

LEGISLATIVE HISTORY CHECKLIST
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(Theft offenses--possession
 of tools--extend to use in
 shoplifting)

NJSA: 20:5-5

LAWS OF: 1992 CHAPTER: 198

BILL NO: A182

SPONSOR(S) Kavanaugh & Penn

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary, Law & Public Safety
 SENATE: Law & Public Safety

AMENDED DURING PASSAGE: Assembly Committee
 substitute enacted

DATE OF PASSAGE: ASSEMBLY: October 8, 1992
 SENATE: December 14, 1992

DATE OF APPROVAL: December 23, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
 SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached

KBG:pp

P.L.1992, CHAPTER 198, approved December 23, 1992
Assembly Committee Substitute for 1992 Assembly No. 182

1 AN ACT concerning tools for committing theft offenses and
2 forcible entry offenses and amending N.J.S.2C:5-5.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.2C: 5-5 is amended to read as follows:

7 2C:5-5. Burglar's Tools.

8 a. Any person who manufactures or possesses any engine,
9 machine, tool or implement adapted, designed or commonly used
10 for committing or facilitating any offense in chapter 20 of this
11 Title or offenses involving forcible entry into premises, larceny
12 by a physical taking, or theft of services]

13 (1) Knowing the same to be so adapted or designed or
14 commonly used; and

15 (2) With either a purpose so to use or employ it, or with a
16 purpose to provide it to some person who he knows has such a
17 purpose to use or employ it, is guilty of an offense.

18 b. Any person who publishes plans or instructions dealing with
19 the manufacture or use of any burglar tools as defined above,
20 with the intent that such publication be used for committing or
21 facilitating any offense in chapter 20 of this Title or offenses
22 involving forcible entry into premises, larceny by a physical
23 taking, or theft of services] is guilty of an offense.

24 The offense under a. or b. of this section is a crime of the
25 fourth degree if the defendant manufactured such instrument or
26 implements or published such plans or instructions; otherwise it is
27 a disorderly persons offense.

28 (cf:P.L.1979, c. 178, s.18A)

29 2. This act shall take effect immediately.

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34 Prohibits the possession and manufacture of tools to commit any
35 theft offense in chapter 20 of Title 2C including shoplifting.

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.

ASSEMBLY, No. 182
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblymen KAVANAUGH and PENN

1 **AN ACT** concerning shoplifting and amending N.J.S.2C:20-11.

2

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

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

6 **2C:20-11. Shoplifting.**

7 a. **Definitions.** The following definitions apply to this section:

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

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

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

18 (4) **"Merchant"** means any owner or operator of any store or
19 other retail mercantile establishment, or any agent, servant,
20 employee, lessee, consignee, officer, director, franchisee or
21 independent contractor of such owner or proprietor;

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

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

28 (7) **"Full retail value"** means the merchant's stated or
29 advertised price of the merchandise;

30 (8) **"Premises of a store or retail mercantile establishment"**
31 means and includes but is not limited to, the retail mercantile
32 establishment; any common use areas in shopping centers and all
33 parking areas set aside by a merchant or on behalf of a merchant
34 for the parking of vehicles for the convenience of the patrons of
35 such retail mercantile establishment;

36 (9) **"Under-ring"** means to cause the cash register or other
37 sale recording device to reflect less than the full retail value of
38 the merchandise.

39 b. **Shoplifting.** Shoplifting shall consist of any one or more of
40 the following acts:

41 (1) For any person purposely to take possession of, carry away,
42 transfer or cause to be carried away or transferred, any

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Matter underlined thus is new matter.

1 merchandise displayed, held, stored or offered for sale by any
2 store or other retail mercantile establishment with the intention
3 of depriving the merchant of the possession, use or benefit of
4 such merchandise or converting the same to the use of such
5 person without paying to the merchant the full retail value
6 thereof.

7 (2) For any person purposely to conceal upon his person or
8 otherwise any merchandise offered for sale by any store or other
9 retail mercantile establishment with the intention of depriving
10 the merchant of the possession, use or benefit of such
11 merchandise or converting the same to the use of such person
12 without paying to the merchant the value thereof.

13 (3) For any person purposely to alter, transfer or remove any
14 label, price tag or marking indicia of value or any other markings
15 which aid in determining value affixed to any merchandise
16 displayed, held, stored or offered for sale by any store or other
17 retail mercantile establishment and to attempt to purchase such
18 merchandise personally or in consort with another at less than the
19 full retail value with the intention of depriving the merchant of
20 all or some part of the value thereof.

21 (4) For any person purposely to transfer any merchandise
22 displayed, held, stored or offered for sale by any store or other
23 retail mercantile establishment from the container in or on
24 which the same shall be displayed to any other container with
25 intent to deprive the merchant of all or some part of the retail
26 value thereof.

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

29 (6) For any person purposely to remove a shopping cart from
30 the premises of a store or other retail mercantile establishment
31 without the consent of the merchant given at the time of such
32 removal with the intention of permanently depriving the
33 merchant of the possession, use or benefit of such cart.

34 c. Gradation. Any person found guilty of an offense under
35 subsection b. is a disorderly person, except that notwithstanding
36 the fine provided under 2C:43-3, such person shall be sentenced
37 to pay a fine of not more than \$500.00 for a first offense; to pay
38 a fine of not less than \$100.00, nor more than \$500.00 for a
39 second offense and to pay a fine of not less than \$250.00, nor
40 more than \$1,000.00 for a third and any subsequent offense.
41 Additionally, notwithstanding the term of imprisonment provided
42 in 2C:43-8, any person convicted of a third or subsequent
43 shoplifting offense shall serve a minimum term of not less than
44 30 days.

45 d. Presumptions. Any person purposely concealing
46 unpurchased merchandise of any store or other retail mercantile
47 establishment, either on the premises or outside the premises of
48 such store or other retail mercantile establishment, shall be
49 prima facie presumed to have so concealed such merchandise
50 with the intention of depriving the merchant of the possession,
51 use or benefit of such merchandise without paying the full retail
52 value thereof, and the finding of such merchandise concealed
53 upon the person or among the belongings of such person shall be
54 prima facie evidence of purposeful concealment; and if such

1 person conceals, or causes to be concealed, such merchandise
2 upon the person or among the belongings of another, the finding
3 of the same shall also be prima facie evidence of willful
4 concealment on the part of the person so concealing such
5 merchandise.

6 e. A law enforcement officer, or a special officer, or a
7 merchant, who has probable cause for believing that a person has
8 willfully concealed unpurchased merchandise and that he can
9 recover the merchandise by taking the person into custody, may,
10 for the purpose of attempting to effect recovery thereof, take
11 the person into custody and detain him in a reasonable manner for
12 not more than a reasonable time, and the taking into custody by a
13 law enforcement officer or special officer or merchant shall not
14 render such person criminally or civilly liable in any manner or to
15 any extent whatsoever.

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

19 A merchant who causes the arrest of a person for shoplifting,
20 as provided for in this section, shall not be criminally or civilly
21 liable in any manner or to any extent whatsoever where the
22 merchant has probable cause for believing that the person
23 arrested committed the offense of shoplifting.

24 f. Tools. (1) Any person who knowingly or purposely
25 manufactures or possesses any tool or implement adapted,
26 designed or commonly used for committing or facilitating
27 shoplifting with the intent to use it or to provide it to another to
28 use, is guilty of a disorderly persons offense.

29 (2) Any person who publishes plans or instructions dealing with
30 the manufacture or use of any shoplifting tools with the intent
31 that such publication be used for committing or facilitating
32 shoplifting is guilty of an disorderly persons offense.

33 (cf: P.L.1979, c. 178, s. 35B).

34 2. This act shall take effect immediately.

35 36 37 STATEMENT

38
39 This bill would amend the current shoplifting statute,
40 N.J.S.2C:20-11, to prohibit the possession or manufacturing of
41 any tool or implement designed or adapted for use in the
42 commission of a shoplifting offense. In addition, the bill would
43 prohibit the publication of plans or instructions with regard to the
44 manufacture or use of shoplifting tools. Any person who violates
45 any provision of this bill would be guilty of a disorderly persons
46 offense. A disorderly persons offense is punishable by a term of
47 imprisonment not to exceed 6 months, a fine of \$1,000, or both.

48 This bill is similar to N.J.S.2C:5-5 which prohibits the
49 possession and manufacturing of burglars' tools.

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Prohibits the possession and manufacturing of shoplifting tools.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 182
STATE OF NEW JERSEY

ADOPTED JUNE 22, 1992

Sponsored by Assemblymen KAVANAUGH and PENN

1 **AN ACT** concerning tools for committing theft offenses and
2 forcible entry offenses and amending N.J.S.2C:5-5.

3

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

6 1. N.J.S.2C: 5-5 is amended to read as follows:

7 2C:5-5. Burglar's Tools.

8 a. Any person who manufactures or possesses any engine,
9 machine, tool or implement adapted, designed or commonly used
10 for committing or facilitating any offense in chapter 20 of this
11 Title or offenses involving forcible entry into premises[, larceny
12 by a physical taking, or theft of services]

13 (1) Knowing the same to be so adapted or designed or
14 commonly used; and

15 (2) With either a purpose so to use or employ it, or with a
16 purpose to provide it to some person who he knows has such a
17 purpose to use or employ it, is guilty of an offense.

18 b. Any person who publishes plans or instructions dealing with
19 the manufacture or use of any burglar tools as defined above,
20 with the intent that such publication be used for committing or
21 facilitating any offense in chapter 20 of this Title or offenses
22 involving forcible entry into premises[, larceny by a physical
23 taking, or theft of services] is guilty of an offense.

24 The offense under a. or b. of this section is a crime of the
25 fourth degree if the defendant manufactured such instrument or
26 implements or published such plans or instructions; otherwise it is
27 a disorderly persons offense.

28 (cf:P.L.1979, c. 178, s.18A)

29 2. This act shall take effect immediately.

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33

34 Prohibits the possession and manufacture of tools to commit any
35 theft offense in chapter 20 of Title 2C including shoplifting.

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.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 182

STATE OF NEW JERSEY

DATED: JUNE 22, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 182.

This committee substitute amends N.J.S.A.2C:5-5 to prohibit the possession or manufacture of any engine, machine, tool or implement adapted, designed or commonly used for committing or facilitating any offense in chapter 20 of this Title or offenses involving forcible entry into premises if the actor knows the same to be so adapted or designed or commonly used and acts with either a purpose so to use or employ it, or with a purpose to provide it to some person who he knows has such a purpose to use or employ it.

The substitute also provides that any person who publishes plans or instructions dealing with the manufacture or use of any burglar tools, with the intent that such publication be used for committing or facilitating any offense in chapter 20 of this Title or offenses involving forcible entry into premises is guilty of an offense.

The offenses under this section are crimes of the fourth degree if the defendant manufactured such instrument or implements or published such plans or instructions; otherwise they are disorderly persons offenses.

The bill in its original form addressed the prohibited possession and manufacture of shoplifting tools and amended specifically the shoplifting statute, N.J.S.A.2C:20-11. This substitute would include these types of shoplifting tools, as well as any other tools used for other types of theft, within the general prohibition of N.J.S.A.2C:5-5. N.J.S.A.2C:5-5 does not currently address all theft offenses. The original bill would have made the possession and manufacture of shoplifting tools a disorderly persons offense. The substitute would permit these offenses to possibly be classified as crimes of the fourth degree if the defendant manufactured such instrument or implements or published such plans or instructions. Otherwise, the offense is a disorderly persons offense.

SENATE LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 182

STATE OF NEW JERSEY

DATED: DECEMBER 3, 1992

The Senate Law and Public Safety Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 182 of 1992.

This committee substitute amends N.J.S.2C:5-5 to prohibit the possession or manufacture of any engine, machine, tool or implement adapted, designed or commonly used for committing or facilitating any offense in chapter 20 of Title 2C the Revised Statutes (theft and related offenses) or offenses involving forcible entry into premises. The actor must know that the engine, machine, tool or implement was adapted or designed or is commonly used for such purposes and must act with either a purpose so as to use or employ it, or with a purpose to provide it to a person whom he knows has such a purpose to use or employ it.

The substitute also provides that any person who publishes plans or instructions dealing with the manufacture or use of any burglar tools, with the intent that such publication be used for committing or facilitating any offense in chapter 20 of Title 2C of the Revised Statutes or offenses involving forcible entry into premises is guilty of an offense.

The offenses under this section are crimes of the fourth degree if the defendant manufactured such instrument or implements or published such plans or instructions; otherwise they are disorderly persons offenses.

As originally drafted, the bill addressed the prohibited possession and manufacture of shoplifting tools and amended specifically the shoplifting statute, N.J.S.2C:20-11. This substitute would include these types of shoplifting tools, as well as any other tools used for other types of theft, within the general prohibition of N.J.S.2C:5-5, which does not currently address all theft offenses. The original bill would have made the possession and manufacture of shoplifting tools a disorderly persons offense. Under the provisions of the substitute, these offenses could be classified as crimes of the fourth degree if the defendant manufactured such instrument or implements or published such plans or instructions. Otherwise, the offense is a disorderly persons offense.