

## **New Jersey DP Theft Charges**

### **1. How can a DP theft conviction impact a person's life?**

A theft conviction on your record can have a devastating effect on your ability to earn a living. Many employers do not hire potential employees who have theft convictions. Theft is a serious criminal charge and it can have severe consequences and penalties. The charge of theft can be anything from the theft of property, theft by deception, theft of services, theft by fraud (unemployment fraud), bad checks, credit card theft, or any other means of theft. The worst part of being convicted for theft is that it will haunt you. Your ability to be licensed in many fields could be jeopardized. Moreover, most potential employees will look at you like a demon if they discover that you have a theft conviction. If you owned a business would you want to hire someone who steals? I don't think so! Therefore, if you are facing a theft charge then you should try every avenue to have the charge dismissed, or downgraded to a municipal ordinance violation.

### **2. What type of theft charges are filed in the Municipal Court?**

There are three theft offenses that are commonly charged in Municipal Court. These disorderly persons' offenses are:

- a. Theft of movable property - N.J.S.A. 2C:20-3(a)
- b. Receiving stolen property - N.J.S.A. 2C:20-7
- c. Theft by deception - N.J.S.A. 2C:20-4

Additionally, theft of service charges are also filed in Municipal Court as well.

The amount of the theft must be less than \$200 for it to be classified as a DP offense. However, it must be emphasized that the county prosecutors often downgrade an indictable theft charge to Municipal Court even when the amount of the theft exceeds \$200. The county prosecutors have broad discretion to downgrade an indictable theft offense to the disorderly persons' level. For example, an allegation of the theft of \$750 of store merchandise is nominally a crime of the third degree. However, in the majority of the cases this charge will not be indicted, and it will be heard in Municipal Court as a DP offense. In summary the county prosecutors routinely downgrade theft charges as matter of routine and remand them to the Municipal Court for disposition.

### **3. What are the elements of a DP theft charge?**

Essentially a DP theft charge has three elements and they are as follows:

- a. The defendant knowingly took or unlawfully exercised control over movable property.
- b. The movable property was property of another.
- c. The defendant's purpose at the time of the taking was to deprive the other person of the movable property.

**4. When is a theft charge only classified as a disorderly persons' offense?**

A theft charge is classified as a disorderly persons offense if the amount of the theft involved is less than \$200. If the theft charge is only a DP offense then it will be heard in Municipal Court.

**5. What are the penalties for a theft conviction in New Jersey?**

Under N.J.S.A. 2C:20-2, the penalties for theft offenses vary:

A. If an individual is charged with theft of property more than \$75,000, it is a second degree offense, and he faces up to 10 years in prison.

B. If an individual is charged with theft of property more than \$500, but less than \$75,000, it is a third degree offense, and he faces up to five years in prison.

C. If an individual is charged with theft of property \$200 or more, but less than \$500, it is a fourth degree offense, and he faces up to 18 months incarceration.

D. If an individual is charged with theft of property less than \$200, it is a disorderly persons' offense, and he could face up to six months jail time.

**6. What is the sentencing range for a DP theft charge?**

The normal fine range for a DP level theft charge is between no fine and \$1000. Every person convicted of a theft offense in Municipal Court must pay a \$50 VCCB assessment, and a \$75 SNF Fund. Finally, court costs of \$33 may also be imposed. The court could also impose a jail term from 0 to 6 months. The court must impose a 90-day jail term on a defendant for a third time shoplifting offense. Finally, the court also could order restitution to be paid the victim. Basically, you will have to repay the merchant or person who you stole from.

**7. Are there defenses to DP theft charges?**

Most shoplifting charges are proven by evidence through the store

video camera, loss prevention staff, security staff, or other witnesses. The specific intent of the person who committed the crime does not need to be proven. In most instances, you cannot use mental illness, medication, drug or alcohol-related problems as an excuse for shoplifting. If the case of shoplifting is a factually weak one (for example, few witnesses), then it is possible that these charges can be reduced to a trespass charge or dismissed outright.

The best strategy to fight any DP theft charge is to try to convince the prosecutor to downgrade the charge to a municipal ordinance violation. The defendant will also have to agree to make full restitution to the victim. Some prosecutors will be amendable to reducing a theft charge to a municipal ordinance violation. Meanwhile, other prosecutors can be hardcore and ruthless and insist on a guilty plea or trial to the theft charge. If you encounter resistance from the prosecutor, then you should offer that the defendant would be willing to serve a period of community service of up to 30 days to qualify for the downgrade. I have had much success in convincing a prosecutor to reduce a DP theft charge to a municipal ordinance violation when I offer community service as an enticement. Community service is no fun. However, a theft conviction will ruin many people's lives.

In many DP theft cases the witnesses will not show up for any theft trial. Therefore, a defendant should not plead guilty to a theft charge just to get the case finished. There is a lot of confusion with the Municipal Court process. The cold hard reality is that police officers, store employees, witnesses, and the complainants often fail to show up for court. This scenario happens all of the time.

Additionally, keep in mind that the municipal prosecutors are overwhelmed. A defense lawyer can be vigorous in the discovery process and prepare a solid defense. More often than not the municipal prosecutors "wing it" and they don't prepare their case adequately. In many cases a theft prosecution can turn into an utter disaster for the State. Therefore, you should not give up if you are charged with a DP theft charge. First, you should try to convince the prosecutor to downgrade their charge to a municipal ordinance violation. If this strategy does not work, then defense counsel should conduct vigorous discovery, and prepare a solid defense.