

By Senator Joyner

18-01578-09

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1                   A bill to be entitled  
2           An act relating to retail-theft diversion programs;  
3           amending s. 812.014, F.S.; requiring a law enforcement  
4           officer who has probable cause to believe that a  
5           defendant has committed retail theft to issue a notice  
6           to appear in lieu of arresting the defendant under  
7           certain circumstances; authorizing a state attorney to  
8           establish a retail-theft diversion program for the  
9           purpose of diverting defendants from criminal  
10          prosecution if the defendant meets certain criteria;  
11          providing eligibility criteria for participating in a  
12          retail-theft diversion program; requiring the state  
13          attorney to mail a notice to appear to a defendant  
14          upon referral to a diversion program; setting forth  
15          the conditions that each participant in the retail-  
16          theft diversion program must complete; providing that  
17          a defendant may be prosecuted for the retail theft if  
18          all conditions in the diversion program are not  
19          fulfilled; authorizing a state attorney to collect a  
20          fee from each participant in the program; setting a  
21          limit on the fee for each defendant; providing an  
22          effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Paragraphs (e) and (f) are added to subsection  
27           (3) of section 812.014, Florida Statutes, to read:

28           812.014 Theft.—

29           (3)

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30 (e) If a law enforcement officer has probable cause to  
31 believe that a defendant has committed retail theft as defined  
32 in s. 812.015(1), the officer shall issue a notice to appear in  
33 lieu of arresting the defendant if the aggregate value of the  
34 merchandise stolen is less than \$300 and the defendant has no  
35 previous criminal or juvenile convictions.

36 (f) A state attorney may establish a retail-theft diversion  
37 program in the state attorney's office or by using an  
38 independent contractor for the purpose of diverting from  
39 prosecution defendants who meet the criteria set forth in  
40 paragraph (e). However, establishing and operating a diversion  
41 program does not affect the authority of the state attorney to  
42 prosecute any defendant for committing retail theft.

43 1. Upon receipt of a complaint or notice to appear alleging  
44 the crime of retail theft, a state attorney who operates a  
45 retail-theft diversion program shall determine whether the  
46 defendant is appropriate for referral to the retail-theft  
47 diversion program. In making such determination, the state  
48 attorney shall consider:

- 49 a. The value of the merchandise stolen in the retail theft;  
50 b. The existence of other pending complaints or criminal  
51 charges against the defendant; and  
52 c. The strength of the evidence of the retail theft.

53 2. Upon referral of the defendant to the retail-theft  
54 diversion program, the state attorney shall mail a copy of the  
55 notice to appear to the defendant. The notice must contain all  
56 of the following:

- 57 a. The date and location of the alleged retail-theft  
58 offense.

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59           b. The date before which the defendant must contact the  
60 retail-theft diversion program office concerning the notice to  
61 appear.

62           c. A statement of the maximum penalty for the retail-theft  
63 offense.

64           3. If the state attorney permits the defendant to enter the  
65 retail-theft diversion program, the state attorney shall enter  
66 into a written agreement with the defendant to divert him or her  
67 from prosecution for retail theft. The diversion agreement must  
68 include all of the following conditions, which must be accepted  
69 by the defendant:

70           a. Attendance and proof of completion of a program designed  
71 to assist, educate, and prevent future unlawful conduct by the  
72 defendant;

73           b. Full restitution, if any is established, of the value of  
74 the retail theft;

75           c. Full payment of fees due under subparagraph 5.; and

76           d. A knowing and intelligent waiver of the defendant's  
77 right to a speedy trial for the period of his or her diversion.

78           4. Any defendant who does not fulfill all conditions in the  
79 diversion program may be prosecuted for the crime of retail  
80 theft.

81           5. To fund the retail-theft diversion program, the state  
82 attorney may collect a fee from each participating defendant.  
83 The fee for each defendant may not exceed:

84           a. Twenty-five dollars, if the value of the stolen  
85 merchandise does not exceed \$50.

86           b. Thirty dollars, if the value of the stolen merchandise  
87 is more than \$50 but does not exceed \$100.

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88           c. Forty dollars, if the value of the stolen merchandise is  
89 more than \$100 but does not exceed \$300.

90           Section 2. This act shall take effect July 1, 2009.