

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2129
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Jurisprudence
5/19/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The problem of retail theft creates a significant drain on both public and private resources in Texas communities. Shoplifting causes losses for business, increases prices for everyday consumers, and causes the criminal justice system at every level to expend a significant amount of resources. Education or diversion programs that allow first-time, low-risk shoplifters to participate in an educational course in lieu of arrest and prosecution have been noted to free up time and additional resources within the legal system and serve as alternative methods of rehabilitation for such offenders. These programs not only explore the reasons behind why people choose to shoplift but also identify community resources, such as job training programs or skills enhancement opportunities.

What H.B. 2129 accomplishes:

- H.B. 2129 seeks to address this issue by establishing that a retailer is not precluded from offering a person who is suspected of stealing or attempting to steal property from the retailer an opportunity to complete a theft education program to deter theft and address criminal behavior instead of reporting the suspected offense to a law enforcement agency.
- These provisions do not preclude a peace officer, district attorney, criminal district attorney, county attorney, or judge from offering a person a theft education program under the bill's provisions.
- It does not remove a retailers right to ultimately report a crime or otherwise infringe upon law enforcement's right to prosecute the same.
- H.B. 2129 establishes that a person may not be required to make an admission of guilt to participate in a theft education program and exempts a person who successfully completes such a program from any additional civil penalties under any other law.
- The bill also states that a person's eligibility to participate in an education program shall not be based on the person's ability to pay.

Committee substitute to H.B. 2129:

- C.S.H.B. 2129 names the bill the Kevin Kolbye Act.
- Chief Kevin Kolbye has for over 40 years served as a local law enforcement officer. He was a champion for this legislation. Unfortunately, due to a terminal health diagnosis in January, Chief Kolbye has been unable to continue supporting the bill's efforts at the Capitol.

C.S.H.B. 2129 amends current law relating to a merchant allowing a person suspected of committing or attempting to commit theft to complete a theft education program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Kevin Kolbye Act.

SECTION 2. Amends Section 124.001, Civil Practice and Remedies Code, as follows:

Sec. 124.001. New heading: SUSPECTED THEFT OF PROPERTY OR ATTEMPTED THEFT OF PROPERTY. (a) Creates this subsection from existing text.

(b) Provides that a person who is in the business of selling goods or services as a merchant is not precluded from offering a person who is suspected of stealing or attempting to steal property from the merchant an opportunity to complete a theft education program under Section 124.002 to deter theft and address criminal behavior instead of reporting the suspected offense to a law enforcement agency.

(c) Requires a merchant who offers a person an opportunity to complete a theft education program to:

(1) notify the person of that opportunity;

(2) inform the person of the civil and criminal remedies available to the merchant and the state, including informing the person that the merchant retains the right to report the suspected offense to a law enforcement agency if the person does not successfully complete the program; and

(3) maintain records for a period of not less than two years of:

(A) any criteria used by the merchant in determining whether to offer a person the opportunity to complete a theft education program;

(B) the terms of each offer made; and

(C) the name of each person to whom the merchant made an offer.

(d) Requires a merchant to make records maintained under Subsection (c)(3) available to a district attorney, criminal district attorney, or county attorney on request.

(e) Provides that nothing in this section precludes a peace officer, district attorney, criminal district attorney, county attorney, or judge from offering a person a theft education program under Section 124.002 in compliance with Chapter 124 (Privilege to Investigate Theft).

SECTION 3. Amends Chapter 124, Civil Practices and Remedies Code, by adding Sections 124.002 and 124.003, as follows:

Sec. 124.002. THEFT EDUCATION PROGRAM. (a) Requires that a theft education program for a person who is suspected of stealing or attempting to steal property under Section 124.001:

(1) address the type of alleged criminal offense;

(2) seek to modify the person's behavioral decision-making process;

(3) engage the person with interactive exercises designed to instill appropriate societal behavior; and

(4) promote accountability and reconciliation between the person and the merchant.

(b) Prohibits a provider of a theft education program from discriminating against a person who is otherwise eligible to participate in the program based on:

(1) the person's race, color, religion, sex, familial status, or national origin;
or

(2) the person's ability to pay.

(c) Provides that a program provider that charges a fee for participation in a theft education program:

(1) is required to develop a plan to offer discounts, alternative payment schedules, or scholarship funds to a person who the provider has verified is indigent;

(2) is authorized to reduce or waive the fee for the program based on the ability to pay of a person described by Subdivision (1); and

(3) is prohibited from compensating a merchant who offers a person the opportunity to complete the program.

(d) Prohibits a person from being required to make an admission of guilt to participate in a theft education program.

(e) Prohibits a person who successfully completes a theft education program under this section, notwithstanding any other law, from being subject to any additional civil penalties under any other provision of law.

Sec. 124.003. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY. Provides that a person who offers or provides a theft education program in compliance with this chapter is not criminally or civilly liable for failure to notify a law enforcement agency of the suspected theft or attempted theft.

SECTION 4. Effective date: September 1, 2023.