

HB 1309

2010

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 defendant
5 has committed retail theft to issue a notice to appear in
6 lieu of arresting the defendant under certain
7 circumstances; authorizing a state attorney to establish a
8 retail-theft diversion program for the purpose of
9 diverting defendants from criminal prosecution if the
10 defendant meets certain criteria; providing eligibility
11 criteria for participating in a retail-theft diversion
12 program; requiring the state attorney to mail notice to
13 appear to a defendant upon referral to a diversion
14 program; providing the conditions that each participant in
15 the retail-theft diversion program must complete;
16 providing that a defendant may be prosecuted for the
17 retail theft if all conditions in the diversion program
18 are not fulfilled; authorizing a state attorney to collect
19 a fee from each participant in the program; setting a
20 limit on the fee for each defendant; providing an
21 effective date.

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

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

27 812.014 Theft.—

28 (3)

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

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

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

48 a. The value of the merchandise stolen in the retail
49 theft.

50 b. The existence of other pending complaints or criminal
51 charges against the defendant.

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:

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

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

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

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

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

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
79 the 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:

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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.

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

90 Section 2. This act shall take effect July 1, 2010.