

HOUSE No. 1474

The Commonwealth of Massachusetts

PRESENTED BY:

David Paul Linsky

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to improve criminal laws relative to organized retail theft.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>

HOUSE No. 1474

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 1474) of David Paul Linsky, Chris Walsh and James M. Murphy relative to the criminal penalties for organized retail theft. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ □ HOUSE
□ , NO. 3330 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to improve criminal laws relative to organized retail theft.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 266 of the General Laws, as so appearing in the 2010 Official
2 Edition, is hereby amended by inserting the following new section:-

3 Section 30B. Unlawful Use of Theft Detection Shielding or Deactivation Devices

4 A person is guilty of unlawful distribution of a theft detection shielding device when he
5 knowingly manufactures, sells, offers for sale or distributes in any way laminated or a coated bag
6 or other devise intended to shield merchandise from detection by an electronic or magnetic theft
7 detector.

8 A person is guilty of unlawful possession of a theft detection shielding device when he
9 knowingly possesses any laminated or coated bags or devices intended to shield merchandise
10 from detection by an electronic or magnetic theft detector, with the intent to commit (or aid or
11 abet) theft.

12 A person is guilty of unlawful possession of a theft detection device deactivator or
13 remover when he knowingly possesses any tool or device designed or adapted to allow, or is
14 capable of allowing, the deactivation, or removal from any merchandise, of any theft detection

15 device, with the intent to use such tool or device to deactivate any theft detection device on, or to
16 remove any theft detection device from, any merchandise without the permission of the merchant
17 or person owning or lawfully holding said merchandise.

18 A person is guilty of unlawful distribution of a theft detection device deactivator or
19 remover when he knowingly manufacturers, sells, offers for sale or distributes in any way tool or
20 device designed or adapted to allow, or capable of allowing, the deactivation, or removal from
21 any merchandise, of any theft detection device without the permission of the merchant or person
22 owning or lawfully holding said merchandise.

23 A person is guilty of unlawful deactivation or removal of a theft detection device when
24 he intentionally deactivates with intent to steal in a retail establishment a theft detection device
25 on, or removes a theft detection device from, merchandise prior to purchase.

26 A violation of this Act shall be punished for a first offense by imprisonment in the house
27 of correction for not more than two and one half years or by a fine of not more than one thousand
28 dollars or by both such fine and imprisonment, and for a second or subsequent offense by
29 imprisonment in the state prison for not more than five years, or by a fine of not more than
30 twenty-five thousand dollars or by both such fine and imprisonment.

31

32 The activation of an anti-shoplifting or inventory control device as a result of a person
33 exiting the establishment or a protected security device within the area within the establishment
34 shall constitute reasonable cause for the detention of the person so exiting by the owner or
35 operator of the establishment or by an agent or employee of the owner or operator, provided
36 notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting or
37 inventory control devices. Each such detention shall be made only in a reasonable manner and
38 only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding
39 the activation of the device and/or for the recovery of goods. Such taking into custody and
40 detention by a law enforcement officer, security officer, merchant, merchant's employee or agent,
41 if done in compliance with all the requirements of the foregoing subsection, shall not render such
42 law enforcement officer, security officer, merchant, merchant's employee or agent, criminally or
43 civilly liable, including any liability for false arrest, false imprisonment, unlawful detention,
44 malicious prosecution, intentional infliction of emotional distress or defamation.

45 SECTION 2. Said Chapter 266 of the General Laws, as so appearing is hereby amended
46 by inserting the following new section:-

47 Section 30C. Theft Using Emergency Exit to Avoid Apprehension or Detection

48 A person commits theft by emergency exit if that person intentionally takes possession
49 of, carries away, transfer or causes to be transferred, any merchandise displayed, held, stored or

50 offered by sale by any store or other retail mercantile establishment with the intent of depriving
51 the merchant of the possession, use of benefit of such merchandise or converting the same to the
52 use of such person without paying to the merchant the value thereof and the person leaves a store
53 by use of a designated emergency exit.

54 A violation of this Act shall be punished for a first offense by a fine of not less than two
55 hundred and fifty dollars and not more than five hundred dollars, and for a second offense by
56 imprisonment in the house of correction for not more than two and one half years or a fine not to
57 exceed two thousand dollars, or by both fine and imprisonment and for subsequent offenses by
58 imprisonment in the state prison for not more than five years, or by a fine of not more than five
59 thousand dollars or by both such fine and imprisonment.

60 SECTION 3. Section 60 of chapter 266 of the general laws, as so appearing, is hereby
61 amended by striking out the entire section and inserting in place thereof the following new
62 section: -

63

64 Section 60. Whoever buys, receives or aids in the concealment of stolen or embezzled
65 property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys,
66 receives or aids in the concealment of property, knowing it to have been obtained from a person
67 by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or
68 exerts control over property in the custody of any law enforcement agency, or any individual
69 acting on behalf of a law enforcement agency, which is explicitly represented to him by any law
70 enforcement officer or any individual acting on behalf of a law enforcement agency as being
71 stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of
72 said property shall, if the value of such property does not exceed two hundred and fifty dollars,
73 be punished for a first offense by imprisonment in a jail or house of correction for not more than
74 two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
75 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be
76 punished by imprisonment in a state prison for not more than five years, or by a fine of five
77 thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property
78 was obtained by means other than through the commission of a theft offense if the property was
79 explicitly represented to the accused as having been obtained through the commission of a theft
80 offense.

81 SECTION 4. Said Chapter 266 of the General Laws, as so appearing is hereby amended
82 by inserting the following new section:-

83 Section 30D. Enhanced Theft – Receiving & Concealing

84 It is not a defense to a charge of receiving stolen property that the property was obtained
85 by means other than through the commission of a theft offense if the property was explicitly
86 represented to the accused person as being obtained through the commission of a theft offense.

87

88 SECTION 5. Said Chapter 266 of the General Laws, as so appearing is hereby amended
89 by inserting the following new section:-

90 Section 30E. Fraudulent/Bogus Receipts & Universal Product Codes

91 A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers,
92 makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a
93 Universal Product Code Label, shall be punished for a first offense by imprisonment in the house
94 of correction for not more than two and one half years or by a fine of not more than five hundred
95 dollars or by both such fine and imprisonment, and for a second offense shall be punished by
96 imprisonment in a house of corrections for not more than two and one half years or by a fine of
97 not more than two thousand dollars or by both fine and imprisonment and subsequent offenses
98 shall be punished by imprisonment in the state prison for not more than five years, or by a fine of
99 not more than ten thousand dollars or by both such fine and imprisonment.

100 A person who, with intent to cheat or defraud a retailer, possesses *fifteen (15) or more
101 fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or
102 possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal
103 Product Code Labels, shall be punished by imprisonment in the state prison for not more than
104 five years, or by a fine of not more than ten thousand dollars or by both such fine and
105 imprisonment.

106 SECTION 6. Chapter 266 of the General Laws, as so appearing, is hereby amended by
107 inserting the following new section:-

108 Section 60B. Pattern of Criminal Offenses

109 Venue for criminal actions to enforce the provisions of this Section, including criminal
110 actions with respect to each of the alleged offenses included within a pattern of criminal
111 offenses, as defined in this Section, that have allegedly been committed, attempted or conspired
112 to be committed by a person or persons, shall be in any county in which at least one alleged
113 criminal offense has occurred that constitutes part of the alleged pattern of criminal offenses, it
114 being the intent of this section that one district court may have jurisdiction over all the conduct,
115 persons and property which are part of, or are directly related to, each and all of the alleged
116 criminal offenses forming part of the alleged pattern of criminal offenses. It is discretionary, not
117 mandatory, to bring all criminal actions in one county when an alleged pattern of criminal
118 offenses involves two or more counties.

119 Any person who engages in a pattern of criminal offenses in two or more counties in this
120 state or who attempts or conspires with others to engage in a pattern of criminal offenses shall,
121 upon conviction, be punishable by imprisonment in the house of corrections for a term not
122 exceeding two years, or imprisonment in the house of corrections for a term not exceeding one
123 year, or by a fine in an amount not more than twenty-five thousand dollars, or by both such fine
124 and imprisonment. Such punishment shall be in addition to and imprisoned on and after any
125 penalty imposed for any offense involved in the pattern of criminal offenses.

126 For purposes of this act, "pattern of criminal offenses" means: Two or more criminal
127 offenses are committed that are part of the same plan, scheme, or adventure; or a sequence of
128 two or more of the same criminal offenses are committed and are not separated by an interval of
129 more than thirty (30) days between the first and second offense, the second and third, and so on;
130 or two or more criminal offenses are committed, each proceeding from or having as an
131 antecedent element a single prior incident or pattern of fraud, robbery, burglary, theft, identity
132 theft, receipt of stolen property, false personating, false pretenses, obtaining property by trick or
133 deception, taking a credit or debit card without consent, or the making, transferring or receiving
134 of a false or fraudulent identification card.

135 Jurisdiction and venue for a pattern of criminal offenses occurring in multiple counties in
136 this state shall be determined as provided in this Section.

137

138 SECTION 7. Chapter 266 of the General Laws, as so appearing, is hereby amended by
139 inserting the following new section:-

140 Section 30F. Organized Retail Crime

141 Organized retail crime shall be defined as the stealing, embezzlement, or obtaining by
142 fraud, false pretenses, or other illegal means, of retail merchandise in quantities that would not
143 normally be purchased for personal use or consumption for the purpose of reselling or otherwise
144 reentering such retail merchandise in commerce; or the recruitment of persons to undertake, or
145 the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by
146 fraud, false pretenses, or other illegal means.

147 An Organized Retail Crime Ring is defined as three or more persons who associate for
148 the purpose of engaging in the conduct of organized retail crime.

149 In this section, "retail merchandise" means one or more items of tangible personal
150 property displayed, held, stored, or offered for sale in a retail establishment or merchandise
151 explicitly represented to the person as being stolen retail merchandise.

152 A person who is guilty of organized retail crime shall be punished by imprisonment in a
153 state prison for a minimum term of not less than 1 year and a maximum term of not more than

154 10 years, if the aggregated value of the property or services involved in all crimes
155 commitment by the individual or co-conspirators in an organized retail crime ring within the past
156 one hundred and eighty days is at least \$2,500 but less than \$10,000; or (2) by imprisonment in a
157 state prison of not less than 2 years and a maximum term of not more than 15 years, if the
158 aggregated value of the property or services involved in all crimes commitment by the individual
159 or co-conspirators in an organized retail crime ring within the past one hundred and eighty days
160 is at least \$10,000 or more.

161 For purposes of this section, a series of thefts committed by the same person from one or
162 more mercantile establishments over a period of one hundred eighty days may be aggregated in
163 one count and the sum of the value of all the property shall be the value considered in
164 determining the degree of the organized retail theft involved.

165 Thefts committed by the same person in different counties that have been aggregated in
166 one county may be prosecuted in any county in which one of the thefts occurred.

167 Leader of Organized Retail Crime Enterprise.

168

169 A person is a leader of an organized retail theft enterprise if he conspires with others as
170 an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of
171 conduct to effectuate the transfer or sale of shoplifted merchandise. A leader of organized retail
172 crime may be punished by a fine of not more than \$250,000 or five times the retail value of the
173 merchandise seized at the time of the arrest, whichever is greater and/or imprisonment in state
174 prison for not more than twenty years.