



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

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MEMORANDUM

**TO: All County Prosecutors
All Municipal Prosecutors**

FROM: John J. Farmer, Jr., Attorney General

**SUBJECT: Attorney General Guidelines --
Prosecution of Shoplifting Offenses**

DATE: January 16, 2001

I. Introduction

On April 28, 2000, *P.L. 2000, Ch. 16* was enacted amending statutes regarding shoplifting. (Copy attached). The Act created a grading system for shoplifting offenses, provided for mandatory terms of community service and a mandatory minimum term of imprisonment of not less than 90 days for a third or subsequent shoplifting offense.

The Act also provides that the Attorney General shall develop guidelines for the prosecution of shoplifting offenses no later than the 120th day after the effective date of the Act. The guidelines are intended to ensure that the prosecution of shoplifting offenses is conducted in a uniform manner throughout the State. *P.L. 2000, Ch. 16, § 2*. In accordance with this statutory mandate, the provisions contained herein shall govern the prosecution of shoplifting offenses throughout the State. These guidelines shall apply to the prosecution of shoplifting offenses in Superior and Municipal Courts and shall also apply to the prosecution of juveniles for shoplifting in the Family Part, to the extent provided in paragraph V below.



II. Grading and Penalties

Under the new law, the grading of shoplifting is based on the full retail value of the merchandise taken. Consequently, shoplifting shall be charged in accordance with the full retail value of the merchandise taken, as provided in *N.J.S.A. 2C:20-11*. Under the statute, shoplifting offenses are graded as follows:

2nd Degree: Shoplifting is a crime of the second degree if the full retail value of the merchandise was \$75,000.00 or more. *N.J.S.A. 2C:20-11c(1)*. A crime of the second degree is punishable by a term of imprisonment of five to 10 years (*N.J.S.A. 2C:43-6a(2)*), a fine not to exceed \$150,000.00, or both (*N.J.S.A. 2C:43-3a(2)*).

3rd Degree: Shoplifting is a crime of the third degree if the full retail value of the merchandise exceeds \$500.00 but is less than \$75,000.00. *N.J.S.A. 2C:20-11c(2)*. A crime of the third degree is punishable by a term of imprisonment of three to five years (*N.J.S.A. 2C:43-6a(3)*), a fine not to exceed \$15,000.00, or both (*N.J.S.A. 2C:43-3b(1)*).

4th Degree: Shoplifting is a crime of the fourth degree if the full retail value of the merchandise was at least \$200.00 but does not exceed \$500.00. *N.J.S.A. 2C:20-11c(3)*. A crime of the fourth degree is punishable by a term of imprisonment not to exceed 18 months (*N.J.S.A. 2C:43-6a(4)*), a fine not to exceed \$10,000 or both (*N.J.S.A. 2C:43-3b(2)*).

Disorderly Persons Offense: Shoplifting is a disorderly persons offense if the full retail value of the merchandise was less than \$200.00. *N.J.S.A. 2C:20-11c(4)*. A disorderly persons offense is punishable by a term of imprisonment not to exceed six months (*N.J.S.A. 2C:43-8*), a fine not to exceed \$1,000 or both (*N.J.S.A. 2C:43-3c*).

The additional mandatory penalties for any person convicted of a shoplifting offense under the Act are as follows:

Additional Mandatory Penalties: 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. *N.J.S.A. 2C:20-11c(4)*.

III. Downgrading of Shoplifting Offenses

Shoplifting offenses shall not be downgraded to disorderly persons offenses and remanded to municipal court except in accordance with the following criteria:

- Second degree shoplifting offenses shall not be downgraded to disorderly persons offenses and remanded to municipal court.
- Third degree shoplifting offenses shall not be downgraded to disorderly persons offenses and remanded to municipal court if the full retail value of the merchandise taken is equal to or greater than \$2,000.
- Ordinarily, third degree offenses where the full retail value of the merchandise is less than \$2,000 should not be downgraded to disorderly persons offenses and remanded to municipal court. However, such cases may be downgraded and remanded to municipal court if there are trial proof issues.
- Fourth degree offenses may be downgraded to disorderly persons offenses and remanded to municipal court, at the discretion of the County Prosecutor or his or her designee. However, a fourth degree offense shall not be downgraded if the offense constitutes the offender's third or subsequent shoplifting offense.

IV. Prosecution of Shoplifting Offenses in Municipal Court

Pursuant to *N.J.S.A. 2B:25-5a*, municipal prosecutors are required to “...represent the State, the county or the municipality in the prosecution of all offenses, except for zoning violations, within the statutory jurisdiction of the municipal court as defined by law.” Exceptions to the requirement that municipal prosecutors prosecute all offenses are set forth in *N.J.S.A. 2B:25-5b*. One such exception allows a municipal prosecutor, with the approval of the court, to decline to participate in municipal court proceedings in which the defendant is not represented by counsel. *N.J.S.A. 2B:25-5b*.

In many municipalities, municipal prosecutors traditionally have not prosecuted shoplifting offenses where the complaining witness is an employee of a supermarket or some other retail establishment. Where such cases were not handled by a municipal prosecutor, retailers were forced to either hire private counsel, pursuant to the proscription of *Opinion 34 – Lay Security Personnel Prosecuting Complaints in Municipal Court*, 156 *N.J.L.J.* 434 (May 3, 1999) or forego prosecution. This practice has resulted in unequal enforcement of the law in such cases.

In order to ensure that shoplifting offenses are prosecuted in municipal courts in a uniform manner, municipal prosecutors shall henceforth prosecute all shoplifting offenses and shall not decline to participate in the prosecution of shoplifting offenses where the defendant is not represented by counsel.

V. Juveniles Charged or Adjudicated Delinquent for Shoplifting

P.L. 2000, Ch. 16 applies to juveniles only as to the grading of offenses under this Act. The mandatory terms of community service for first or second offenses, or the mandatory 90 day term of incarceration for third or subsequent offenses, imposed under *N.J.S.A. 2C:20-11c(4)*, do not apply to juveniles. Similarly, since the Act speaks only of convictions and not adjudications of delinquency, adjudications of delinquency for shoplifting offenses should not be construed as prior offenses for the purpose of imposing mandatory penalties pursuant to *N.J.S.A. 2C:20-11c(4)*.

VI. Civil Penalties

The Prosecutor shall be mindful that he or she represents the State of New Jersey in shoplifting cases. The Prosecutor shall not negotiate for, request or require a defendant to pay civil penalties for shoplifting or theft of food or drink pursuant to *N.J.S.A. 2A:61C-1*.¹ However, this shall not preclude a prosecutor from requesting that restitution be ordered under *N.J.S.A. 2C:43-3* or agreeing that a plea shall not be evidential in any civil proceeding pursuant to *R. 3:9-2*.

att. *P.L. 2000, Ch. 16*

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¹See *State v. McLaughlin*, 310 *N.J. Super.* 242, 261-263 (App. Div. 1998). In *McLaughlin*, the court held that a civil penalty could not be imposed under *N.J.S.A. 2C:43-2(d)* where the legislature intended that the fines be recoverable in a civil action brought by the Commissioner of Insurance. *N.J.S.A. 2A:61C-1d(3)* provides for civil penalties in cases where the value of the merchandise does not exceed \$500.00. *N.J.S.A. 2A:61C-1* requires that the merchant make a written demand for the penalty and allow the offender twenty days to comply. Under *N.J.S.A. 2A:61C-1c*, in the event that a merchant institutes a civil action, the prevailing party is entitled to an award of reasonable attorney's fees and reasonable court costs.