



Garden State CLE
 2000 Hamilton Avenue
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 (609) 584-1924 – Phone
 (609) 584-1920 - Fax

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GARDEN STATE CLE

Shoplifting

1.0 credit course

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LESSON PLAN AND EVALUATION FORM***

Featuring

***Robert Ramsey, Esq.
Garden State CLE Senior Instructor***

and

***H. Robert Switzer
P.J.M.C. (ret.)***

N.J.S.A. 2C:20-11: Shoplifting

a. Definitions The following definitions apply to this section:

- (1) "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store;
- (2) "Store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale;
- (3) "Merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof;
- (4) "Merchant" means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or proprietor;
- (5) "Person" means any individual or individuals, including an agent, servant or employee of a merchant where the facts of the situation so require;
- (6) "Conceal" means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation;
- (7) "Full retail value" means the merchant's stated or advertised price of the merchandise;
- (8) "Premises of a store or retail mercantile establishment" means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment;
- (9) "Under-ring" means to cause the cash register or other sale recording device to reflect less than the full retail value of the merchandise;
- (10) "Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device;
- (11) "Organized retail theft enterprise" means any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

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

- (1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.
- (2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.
- (3) For any person purposely to alter, transfer or remove any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the value thereof.
- (4) For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof.
- (5) For any person purposely to underling with the intention of depriving the merchant of the full retail value thereof.
- (6) For any person purposely to remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

c. Gradation. (1) Shoplifting constitutes a crime of the second degree under subsection b. of this section if the full retail value of the merchandise is \$75,000.00 or more.

(2) Shoplifting constitutes a crime of the third degree under subsection b. of this section if the full retail value of the merchandise exceeds \$500.00 but is less than \$75,000.00.

(3) Shoplifting constitutes a crime of the fourth degree under subsection b. of this section if the full retail value of the merchandise is at least \$200.00 but does not exceed \$500.00.

(4) Shoplifting is a disorderly persons offense under subsection b. of this section if the full retail value of the merchandise is less than \$200.00. Additionally, notwithstanding the term of imprisonment provided in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting offense shall be sentenced to perform community service as follows: for a first offense, 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 and any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of imprisonment of not less than 90 days.

d. Presumptions. Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof, and the finding of such merchandise concealed upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

Shoplifting Diversion Programs

New Jersey law provides a variety of programs and procedures that will divert defendants who have been charged in municipal court from the criminal justice system. Typically, the diversionary programs will address a wide array of disorderly and petty disorderly persons' offenses. In cases involving alcohol abuse, municipal ordinances can also be considered as the subject of diversion. Among the available programs and procedures are:

NJSA 2C:2-11 - De Minimis Infractions

NJSA 26:2B-17 - ATRA

NJSA 2C:36A-1 - Conditional Discharge

NJSA 2C:51-2 – Waiver of Forfeiture of Public Office

NJSA 2C:43-12 – PTI on Upgraded D/P charges

Rule 7:8-1 & 1:40-8 – Complementary Dispute Resolution Plea Bargaining Process

2C:52-6. Arrests not resulting in conviction

a. In all cases, except as herein provided, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in [section]N.J.S. 2C:52-7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

* Shoplifting can qualify under the diversionary program wherein a conditional dismissal allows first-time offenders, who are eligible charged with certain disorderly persons offenses. A defendant charged with a petty disorderly offense may apply into the program, provided the following:

1. No previous conditional discharge
2. No previously convictions
3. Criminal case history is in good standing
4. Fingerprints copied
5. Pay \$75 application fee to the courts

** Local factors may apply

Notable Statutes:

N.J.S.A. 2C:43-13.8 - Conditional dismissal assessment

N.J.S.A. 2C:20-3 - Theft by unlawful taking or disposition

a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

N.J.S.A. 2C:15-1 - Robbery

N.J.S.A. 2C:12-1 - Assault, a. Simple Assault

N.J.S.A. 2C:13-3 - False Imprisonment

Notable Cases:

State v. Paserchia, 356 NJ Super. 461 (App. Div., 2003)

- *Plea Agreements*

State v. Humphreys, 54 NJ 406 (1969)

- *No presumption in criminal or quasi criminal cases*

State v. Holup, 253 N.J. Super. 320 (App. Div. 1992)

- *Request for discovery; Holdup Motion*

* *Generally see: Rule 1:6-2 - Motions must be filed in writing!*

State v. Smith - 195 NJ Super. 468 (Law Div., 1984)

- *No De Minimis Applications*