **["Gift card" means a tangible device, whereon is embedded or**
17 **encoded in an electronic or other format a value issued in exchange**
18 **for payment, which promises to provide to the bearer merchandise**
19 **of equal value to the remaining balance of the device.]**

20 "Merchandise" means any objects, wares, goods, commodities,
21 services, or anything offered, directly or indirectly, to the public for
22 sale.

23 "Open-Loop Gift Card" means a card, code, or device that is:

24 (1) issued to a consumer on a prepaid basis primarily for
25 personal, family, or household purposes in a specified amount,
26 regardless of whether that amount may be increased or reloaded in
27 exchange for payment;

28 (2) payment card network branded; and

29 (3) redeemable on presentation at multiple unaffiliated merchants
30 for goods or services within the payment card network or usable at
31 an automated teller machine.

32 "Retail mercantile establishment" means any place of business
33 where merchandise is exposed or offered for sale at retail to
34 members of the consuming public.

35 "Third-Party Gift Card Reseller" means a merchant who, without
36 authorization from or affiliation with the business entity issuing an
37 open- or closed-loop gift card, is engaged in the business of:

38 (1) buying open- or closed-loop gift cards on behalf of
39 consumers; or

40 (2) reselling open- or closed-loop gift cards to consumers.

41 (cf: P.L.2021, c.431, s.1)

42

43 11. (New section) a. The Director of the Division of Consumer
44 Affairs in the Department of Law and Public Safety shall create and
45 provide a notice to retail mercantile establishments which shall
46 include, but not be limited to:

47 (1) the risk of gift card scams; and

1 (2) available assistance, including from the Division of
2 Consumer Affairs, a consumer may seek if the consumer suspects
3 they may be a victim of a gift card scam.

4 b. (1) Except as provided in subsection e. of this section, a
5 retail mercantile establishment may not knowingly sell an open-
6 loop gift card or closed-loop gift card to a consumer unless the
7 retail mercantile establishment conspicuously displays a notice in a
8 form as prescribed by the Director of the Division of Consumer
9 Affairs in accordance with subsection a. of this section.

10 (2) For in-person sales, the notice shall be placed at or near the
11 physical location where the open-loop gift card is displayed for sale
12 or where the sale of the open-loop gift card is sold.

13 (3) For online sales of open-loop gift cards, the notice shall be
14 displayed on the webpage where the gift card is offered for sale or
15 before the sale is finalized.

16 c. For the sale of an open-loop gift card pursuant to paragraph
17 (2) of subsection b., the gift card shall be enclosed in packaging
18 that:

19 (1) is sealed in a manner that is not easily opened without signs
20 of tampering;

21 (2) except as provided in paragraph (3) of this subsection,
22 conceals all numeric codes specific to the activation or the
23 redemption of the gift card, including any bar code, CVV number,
24 pin number, or activation code;

25 (3) displays an activation code, bar code, or other activation data
26 only if the packaging used is more secure than it otherwise would
27 be if the data were fully concealed; and

28 (4) includes a warning that states the following or uses language
29 substantially similar to the following: "Do not sell or purchase if
30 packaging has been broken or indicates tampering."

31 d. For the sale of a closed-loop gift card, the gift card shall be
32 enclosed in packaging that:

33 (1) conceals or covers, in a manner that is not easily removed or
34 replaced without signs of tampering, all numeric codes specific to
35 the redemption of the gift card; or

36 (2) if made more secure through partial concealment or covering
37 than full concealment or covering pursuant to paragraph (1) of this
38 subsection, partially conceals or covers, in a manner that is not
39 easily removed or replaced without signs of tampering, all numeric
40 codes specific to redemption of the gift card; and

41 (3) includes a warning that states the following or uses language
42 substantially similar to the following: "Do not sell or purchase if
43 packaging has been broken or indicates tampering."

44 e. A retail mercantile establishment may sell an open- or closed
45 loop gift card that is not enclosed in secured packaging pursuant to
46 subsection c. or d. of this section if:

- 1 (1) the gift card is a chip-enabled, numberless card that is
2 activated by a consumer after registering the card on the card
3 issuer's website; or
- 4 (2) the gift card is:
- 5 (a) sold exclusively by a retail mercantile establishment for use
6 only at the retail mercantile establishment or a group of affiliated
7 retail mercantile establishments for use at the retail mercantile
8 establishments of the affiliated establishments; and
- 9 (b) is secured in a physical location within the retail mercantile
10 establishment that is accessible only by an employee.
- 11 f. (1) When a third-party gift card reseller buys or sells an
12 open-loop gift card as part of a transaction occurring in this State,
13 the reseller shall record and, for at least three years, maintain a copy
14 of the following information as applicable:
- 15 (a) the date of the transaction;
- 16 (b) the name of the person who conducted the transaction;
- 17 (c) the name, age, and address of the seller of the gift card;
- 18 (d) the seller's and consumer's driver's license number or
19 identification card number;
- 20 (e) a description of the purchased gift card, including, but not
21 limited to, the retailer for which the gift card is intended for use and
22 the gift card number;
- 23 (f) the specific amount issued on the gift card;
- 24 (g) the transaction price;
- 25 (h) the signature of the consumer.
- 26 (2) The information recorded and maintained pursuant to this
27 section shall be chronologically written in ink or logged into a
28 secure database, software system, or other similar technology
29 platform.
- 30 (3) Except as provided in paragraph (4) of this subsection,
31 recorded information may not be destroyed, altered, or erased.
- 32 (4) A handwritten correction may be made to an entry of
33 information by drawing a line of ink through the entry in a manner
34 that retains legibility.
- 35 (5) Information recorded pursuant to this subsection shall be
36 open to inspection by any duly authorized law enforcement officer
37 in this State during the ordinary business hours of the third-party
38 gift card reseller or at other reasonable time.
- 39 f. A third-party gift card reseller, including an agent or
40 employee of the third-party gift card reseller may not:
- 41 (1) fail to make an entry of or falsify, destroy, or remove any
42 information required to be recorded and maintained pursuant to this
43 section;
- 44 (2) refuse to allow any duly authorized law enforcement officer
45 in this State to inspect a record of information or open- or closed-
46 loop gift cards in the reseller's possession; or
- 47 (3) fail to maintain a record in pursuant to this section.

1 g. Upon the filing of an official report to a law enforcement
2 agency by any person alleging to be a victim of theft of one or more
3 open- or closed-loop gift cards with an aggregate value exceed
4 \$500, law enforcement may request that the issuer of the gift cards
5 or the issuer's agents preserve and provide law enforcement all
6 relevant evidence.

7
8 12. There is appropriated from the General Fund to the
9 Department of Law and Public Safety the sum of \$1,000,000 to
10 effectuate the provisions of this act.

11
12 13. This act shall take effect immediately, except that sections 7,
13 10, and 11 shall take effect on the 180th day after the date of
14 enactment.

15
16
17 STATEMENT

18
19 This bill makes various changes to State law related to retail
20 theft. The bill upgrades certain crimes related to retail theft,
21 permits certain defendants to be sentenced to extended terms of
22 imprisonment, and establishes a retail theft unit in the Department
23 of Law and Public Safety (DLPS).

24
25 ASSAULT

26 The bill establishes that it is aggravated assault to assault an
27 "employee of a retail mercantile establishment." This is defined as
28 any person engaged in the sale, display, or offering for sale of
29 consumer commodities and who is employed by any place of
30 business where merchandise is displayed, held, stored, or sold or
31 offered at retail to members of consuming public.

32 Aggravated assault is a crime of a employee of a retail
33 mercantile establishment is a crime of the third degree if the victim
34 suffers bodily injury, otherwise it is a crime of the fourth degree. A
35 third degree crime is punishable by three to five years
36 imprisonment, a fine of up to \$15,000, or both. A fourth degree
37 crime is punishable by up to 18 months imprisonment, a fine of up
38 to \$10,000, or both.

39
40 LEADER OF ORGANIZED RETAIL THEFT ENTERPRISE

41 The bill upgrades the crime of "leader of organized retail theft
42 enterprise" to a crime of the first degree.

43 A first degree crime is punishable by 10 to 20 years
44 imprisonment, a fine of up to \$200,000, or both.

1 TAX EVASION

2 The bill increases the penalty for failure to pay taxes in
3 connection with being the leader of an organized retail theft
4 enterprise to a second degree crime.

5 A second degree crime is punishable by five to 10 years
6 imprisonment, a fine of up to \$150,000, or both.

7

8 PERSISTENT OFFENDER

9 The bill provides that a person may be sentenced to an extended
10 term of imprisonment for repeat convictions related to retail theft.

11 Under the bill, a person is a persistent offender if the person has
12 previously been convicted on two or more prior and separate
13 occasions of receiving stolen property, shoplifting, being a leader of
14 organized retail theft enterprise; or theft that involves the stealing of
15 merchandise, regardless of the dates of the convictions. A persistent
16 offender may be sentenced to an extended term, upon motion of the
17 prosecutor, if the prior conviction is for a crime committed on a
18 separate occasion and the crime for which the person is being
19 sentenced was either: (1) within 10 years of the date of the
20 defendant's last release from confinement for the commission of
21 any crime; or (2) within 10 years of the date of the commission of
22 the most recent violation of a crime established in the bill for which
23 the defendant has a prior conviction.

24

25 RETAIL THEFT AGGREGATION

26 The bill provides a one-year look back period for aggregation of
27 shoplifting violations. The bill provides that the value of
28 merchandise involved in a violation of the shoplifting statute may
29 be aggregated within the previous one-year period in determining
30 the grade of the offense where the acts or conduct constituting a
31 violation were committed pursuant to one scheme or course of
32 conduct, whether from the same person or several persons, or were
33 committed in furtherance of or in conjunction with an organized
34 retail theft enterprise.

35

36 FENCING

37 The bill updates the fencing statutes, N.J.S.A.2C:20-7.1, to
38 clarify that the statute also applies to online sales of stolen goods.

39

40 FOSTERING STOLEN PROPERTY

41 The bill also separately establishes the offense of fostering the
42 sale of stolen property. The offense is a disorderly persons offense.

43 A person commits an offense under the bill when: (1) the person
44 hosts, advertises, or otherwise assists the sale of stolen goods,
45 including on an Internet website; and (2) the person knows or
46 reasonably should know that the property was stolen.

1 The requisite knowledge is presumed in the case of a person who
2 undertook a substantial and unjustifiable risk that the persons
3 actions would result in the sale of stolen property.

4 A disorderly persons offense is punishable by up to six months
5 imprisonment, a fine of up to \$1,000, or both.

6

7 GIFT CARD FRAUD

8 The bill imposes certain packaging requirements for the sale of
9 open and closed-loop gift cards and requires the Division of
10 Consumer Affairs (DCA) in the Department of Law and Public
11 Safety to create a notice related to gift card fraud for dissemination
12 in locations which sell gift cards.

13 The bill defines “closed-loop gift card” as a gift card, code or
14 device that is: (1) issued to a consumer on a prepaid basis primarily
15 for personal, family, or household purposes in a specified amount,
16 regardless of whether that amount may be increased or reloaded in
17 exchange for payment; and (2) redeemable on presentation by a
18 consumer at a single retail mercantile establishment or a group of
19 affiliated retail mercantile establishments. Further, the bill defines
20 “open-loop gift card” as a card, code, or device that is: (1) issued to
21 a consumer on a prepaid basis primarily for personal, family, or
22 household purposes in a specified amount, regardless of whether
23 that amount may be increased or reloaded in exchange for payment;
24 (2) payment card network branded; and (3) redeemable on
25 presentation at multiple unaffiliated merchants for goods or services
26 within the payment card network or usable at an automated teller
27 machine.

28 The bill prohibits a retail mercantile establish from knowingly
29 selling an open- or closed-loop gift card to a consumer unless the
30 establishment conspicuously displays the notice provided by the
31 DCA and the packaging of the gift card meets certain requirements
32 in the bill.

33 Further, the bill establishes requirements as it relates to third-
34 party gift card resellers. The bill defines “third-party gift card
35 reseller” as a merchant who, without authorization from or
36 affiliation with the business entity issuing an open- or closed-loop
37 gift card, is engaged in the business of: (1) buying open- or closed-
38 loop gift cards on behalf of consumers; or (2) reselling open- or
39 closed-loop gift cards to consumers. These resellers are subject to
40 certain record maintenance requirements.

41 A retail mercantile establishment that violates the provisions of
42 N.J.S.A.56:8-110.1 et seq. or the provisions of the bill related to
43 open- or closed-loop gift card fraud is subject to a civil penalty of
44 \$1,000.

45

46 ORGANIZED RETAIL THEFT UNIT

47 Finally, the bill requires the Attorney General, in consultation
48 with the Director of the Division of Criminal Justice, to establish a

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22

1 unit or other appropriate office to combat organized retail theft.
2 The unit, and the Division of Criminal Justice, will have the
3 authority to (1) investigate and, if warranted, prosecute cases
4 concerning acts of retail theft; and (2) assist county prosecutors in
5 the investigation and prosecution of acts of retail theft.