

## **New Jersey Shoplifting Defense Info**

### **1. What will happen on my first court date and do I have to be there if I have a lawyer?**

Your first court date is called an arraignment. On this date you must enter a plea before the judge. In most shoplifting cases, you must enter a plea before a Municipal Court judge. If the amount that is stolen is a high amount or more than \$200, then the case may be waived or sent up to the County Prosecutor. Thereafter, the case may seem that it is lost in the system. However, you will ultimately receive a notice to appear at the County Criminal Court. Alternatively, the case could remain in the Municipal Court system. Please note that even though the limit is \$200 for a DP shoplifting charge, quite often the limit is raised by the County Prosecutor's office.

### **2. Why should I pay for a lawyer when I can get the services of a public defender for free?**

In order to qualify for the services of a public defender you must establish to the court's that you are basically broke. A public defender is an attorney assigned by the court to handle all of the cases that day for the defendants who can't afford to hire a lawyer. The public defenders are excellent lawyers and most have many years of experience. However, they are overwhelmed with a very large caseload. A public defender only has so much time, and he is very limited as to how much time he can devote to your case. If you hire your own lawyer then he can explore more loopholes and motions in your case. Therefore, it is a "no brainer" that increases your chances for a better outcome if you hire your own lawyer.

### **3. What are the types of shoplifting in New Jersey?**

#### **Conduct Necessary to Establish Shoplifting**

There are basically five types of shoplifting defined under New Jersey's shoplifting law N.J.S.A. 2C:20-11:

**a. Defendant Purposely Takes Merchandise.** The first type of shoplifting deals with a person who purposely takes merchandise from a store. The person must have an intent to deprive the store/owner of the merchandise of payment for it.

**b. Defendant Conceals Merchandise.** The second type of shoplifting is when a person purposely tries to conceal merchandise with the intent to deprive the owner/store of payment for it. Under the New Jersey shoplifting laws, any person purposely concealing unpurchased merchandise of any store, either on the premises or outside, is presumed to have concealed the merchandise with the

intention of depriving the merchant of the possession.

The term "Conceal" means to conceal so that even though a person can notice the merchandise, it is not visible through ordinary observation. In New Jersey there is a legal presumption that any person who purposefully conceals un-purchased merchandise has concealed with an intent to deprive the store/owner of it without paying for it.

**c. The Defendant Alters, Transfers or Removes a Price Tag or Label.** A shoplifting charge can also be filed if a person alters, transfers or removes a label or price tag. The person also must have an intent to deprive the merchant/store of the true value or consideration intended to be paid for the merchandise.

**d. The Defendant Transfers Merchandise to Another Container.** A person can also commit shoplifting where he purposely transfers merchandise into another container. The person also must have an intent to commit a theft of the merchandise.

**e. The Defendant Under-Rings the Merchandise.** Finally, a person can also be charged with shoplifting if he under-rings the value of the merchandise. The term under-ring means basically means that the cashier or store worker causes the sale to be made for less than the marked up price. The prosecutor must prove that the under-ringing were done purposely by the cashier.

#### **4. When is shoplifting only classified as a disorderly persons offense?**

Most shoplifting charges are handled in your local Municipal Court. However, it is important to emphasize that even if you are only convicted of a disorderly persons offense in Municipal Court you will still have a conviction for a theft charge. Therefore, you will still have a criminal record. If you apply for a job, then any criminal record search will still show that you have been busted for stealing. The bottom line is that even a DP conviction for shoplifting could ruin your chances for to obtain better job. Moreover, if you are here on a Green Card, a DP conviction for shoplifting could seriously jeopardize your chances to ever become a US citizen.

N.J.S.A. 2C:20-11(c)(4) provides that shoplifting is a disorderly persons offense if the merchandise is only valued at \$200 or less. The penalties for shoplifting can be very tough. A person busted for shoplifting can receive heavy fines, restitution, be jailed for up to six months, receive community service of between ten and twenty-five days, probation, driver's license suspension, and a forfeiture of public office. Moreover, if you are a repeat offender, then New Jersey law requires a mandatory jail term of 90 days.

**5. What are the possible sentences for a person who is convicted of shoplifting?**

The penalties imposed upon conviction for shoplifting vary depending on the degree of the shoplifting offense. There are many different levels of shoplifting. The most serious level of shoplifting is a second degree shoplifting. There are also third and fourth degree shoplifting charges as well. A conviction for DP shoplifting, is the least severe type of shoplifting. A DP charge is basically a misdemeanor, and it is not considered to be a felony.

Nonetheless, the sentencing scheme for shoplifting offenses emphasizes community service. Any person convicted of a shoplifting offense shall be sentenced must perform community service. For a first offense, a person must complete at least ten days of community service; for a second offense, at least 15 days of community service; and for a third or subsequent offense, a maximum of 25 days of community service. For a third time offender, a person must also serve a minimum term of imprisonment of 90 days.

**6. What type of fines could a person receive if he is convicted of shoplifting?**

If a person is convicted of shoplifting then the court must impose heavy fines. The fines to be imposed for a shoplifting conviction are as follows up to \$150,000 for second degree shoplifting; up to \$15,000 for third degree shoplifting; up to \$10,000 for fourth degree shoplifting; and up to \$1,000 for misdemeanor/disorderly persons shoplifting.

**7. What type of jail terms could a person receive if he is convicted of shoplifting?**

The courts don't like to sentence a person to jail for a shoplifting charge(s). However, if the person is a habitual offender, then the judge will have no discretion but "to throw the book" at him. A six-month jail term can be imposed for a DP shoplifting charge. If you are busted for the more serious shoplifting charges then the potential penalties skyrocket. The max jail term for a fourth degree shoplifting charge is five years, the max term for a third degree shoplifting charge is eighteen months, and the max term for a second degree shoplifting is ten years.

**8. What is the current status New Jersey shoplifting detention and arrest law?**

New Jersey law has many specific rules that apply to the detention or arrest of a person for shoplifting. If either a police officer or a store employee has probable cause to believe

that a person has wilfully concealed unpurchased merchandise, then the person can be taken into custody. The taking into custody must be done in a reasonable manner and only for a reasonable period of time. A police officer may arrest a person for shoplifting without a warrant if he has probable cause to believe that the person is stealing.

#### **9. When can a trumped up shoplifting charge be upgraded to a robbery charge?**

In many cases, a vigilant prosecutor may try to convert a basic shoplifting case into a robbery case. If the person uses any type of force to effectuate the stealing the merchandise, then the shoplifting charge can be elevated to a robbery charge. All the person has to do is basically touch a store employee or security officer when he attempts to flee the store with the stolen merchandise. This type of scenario can create a nightmare for a defendant. Robbery charges are heavy duty offenses. In the shoplifting turned robbery scenario, the robbery charge will then be indicted as a second degree offense. A second degree offense carries a prison term of five to ten years.

N.J.S.A. 2C:15-1 defines the charge of robbery as the use or threat of force, or the infliction of bodily injury, in the course of committing or the fleeing of an act theft. Thus, whenever any type of touching, or even the slightest use of force is used in the course of a shoplifting offense, then the charge can be upgraded to a robbery charge. Thus, if a shoplifter pushes away a security guard or a store worker trying to escape the store to beat a shoplifting charge, then he can also be charged with robbery.

If you are charged with robbery then you will certainly be in "hot water." Most shoplifting charges are only DP charges. However, if the DP charge is elevated to a second degree robbery charge, then you could face up to five to ten years in jail. To make the situation even worse, a robbery charge is a crime of violence and it is subject to the NERA or *No Early Release Act* laws. The NERA laws provide a period of parole ineligibility of 85% if the jail term. Therefore, if a simple shoplifter is convicted of a second degree robbery, then he will have to serve 85% of the jail term. In summary, if you are busted for shoplifting and if you have any type of physical contact with any of the store employees or security officers, then you may be charged with second degree robbery.

#### **10. What is New Jersey's shoplifting civil penalty law?**

If you are arrested for shoplifting you will also be liable for civil penalties as well. New Jersey has a civil law that permits store owners to seek civil penalties on those who shoplift from them. The law is codified in N.J.S.A. 2A:61C-1 and it provides

for a civil penalty up to \$150 to be assessed against a person who steals from a store. The victim is also entitled to recover for any damage or loss of property up to \$500. If a juvenile is arrested for shoplifting then civil penalties can be imposed against his parents.

The merchant is also entitled to seek the recovery of reasonable attorney fees if it sues for civil relief under N.J.S.A. 2A:61C-1. The recovery of attorney fees depends on two key factors; (1) the defendant has been convicted of shoplifting; and (2) the defendant was served with a demand for payment of the stolen merchandise, and he failed to respond or has rejected the demand within 20 days of receiving notification.

**11. I have lived a clean life and my shoplifting charge is my first criminal offense. Does New Jersey have any PTI or diversion programs for shoplifting?**

There is no PTI program if you are only charged with a DP shoplifting. This is one of the major flaws of the Municipal Court system. In Municipal Court a conditional discharge is only available for drug charges. The most common outcome for a first time shoplifting is for the charge to be downgraded to a municipal ordinance. Basically, if a person is convicted of a municipal ordinance, then it will not give you a criminal record. A municipal ordinance conviction will not show up on your criminal record. Be forewarned though! Many of my clients have advised me that their municipal ordinance conviction still shows up on their criminal record. A municipal ordinance charge can be expunged after a two year waiting period. A standard DP shoplifting charge can only be expunged after a five year waiting period. There are many areas of the law that is grey, and the issue whether a municipal ordinance conviction will show up on a criminal records search is one of them.

Meanwhile, if a person is charged for a second, third or fourth degree charge, then PTI (Pre-Trial Intervention) is available. A defendant charged with offense can apply for PTI if he has no prior indictable convictions on his record. PTI allows for dismissal of shoplifting offenses wherein a person is admitted into the program, and he is successful in completing a six months to two years probation. When a person successfully completes the PTI program, then the shoplifting charges are dismissed.

Please note that there is a legal presumption that a person is not eligible for a PTI for a second degree charge. However, this legal presumption can be rebutted and contested. For the majority of first time shoplifting for indictable cases, their case will be accepted into PTI. Another common scenario is that the County Prosecutor will remand a shoplifting case to the local municipal court even if the merchandise exceeds \$200. The County

Prosecutor's Office "have bigger fish to fry" than by simply over prosecuting shoplifters.

**12. Can a shoplifting charge be totally dismissed?**

There are rare cases when a shoplifting case can be even dismissed outright. First, a defendant can always file a motion to dismiss the case on the grounds that shoplifting charge was a *de minimis* offense, and it must be dismissed under the exception under N.J.S.A. 2C:2-11. The *de minimis* rule provides for an outright dismissal of a shoplifting charge wherein the alleged conduct is too small and trivial to justify a full trial.

A shoplifting case also can ultimately be dismissed if the employees of the store and the security guards do not show up for trial. If the store employees don't show up for court then the judge could dismiss the case. In most cases, the municipal court judge will adjourn the case and give the store employees one more chance to show up for the trial. The municipal court judge will mark the case "try or dismiss." This means that if the municipal court prosecutor is not ready to try the shoplifting case on the second listing, then the case will be dismissed. You would be surprised at how many shoplifting cases are dismissed because the store employees don't show up. In the busy urban municipal courts it is very common for the store employees not to show up for court. The Municipal Court system has a few glitches. A major glitch is that witnesses do not always show up for trial. If this glitch arises in your shoplifting case, then vigorously ask the judge for a dismissal. The judge just may grant your request if it is a second court listing.

**13. How are most indictable shoplifting charges resolved?**

The majority of shoplifting cases are resolved by entering into a plea agreement to downgrade the charge. The majority of the shoplifting cases are DP charges. In most of the cases, the local municipal prosecutor will agree to a downgrade to a municipal ordinance. If you receive a downgrade for a municipal ordinance then it is a major victory. However, the fines for most municipal ordinance convictions are approximately \$500. A defendant will also still have to expunge a municipal ordinance.

**14. What is the new charge called shoplifting with an organized retail theft enterprise(s)?**

The New Jersey shoplifting laws now also include special provisions for shoplifting that occurs under the direction and control of an organized enterprise. The potential penalties resulting from a conviction on this charge are severe. The New Jersey Shoplifting Law imposes enhanced penalties for a person convicted of shoplifting as part of an "organized retail theft enterprise." An organized retail theft enterprise is defined

under the criminal code as the association of two or more individuals for the purpose of effectuating the transfer of merchandise that has been shoplifted.

This type of charge is also an indictable charge. It is a second degree offense, instead of the usual third degree, whenever a person shoplifts merchandise with a value that exceeds \$1,000 consistent with an organized retail theft enterprise. Any other shoplifting offense, which is undertaken by an organized retail theft enterprise is considered a third degree crime even if it involves merchandise of limited value. For this type of charge, the court can aggregate the merchandise taken by members of an organized retail theft enterprise.

**15. How will a shoplifting charge affect a person's immigration status?**

If you are not a United States citizen, and if you are charged with shoplifting, then the immigration consequences could be prove to be disastrous. The immigration consequences can be far more harmful than the fine or sentence that you have received. Even a minor shoplifting DP criminal conviction can have grave immigration consequences on a non-citizen. Thus, the effective defense of an alien/non-citizen on a shoplifting charge requires extra diligence.

Remarkably even a DP conviction for shoplifting conviction with no jail time can result in the deportation and permanent exclusion of a non-citizen. US Immigration laws now bar people from entering the United, or becoming a citizen, or having their visa renewed, if they have been convicted of any "crime involving moral turpitude." A conviction of shoplifting involves being dishonest. Thus, shoplifting is almost always considered to be a crime of moral turpitude. Therefore, you could be booted out of the US, denied a visa, or denied citizenship if you are convicted of even a DP shoplifting charge. This same result occurs even with residents that have been in the United States for decades, have established businesses, purchased homes, raised families and had no other prior legal problems.

It is shocking to learn that even relatively minor charges can result in deportation while far more serious crimes have no immigration consequences at all. The immigration consequences depend on the classification of the crime. Crimes of moral turpitude and aggravated felonies are removable. The crimes of moral turpitude typically have surprising immigration consequences. On first impression, you would assume that a minor shoplifting DP charge is not a serious crime. Under US Immigration law a charge of shoplifting is a "crime involving moral turpitude." Moreover, it is also considered fraud.

According to the United States Immigration Law, a non-citizen/

alien can be deported if he is convicted of a crime that involves moral turpitude. The conviction must have occurred within five years of having legally entered the country, or having been issued a legal permanent resident status. Shoplifting, as mentioned earlier is classified as crime of moral turpitude. Therefore if you have only been in the US for less than five years, or it has not been ten years since the approval of your permanent residence status, then you can be deported.

A shoplifting conviction can also ruin your chances to become an US citizen or to renew a visa. Moreover, if you are here in the US and busted for shoplifting, then you can even be deported. Additionally, a shoplifting conviction may also bar you from re-entering the good old USA. Thus, if you receive a shoplifting charge, these charges should be taken very seriously. The collateral consequences of even a DP/Misdemeanor shoplifting charge can wreak havoc on your life. In summary, if you are a permanent residence, a visa holder, on student visa, or a tourist visa, then should fight any shoplifting charge zealously and "to the ends of the earth."

#### **16. How can my firm help you if you were busted for shoplifting?**

Being caught for shoplifting is nothing to be proud of. However, you should not have your life ruined simply because you made a mistake. Maybe you are out of work, and you are desperate. Maybe you are obsessive compulsive and you have a uncontrollable psychological urges to steal. Maybe you are OCD and you are obsessed to have that new dress at the mall even though you can't afford it. My major point is that we all make mistakes in our lives. I have certainly made my share of mistakes and I am grateful that I was not ruined for making them. You also should not be ruined for making the mistake of shoplifting and for being stupid.

Stealing causes bad karma in your life. Even if you enjoy the value of the stolen merchandise, you will still receive bad luck and misfortune for your immoral behavior. You should view your shoplifting charge as an opportunity to clean up your act, get rid of your bad karma, and to reexamine your life. In summary, you don't want to continue to be labeled as a thief. You embarrass yourself and your family. Nonetheless, we live in the Unites States and you are presumed innocent. Thank your luck stars that you don't live in Saudi Arabia. If you are convicted of stealing in Saudia Arabia the government often chops off your hand.

Alternatively, you may have placed an object in your pocket forgotten about it. You may have simply accidentally walked out of the store without paying for it. The store would naturally assume that you have committed shoplifting. However, when people shop they often are multitasking and thinking about many

different thoughts at once. Mistakes happen all of the time, and many people are absent minded. My law firm can intervene on your behalf, and offer the store a restitution settlement. Moreover, my firm can assist you to avoid the embarrassment of having any criminal charges filed. Finally, my firm can help you in any negotiations with the store or with the prosecutor.

For some people, stealing, and especially shoplifting, fulfills psychological needs caused by disorders such as kleptomania or obsessive compulsive disorder. My law firm can help you deal with the charges against you as well as refer you to helpful psychological resources.

Finally, my firm also often works with our clients and store owners to reach a civil compromise to avoid any shoplifting charges being filed. A successful negotiation with the store about a possible civil compromise may ultimately result in the shoplifting charges being dropped. In these type of cases, the charged person must pay for full restitution for the stolen merchandise, and the store will then decline to press the case.

In summary, shoplifting is probably the most common criminal offense in New Jersey. It can have embarrassing and often ruinous consequences on your life. Shoplifting can ruin your criminal record, and it also can wreck your chances to find a good job. Most employers don't want to hire new employees with a shoplifting charge on their record. Therefore, if you don't hire an experienced lawyer to represent you for a shoplifting charge then you are just gambling with your future. Believe me, most employers avoid hiring applicants "like the plague" who have any type of criminal conviction(s) that is theft related. If you were an employer, would you want the extra headache of always worrying whether your recently hired employee with the shoplifting rap sheet would steal from you. I don't think so!

**17. How can the charges of shoplifting be proven in a court of law?**

If you have been caught for shoplifting, then these charges can most likely be proven by the following evidence:

- a. Store video camera
- b. Security staff
- c. Loss prevention staff
- d. Witness testimony
- e. Statements made by the accused

**18. What elements or facts must the prosecutor prove to convict a person of shoplifting?**

In order for the prosecutor to establish a solid case for Shoplifting, the following must be proved:

- a. The defendant/shoplifter must have been seen approaching the merchandise;
- b. The defendant/shoplifter must have selected the merchandise;
- c. The defendant/shoplifter must have concealed, carried away, or converted the merchandise;
- d. The defendant/shoplifter must have been in continuous observation by the merchant or witness;
- e. The defendant/shoplifter must have failed to pay for the merchandise;
- f. The defendant/shoplifter must have been approached by the merchant outside the store.

In a shoplifting case, the specific intent of the charged person does not need to be proved. Any mental illness, alcohol or drug-related issues, and medication can't be used as a defense to a shoplifting charge. The prosecutor(s) must analyze each shoplifting charge on a case by case basis. The sentence and the penalties will vary according to the defendant's prior criminal record, the amount of the stolen merchandise, and on various other factors.

#### **19. What is teenage or juvenile shoplifting?**

When a juvenile is accused of shoplifting then the case is referred to the Family Court. All juvenile cases are handled in the Family Court. The juvenile process is quite different than the adult criminal court. A juvenile crime is called an act of delinquency. Moreover, the rules applied in the Juvenile Court are much different than in the adult court.

The sentence and penalties for a juvenile shoplifting still include the following:

- \* Detention (placement or camp)
- \* Probation
- \* Juvenile record
- \* Fines
- \* Community Service