

A Guide to

# Defending Against Shoplifting Charges in New Jersey

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## Disclaimer

This publication is intended as a general education guide to shoplifting laws in New Jersey. This publication does not constitute legal advice. Each case is unique and must be considered based on its own specific details. This publication is for informational purposes only and is based upon New Jersey law at the time it was published. Subsequent changes in the law may or may not affect your rights. For specific legal advice regarding your case, it is advisable to consult an experienced New Jersey criminal defense lawyer who will be able to review your situation and the specific details of your case and provide custom-tailored legal advice.

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Chapter 1:  
**New Jersey Shoplifting Law Basics**

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# Chapter 1:

## New Jersey Shoplifting Law Basics

Shoplifting is one of the most common crimes in New Jersey. But that doesn't make it any less embarrassing or scary when you're caught.

The legal process can be confusing – and despite what many people think, the consequences of shoplifting can be serious. A conviction can result in steep fines, community service, and even jail time. You may also have to deal with the stigma and negative consequences of having a criminal record.

If you're facing a shoplifting charge, you should take your defense seriously, no matter how little merchandise is involved.

This guide will help you understand the process, the potential penalties, and possible defense strategies. But you should also get the help of a criminal defense attorney. An attorney may be able to help reduce the penalties for a shoplifting conviction – or avoid them altogether.

### **New Jersey's Shoplifting Statute**

You probably think of "shoplifting" as taking an item out of a store without paying for it.

And while that's one form of shoplifting, you can also face shoplifting charges even if you didn't actually take any merchandise out of the store. The prosecutor only needs to believe you intended to take an item from the store without paying the full value.

In fact, under N.J.S.A. 2C:20-11, "shoplifting" may be any of the following acts:

- 1. Taking or carrying away merchandise offered for sale.** This is the “classic” shoplifting scenario. It involves taking merchandise out of a store without paying for it, with the intention of depriving the store of the merchandise’s value.
- 2. Hiding or concealing merchandise.** This type of shoplifting involves concealing an item with the intention of depriving the store of the merchandise’s value. “Concealing” means you hide the item so it’s not visible through ordinary observation, even if there’s some notice of its presence.
- 3. Switching, removing, or altering a price tag or label.** This type of shoplifting involves altering the tag or label of an item and attempting to buy the item at less than the full value, with the intention of depriving the store of the merchandise’s full value.
- 4. Transferring goods from one container to another.** This type of shoplifting involves putting an item into another container, with the intention of depriving the store of the merchandise’s full value.
- 5. Causing the cash register to reflect less than the full retail value of the merchandise (or “under-ringing”).** This type of shoplifting applies to store employees. An employee can be charged with shoplifting if they ring an item at a lower price than what’s offered by the store – either for themselves or someone else – with the intention of depriving the store of the merchandise’s full value.
- 6. Removing a shopping cart from the store.** This type of shoplifting involves taking a cart from the store’s premises with the intention of depriving the store of the possession, use, or benefit of the cart.

In addition, possessing or using a device to defeat anti-shoplifting or inventory control devices in any store is a disorderly persons offense in New Jersey. Examples of such devices include those that demagnetize security tags or alter bar codes. The idea is that if you have this kind of device in a store, you intend to use it to steal.

## Levels of Shoplifting Offenses

Like many crimes, shoplifting offenses in New Jersey are classified into different levels (or “grades”) according to severity. The grades are based primarily on the value of the merchandise involved:

- **Second degree indictable offense** if (i) the full retail value of the merchandise is \$75,000 or more, or (ii) the offense was committed as part of an organized retail theft enterprise (as defined in the section below) and the full retail value is \$1,000 or more.
- **Third degree indictable offense** if (i) the full retail value of the merchandise is more than \$500 but less than \$75,000, or (ii) the offense was committed as part of an organized retail theft enterprise and the full retail value is less than \$1,000.
- **Fourth degree indictable offense** if the full retail value of the merchandise is at least \$200 but no more than \$500.
- **Disorderly persons offense** if the full retail value of the merchandise is less than \$200.

An indictable offense is the same as a felony in other states. Such charges are handled in the Superior Court in the county where the alleged shoplifting took place.

A disorderly persons offense is the same as a misdemeanor in other states. Such charges are handled in the Municipal Court in the county where the alleged shoplifting took place.

## Organized Retail Theft Enterprise

As indicated above, New Jersey law has special provisions for shoplifting in connection with an “organized retail theft enterprise.”

An “organized retail theft enterprise” is defined as the association of two or more individuals for the purpose of transferring or selling shoplifted merchandise.



Shoplifting offenses committed in connection with an organized enterprise are graded as follows:

- Second degree indictable offense if the merchandise is valued over \$1,000; and
- Third degree indictable offense if the merchandise is valued less than \$1,000.

To determine the level of offense, the prosecutor can aggregate the value of the merchandise stolen by members of an organized retail theft enterprise.

### **Aggregating Merchandise Value**

If you commit more than one shoplifting offense as part of “one continuous course of conduct,” New Jersey law allows the prosecutor to add up the value of all the merchandise. That total value will determine the level of offense.

This means that instead of facing several lower-level charges, you could face one more serious charge.

For example, stealing \$150 of merchandise from one store would normally be a disorderly persons offense. But if you stole \$150 from each of five different stores in one afternoon, the prosecutor could add the value of all the merchandise for a total of \$750.

As a result, instead of five disorderly persons offenses, you could be charged with a single third degree indictable offense and face much steeper penalties.

This is one reason why having an experienced criminal defense lawyer is so important. In this situation, your attorney can help ensure that the prosecutor doesn't improperly aggregate the value of merchandise.

## Elements of a Prosecutor's Case

To convict you of a charge, a prosecutor must prove certain points beyond a reasonable doubt. These points are called the “elements” of the case. For a shoplifting charge, those elements are:

- you purposely committed one of the six shoplifting acts;
- the act occurred at a store or other retail mercantile establishment;  
and
- you intended to deprive the store of the merchandise without paying the full value.

To prove the elements of a shoplifting case, prosecutors will often rely on:

- video surveillance footage from the store where you allegedly shoplifted;
- testimony from staff, including retail security guards or loss prevention officers who observed you in the store; and
- police reports filed by the police officer at the scene.

Note that purposefully concealing merchandise is *prima facie* evidence of intent to steal. That means the court will accept it as proof that you intended to steal, unless you prove otherwise. To escape conviction, you have to show evidence that you did *not* intend to steal.

## Statute of Limitations

Many crimes, including shoplifting, are subject to a “statute of limitations.” The statute of limitations refers to the deadline for filing charges against you.

The statute of limitations for shoplifting depends on the level of offense:

- One year from discovery of the offense for a disorderly persons offenses (merchandise valued under \$200); and
- Five years from discovery of the offense for indictable offenses (merchandise valued at \$200 or more).

This means that even if you made it out of the store, you could still be charged later – potentially a very long time after the incident! Given that many businesses use security cameras, this is a very real possibility.

## **Comparison to Robbery**

Robbery is a serious crime with serious consequences. And although many people think shoplifting isn't very serious in comparison, sometimes shoplifting can result in a robbery charge.

Under N.J.S.A. 2C:15-1, you've committed robbery if, while committing or fleeing of an act of theft, you:

- inflict bodily injury or use force upon another;
- threaten another with bodily injury, or
- commit or threaten to commit any crime of the first or second degree.

In practice, this means that if you used any amount of force while shoplifting, then the prosecutor may upgrade your charge to robbery.

This could be as little as touching a store employee or security officer when trying to flee the store.

A shoplifting-turned-robbery scenario is a second degree criminal offense and carries a prison term of five to ten years.

Robbery is also a crime of violence, which means it's subject to New Jersey's No Early Release Act, or NERA. Under NERA, if you're convicted of robbery, you must serve *at least 85%* of your prison term. You would be ineligible for parole for that period.

Shoplifting charges are serious enough. But given the potential heavy prison term, robbery charges are even more so. If you're facing a robbery charge, you should get a skilled criminal defense attorney on your side right away.



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Chapter 2:  
**What to Expect after a  
Shoplifting Charge**

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# Chapter 2:

## What to Expect after a Shoplifting Charge

If you're facing a first-time shoplifting charge, not knowing what to expect in the legal process can add a lot of stress. To help ease some of that stress, below is an outline of key steps in a shoplifting case.

A typical shoplifting case takes three to six months to resolve. But more serious cases can take much longer – sometimes up to a year to go to trial.

Each case has its own nuances, and the law and its application are rarely straightforward. There are also a lot of procedural rules that you must follow.

That's why it's important to hire a criminal defense attorney. An experienced lawyer will be able to help you navigate the process and ensure you don't make any costly mistakes.

### **Pre-Indictment Conference**

If you're facing an indictable offense, the first step is attending a pre-indictment conference before you're formally charged. Pre-indictment conferences are also called early disposition conferences in some counties.

It's critical that you have an attorney at this stage. At this hearing, your attorney and the prosecutor will discuss your case. And the prosecutor will likely offer you a plea bargain based on limited evidence like police reports and witness interviews.

A plea bargain is when you agree to plead guilty in exchange for concessions from the prosecutor, such as a lesser charge or lighter penalties.

The plea offer is usually based on:

- the seriousness of your shoplifting offense,
- the likelihood that you'll be convicted at trial, and
- the cost of going to trial.

Your attorney will be able to review the evidence and advise you on the acceptability of the plea bargain and the risk of going to trial. Before accepting any plea bargain, your attorney should also determine your eligibility for a diversionary program. See [Chapter 3: Shoplifting Penalties – Diversionary Programs](#).

If you don't agree to a plea bargain at this point, your attorney will continue to negotiate on your behalf to downgrade your charge or minimize the penalties. You can agree to a plea bargain at any stage of the process. It may also be possible to get your case remanded to Municipal Court or even administratively dismissed. See [Chapter 4: Building a Shoplifting Defense](#).

## **Indictment**

Before the prosecutor can formally charge you with an indictable offense, they have to bring your case to a grand jury in a secret hearing. The grand jury is made up of citizens in the county in which the alleged shoplifting took place.

The prosecutor will present evidence of your shoplifting offense to the grand jury. The grand jury will then decide whether there's enough evidence to bring a charge against you.

If there's enough evidence, the grand jury will issue an indictment. An indictment isn't a finding of guilt. It just means the prosecutor can proceed with the charges against you.

If the grand jury decides there's not enough evidence to move forward, you won't be formally charged. The grand jury may also decide to charge you with a lower level offense than what the prosecutor sought.

## Arraignment and Pre-Trial Procedures

The arraignment is a court hearing where the judge explains the charges filed against you and the potential penalties.

For an indictable offense, the arraignment is held in Superior Court within 14 days of the indictment. For a disorderly persons offense, the arraignment is your first court appearance and held in Municipal Court.

At the arraignment, the judge will tell you your rights, including your right to counsel. If you don't have an attorney yet, you'll get the chance to find one after the arraignment.

The judge may also ask you to enter a plea of guilty or not guilty.

If you've already reached a plea agreement with the prosecutor, it would be entered with the judge at the arraignment.

But if you don't have an attorney or haven't reached a plea agreement, you should not plead guilty at this stage. The judge will then make arrangements for discovery and other pre-trial procedures.

## Discovery

Discovery is the process of exchanging evidence in a case. That means your attorney will ask to see the evidence the prosecutor plans to use against you, such as:

- video footage,
- witness statements, and
- police reports.

Based on this evidence, your attorney will prepare a defense strategy.



If the prosecutor fails to hand over evidence in a reasonable timeframe, your attorney may be able to file a motion asking the court to dismiss your charges. The court will then set a deadline by which the prosecutor must provide the evidence. If they don't meet the deadline, the charges can be dismissed. See [Chapter 4: Building a Shoplifting Defense – Failure to Produce Discovery](#).

## **Trial**

Your lawyer may be able to resolve your case by motions or through a plea bargain, so it's possible that you won't ever go to trial.

But it's also possible that once all the pretrial matters have been resolved, you'll still end up going to court.

If your case goes to trial, it will be heard in either the Municipal Court (for disorderly persons offenses) or the Superior Court (for indictable offenses) in the county where the shoplifting allegedly occurred.

If your case is in Municipal Court, you don't have the right to a jury trial. Instead, the judge will decide your case.

If your case is heard in Superior Court, you have the right to a trial by jury. But you can also waive that right and have the case decided by the judge.

At the trial, the prosecutor will have to prove your guilt beyond a reasonable doubt. See [Chapter 1: Shoplifting Law Basics – Elements of the Prosecutor's Case](#).

Your attorney will also present your defense. See [Chapter 4: Building a Shoplifting Defense](#).

## **Sentencing**

If the prosecutor convinces the judge or jury that you're guilty of the offense(s) charged beyond a reasonable doubt, you'll get your sentence at the end of the trial. But if the judge or jury finds you not guilty, the judge will enter an acquittal and you'll be free to go.

The judge decides your sentence, even if you have a jury trial. They must follow certain sentencing minimums, but they otherwise have the discretion to impose the appropriate penalties. They'll do this based on the circumstances of your case, including any mitigating or aggravating factors. See [Chapter 3: Shoplifting Penalties](#).

In the case of a plea bargain, the terms of the sentence are usually ironed out beforehand. That means you'll know what the penalties will be before you agree to plead guilty.

## Appeals

If you're found guilty at trial, you may be able to challenge your sentence or conviction by filing an appeal.

If your case was originally heard in Municipal Court, you can file an appeal with the county Superior Court. If your sentence or verdict is upheld, you can then appeal to the Appellate Division of the Superior Court.

If your case was originally heard in Superior Court, you can file an appeal with the Appellate Division of the Superior Court.

Appeals from the Appellate Division are heard by the New Jersey Supreme Court.

On appeal, the relevant court will make its decision based *only* on a review of the trial record. There will be no new evidence or testimony. Generally, higher courts are limited in their ability to review or reverse any factual findings in your case. And they are often reluctant to second-guess the trial court's conclusions.

In addition, the New Jersey Supreme Court will generally only hear your appeal if:

- your case involves a constitutional issue not previously addressed by the Supreme Court, or
- an Appellate Division judge voted to reverse your conviction.

Note that you can't appeal a guilty plea if you accepted a plea agreement. When you plead guilty in connection with a plea bargain, the judge will ask you if you understand that you're giving up or "waiving" your right to appeal the conviction. However, you may still be able to appeal your sentence.

## Post-Conviction Relief

When you file a post-conviction relief petition, you're asking the court to open an investigation into whether the court, prosecution, or defense counsel made any mistakes in your case. Under Rules 3:22-12 and 7:10-2(b) of the New Jersey Rules of Court, there's generally a five-year time limit for seeking post-conviction relief.

If your petition is successful, it's possible to reduce or even eliminate penalties. You can also avoid enhanced penalties in future cases.

But it's not easy to get post-conviction relief. It's only possible under very specific circumstances, such as:

- ineffective defense counsel,
- prosecutorial misconduct,
- an illegal sentence, or
- lack of jurisdiction.

An experienced criminal defense attorney can help you determine whether a post-conviction relief petition makes sense for you.

## Expungement

**Expungement** is the legal process of clearing an arrest or conviction from your record. Shoplifting convictions are eligible for expungement if you meet certain criteria.

Even if a shoplifting conviction is the only thing on your criminal record, you should consider getting it expunged. Even one conviction can have a severe impact on

your employment prospects. Many employers don't want to hire employees who have any kind of theft charge on their record. It could affect other areas of your life, too, like access to loans and college applications.

Also keep in mind that you're still "in the system" if you had your charges reduced or dropped. Your arrest can be uncovered by employers and others during a background check, which can lead to lost opportunities.

The general requirements in New Jersey are explained below. These requirements are very strict. And the process is also complex and time-consuming. Even technical mistakes can cause your expungement to be denied, dismissed, or at least delayed.

If you're considering expungement, you should talk to an attorney about whether you're eligible. An experienced lawyer can make sure you meet all requirements and give you the best chances of success.

## **ADULT OFFENSES**

If you're an adult, you can generally submit an expungement petition if you only have:

- one indictable offense;
- one indictable offense and up to three disorderly persons offenses;
- up to four disorderly persons offenses; or
- municipal ordinance violations, no indictable offenses, and up to two disorderly persons offenses.

Expunging a conviction requires a waiting period, which varies based on the nature of the offense. The applicable waiting period begins to run on the latest of the date you:

- are convicted;
- pay off all fines;
- complete probation; or
- are released from incarceration.

Below is a summary of the waiting periods.

Record	Waiting Period
Indictable offense	Five years
Disorderly persons offense	Five years
Municipal ordinance violation	Two years
Dismissal following successful completion of diversion program (PTI, Conditional Discharge, or Conditional Dismissal)	Six months
Arrest not resulting in conviction (dismissed charges, acquittal, discharge without finding of guilt)	None – immediately eligible

## JUVENILE OFFENSES

Juvenile shoplifting records can also be expunged. There are two ways to expunge a juvenile record.

The first way is to file an Expungement Petition as if the juvenile offense were the corresponding adult offense with the same elements. In this case, you'd need to meet the same requirements as you would for expunging the adult offense.

The second way is to expunge your *entire* juvenile record. You're eligible to expunge your entire juvenile record if:

- three years have passed since (i) you were discharged from custody or supervision, or (ii) the entry of any court order not involving custody or supervision (not counting periods of post-incarceration supervision);
- you haven't been convicted of any indictable offense or disorderly persons offense or adjudged a juvenile delinquent or in need of supervision during the three years before filing your Expungement Petition (not counting periods of post-incarceration supervision);
- no proceeding or complaint is pending against you for any indictable offense, disorderly persons offense, or adjudication of delinquency;
- you were never adjudged a juvenile delinquent for an act that, if committed by an adult, would be a non-expungeable offense;
- you've never had an adult conviction expunged; and
- you've never had any adult indictable offenses charges dismissed following the completion of a supervisory treatment or other diversionary program.

A dark, moody photograph of two men. The man in the foreground is seen from the back, wearing a brown jacket and has his hands cuffed behind his back. The man in the background is wearing a dark jacket and glasses, looking towards the first man. The image is dimly lit, with a white horizontal line running across the middle.

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Chapter 3:  
**Shoplifting Penalties**

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# Chapter 3:

## Shoplifting Penalties

Even a minor shoplifting offense can carry serious consequences in New Jersey.

As discussed below, penalties may include fines, community service, and even jail time. Stores may also impose bans or try to recover civil penalties or restitution from you. If you're a non-U.S. citizen, your immigration status may be affected as well.

If you're facing a shoplifting charge, you should get the help of a criminal defense attorney right away. An experienced attorney may be able to help you avoid a shoplifting conviction, or at least reduce the negative impact of a conviction.

### Jail Time

If you're convicted of shoplifting, you may face the following:

- Disorderly persons offense: up to six months in jail
- Fourth degree indictable offense: up to 18 months in prison
- Third degree indictable offense: 3-5 years in prison
- Second degree indictable offense: 5-10 years in prison

If you're convicted of a third or subsequent shoplifting offense, you'll receive a mandatory jail term of at least 90 days.

Note, however, that under N.J.S.A. 2C:44-1(e), a presumption of non-incarceration applies to many *first-time* offenses other than first degree and second degree crimes.

A "presumption of non-incarceration" means that *generally* a conviction won't mean jail time.



While shoplifting is a serious offense in New Jersey, it's one of the charges that carry a presumption of non-incarceration. This means that often you have a good chance of avoiding jail time for a first-time shoplifting offense (unless you're facing a second degree charge).

But the presumption of non-incarceration can be rebutted. In other words, a judge can still sentence you to jail to protect the public if the facts of your case are particularly serious. The greater the value of the merchandise, the more likely you'll be sentenced to jail.

In addition, second degree convictions carry a presumption of incarceration. So if you're convicted of a second degree shoplifting charge, you'll be sentenced to prison unless you can present evidence weighing against incarceration.

No matter what your circumstances, it's best to hire an experienced attorney to increase your chances of getting the lowest possible penalties. This may include getting a shoplifting charge reduced to a municipal violation, which doesn't carry jail time. Or your attorney may be able to advocate for your admission into a diversionary program. See [Diversionary Programs below](#).

## **Financial Penalties**

Even if you manage to avoid jail time, shoplifting convictions can be very expensive, including fines, restitution, and legal fees. This can be true even for a first-time offense. Facing these kinds of costs can be overwhelming. But if you hire an attorney, they'll be able to prepare you for what to expect based on the facts of your case. Often, you'll have a few months between when you're charged and when the case is resolved. This will give you a little time to save money or borrow funds before you have to make payments.

For fines imposed by the court, your attorney can also ask the judge to put a payment plan in place based on your financial situation. Below is a summary of the types of financial penalties you may encounter for a shoplifting offense.

## COURT-IMPOSED FINES

If you're convicted of shoplifting, you may face the following fines:

- Disorderly Persons Offense: up to \$1,000
- Fourth Degree Offense: up to \$10,000
- Third Degree Offense: up to \$15,000
- Second Degree Offense: up to \$150,000

These fines are imposed by the court at sentencing.

## CIVIL PENALTIES AND RESTITUTION

In New Jersey, victims of shoplifting can also impose *civil* penalties on you if you shoplift from them.

Under N.J.S.A. 2A:61C-1, if you are convicted of shoplifting merchandise with a value of less than \$500, you are civilly liable to the store for:

- a civil penalty of up to \$150;
- the value of the merchandise as damages, up to \$500, if the merchandise can't be restored to its original condition; and
- additional damages arising from the shoplifting, if any (not including loss of time or wages in connection with apprehending you).

Even if you weren't arrested by the police, some stores will send a civil demand letter if they catch you shoplifting. This is a letter demanding payment of the civil fine as well as any money for the stolen merchandise. They may also demand payment for legal fees and/or loss prevention staff fees.

Demand letters are generally legal, and the store has the right to make the above demands. If you pay, in most cases you won't have to deal with further criminal or civil proceedings. But you should make sure you speak to an attorney first before paying or taking any other action.

If the business files a civil lawsuit against you, it can also recover reasonable attorneys' fees from you if:

- you were convicted of shoplifting, and
- you were served with a demand for payment and failed to respond or rejected the demand within 20 days of notification.

Stores may seek restitution for the stolen merchandise as well. That is, you may be required to repay the full value of the stolen merchandise.

## **Community Service**

In New Jersey, community service is required for all people convicted of shoplifting. You'll have to serve:

- at least 10 days for a first offense;
- at least 15 days for a second offense; or
- maximum of 25 days for a third or subsequent offense.

## **Diversiónary Programs**

If you're facing a shoplifting charge, you may be able to apply for a diversionary program to avoid a conviction. The goal of these programs is to rehabilitate you so that you won't commit any criminal acts in the future.

Each diversionary program is tailored to your specific case. But it can include components such as:

- supervision,
- community service,
- counseling, and
- drug testing.

Conditional Dismissal and Pre-Trial intervention (or “PTI”) are two diversionary programs in New Jersey.

If you’ve been charged with a disorderly persons offense, you may be eligible for the Conditional Dismissal program in Municipal Court.

If you’re facing a second, third, or fourth degree indictable offense, then PTI may be available. The PTI program can last up to three years. There’s a presumption that you won’t be eligible for PTI for a second degree charge, but this presumption can be rebutted.

After successful completion of a diversionary program and any required probation your charges will be dismissed. However the diversionary program will still appear on your criminal record and need to be expunged. See [Chapter 2 on Expungements](#).

Enrolling in a diversionary program also allows you to avoid going through a lengthy trial process or negotiating a plea bargain. That means you can avoid many of the costs associated with going to trial. The process is also a lot faster compared to a trial, so you can move on with your life as soon as possible.

But if you don’t successfully complete the program, your case will go back into the court process.

You’re generally only eligible for a diversionary program if:

- you're a legal adult (over the age of 18);
- you've never been enrolled in a diversionary program.

But even if you're eligible, there's no guarantee that you'll be accepted. Diversionary programs are a privilege, not a right.

The court will take into account your background and several other factors to determine if a diversionary program is likely to help, such as:

- the needs and interests of society,
- your motivation and age,
- whether violence was involved,
- prior criminal convictions,
- whether you're on parole and/or probation, and
- whether you live in New Jersey.

Having an experienced criminal attorney will increase your chances of acceptance.

## **Store Policies and Bans**

Every business has its own policy for handling shoplifters. As noted above, the policies may include seeking:

- restitution for the stolen goods (if you left with the merchandise);
- payment of a civil fine and damages; and/or
- legal fees and other costs for going to court.

Stores may also ban you from the store for a period of time, or even for life. If you're banned from a store, you should take it seriously. If you're caught returning, you could be arrested for trespassing.

## Consequences for Juveniles

Juvenile shoplifting offenses are graded like adult offenses. But the consequences of shoplifting for minors (those under the age of 18) aren't the same as for adults.

Shoplifting charges against a minor will likely go through the juvenile justice system. This means the case will be heard in a New Jersey Family Court and decided by the judge. There's no right to a jury in Family Court.

The consequences will be designed to prevent future criminal conduct. Juvenile courts have a lot of freedom to determine the appropriate penalties in each case.

In some cases, a minor may be released back into the custody of their legal parent or guardian. In other cases, the consequences can still be serious, including:

- paying restitution for the stolen merchandise or other fines,
- performing community service,
- serving probation, and
- serving time in a juvenile detention facility.

The potential time in a juvenile detention facility depends on the level of offense:

- **Merchandise valued less than \$200:** up to six months in detention
- **Merchandise valued at least \$200 and no more than \$500:** up to one year in detention
- **Merchandise valued more than \$500 and less than \$75,000:** up to two years in detention
- **Merchandise valued at least \$75,000:** up to three years in detention

As noted above, in New Jersey a shoplifting offense carries a presumption of non-incarceration. That means a juvenile generally won't go to juvenile detention unless the judge considers it necessary to correct the behavior.

But even if a juvenile doesn't go to detention, being "adjudged delinquent" can still have many negative consequences. Being "adjudged delinquent" is the juvenile equivalent of being found guilty. Having a juvenile record can negatively impact a person's life even into adulthood. It may affect college acceptance, financial aid, employment options, and more.

In addition, shoplifting is a "crime of moral turpitude" under U.S. immigration law. A crime of moral turpitude is a crime that violates the standards of morality expected of people in a community. And it can result in deportation of a non-U.S. citizen. That means minors who are not U.S. citizens could face deportation if they shoplift. See [Impact on Immigration](#) below.

The store can also impose the civil penalties described above under [Financial Penalties – Civil Penalties and Restitution](#). For a juvenile, the parents will usually be responsible. But a parent is not subject to these penalties if their parental custody and control of the minor has been removed by:

- court order, decree, or judgment,
- military service, or
- marriage.

The consequences for a juvenile may seem less severe than for an adult. But it's still important to consult an experienced criminal defense attorney. An attorney may be able to help reduce the negative impact of being adjudged delinquent, including the juvenile record that can follow a person around for years to come.

## Impact on Immigration

If you are not a U.S. citizen, a shoplifting conviction can have a serious impact on your immigration status in the United States. Non-U.S. citizens may include:

- permanent residents (green card holders),
- visa holders,
- those waiting for a green card or visa, and
- undocumented immigrants.

According to U.S. immigration law, non-citizens can be deported if they're convicted of a "crime of moral turpitude." The U.S. government may also deny their applications for a visa, legal permanent resident status, or U.S. citizenship. In addition, undocumented immigrants may become priority removal cases.

There is some debate about what a "crime of moral turpitude" really means. But federal immigration law generally defines it as a crime that violates the standards of morality expected of people in a community.

All shoplifting offenses, regardless of the degree, are considered "crimes of moral turpitude." This is true even if you were convicted of a disorderly persons offense and received no jail time.

If you're a non-citizen facing a shoplifting charge, you should hire an attorney right away who's experienced in both criminal and immigration law.

There are many factors that will influence whether you're put in removal proceedings or denied admission into the United States. But you may be deported or denied admission even if you've been a resident for decades, have an established life, bought a home, raised a family, and have no other legal issues.

But it's possible to avoid these outcomes if your attorney gets your case dismissed outright or you're accepted into a diversionary program. They can also negotiate with the prosecutor to try to reduce a criminal shoplifting charge to a municipal ordinance violation.





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Chapter 4:  
**Building a Shoplifting Defense**

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# Chapter 4:

## Building a Shoplifting Defense

How you defend against a shoplifting charge will depend on the facts of your case. This includes, among other things, the value of the merchandise and the evidence against you.

But no matter what the circumstances, you'll increase your chances of getting the best possible outcome if you get the help of a criminal defense attorney.

Your attorney will be able to review all aspects of your case and advise you of the best path forward. Even if you think the prosecutor has an "open and shut" case, an experienced attorney can at least help you reduce the possible penalties.

Below are some elements that may be useful for your defense strategy.

### **Lack of Intent**

To convict you of shoplifting, the prosecutor must prove beyond a reasonable doubt that you *intended* to take the merchandise without paying the full value.

If you *accidentally* take something from a store, it's not shoplifting. But if you're caught with an item you didn't pay for, you may still face a shoplifting charge.

Purposefully concealing merchandise is *prima facie* evidence of intent to steal. That means the prosecutor can prove your intent to steal just by showing that you purposely concealed merchandise. To avoid a conviction, you have to rebut this evidence by providing evidence that you did *not* intend to steal.

The circumstances will play a big role in whether you are charged or convicted. If you paid for a shopping cart of items but forgot one item, you're much more likely to avoid charges than if you walked out with pockets full of merchandise.

Mistakes do happen, but many guilty shoplifters claim it was an accident in hopes of escaping charges. This means in practice, it will fall on you to prove that you didn't intend to steal.

Keep in mind that mental illness, alcohol or drug issues, medication, or other circumstances that may have affected your state of mind can't be used as a defense in a shoplifting case.

## De Minimis Offenses

In rare cases, you may be able to get your shoplifting charge dismissed completely as a "de minimis offense" under N.J.S.A. 2C:2-11. This statute allows the dismissal of your case if your conduct was too trivial to warrant the charge or a full trial.

For example, in the 1984 New Jersey case *State v. Smith*, the defendant was charged with shoplifting for taking three pieces of gum valued at \$0.15. The court dismissed the case because of the trivial (or de *minimis*) nature of the offense. The court based its decision on, among other factors:

- the amount stolen,
- the defendant's otherwise clean record,
- the damage to the defendant's reputation as a result of the charges, and
- the legal expenses the defendant incurred.

Still, dismissal is not guaranteed just because an offense involves a small dollar amount.

For example, in the 2001 New Jersey case *State v. Evans*, the defendant was convicted of shoplifting a hair bow valued at \$12.50. In that case, the defendant removed the tag from the bow, put it in her hair, and continued to shop for more than an hour. She purchased items worth nearly \$600, but didn't buy the hair bow. When security confronted her, she was uncooperative and "verbally abusive."

The court refused to dismiss the charges as de minimis. In making its decision, the court noted that the most important factor in determining triviality is the risk of harm to society of the defendant's conduct.

Successfully using the de minimis defense is difficult. And it has little chance of working if the merchandise is worth more — especially if it's an indictable offense involving merchandise valued at \$200 or more.

## **Failure of Witnesses to Appear**

Witnesses are an important part of many shoplifting cases. Witnesses may include, for example, the security officer who stopped you at the store. If you go to trial, these witnesses have to appear and tell the court what happened.

But often, these witnesses fail to appear in court to give their testimony. This may mean the prosecutor can no longer prove its case against you.

Even if a witness gave a statement to police about what they saw, the police officer can't testify about what happened. This is called hearsay, and it can't be used as evidence against you.

So if a witness fails to appear in court, you may be able to ask the judge to dismiss your case.

Usually, the judge will adjourn the case to a later date to give the witnesses another chance to appear. But if they don't show up at the postponed hearing, the judge will likely grant the dismissal.

## **Failure to Produce Discovery**

When facing a criminal charge, you have the right to a speedy trial. The prosecutor must also provide you and your attorney with all the evidence they have against you during discovery. See [Chapter 2: What to Expect After a Shoplifting Charge — Discovery](#).

That evidence may include police reports, witness statements, and surveillance video.

The prosecutor must provide this evidence before you proceed to trial. But sometimes, the prosecutor repeatedly fails to provide the requested evidence during discovery. This may happen if, for example, video evidence is lost, or the store doesn't get it to the prosecutor in time.

When this happens, your attorney may be able to file a motion to have your charges dismissed.

The court will then set a deadline for the prosecutor to provide the discovery. If they don't meet that deadline, the charges may be dismissed. Even if your charges aren't dismissed, you may also be able to ask the court to deem the evidence inadmissible. This means it can't be used against you.

## **Mitigating Factors**

Sometimes, despite fighting hard against a shoplifting charge, you may still be convicted.

In this case, it's very important to take steps to show your ability to be rehabilitated. This may include, for example, paying restitution to the victim, seeking therapy, or providing other evidence that you're remorseful and aren't likely to commit other crimes in the future.

These kinds of efforts can help reduce the severity of your sentence.

## **Plea Bargaining**

In most shoplifting cases today, there's video evidence of the alleged shoplifter entering and attempting to leave the store. This kind of evidence makes it difficult to defend against a shoplifting charge.

But depending on the circumstances of your case and your prior record, your attorney may be able to negotiate a plea agreement with the prosecutor to at least downgrade your charge or reduce the penalties.

For example, for a first time disorderly persons offense, the Municipal Court prosecutor will often agree to downgrade the charge to a municipal ordinance violation.

A municipal ordinance violation is preferable because:

- it won't require jail time,
- the fine is less expensive,
- you can expunge the conviction after two years (instead of five years for a disorderly persons offense).

Even if you're facing an indictable offense charge, your attorney may still be able to negotiate a reduced charge for you.


Before accepting any plea bargain, your attorney should also determine your eligibility for a diversionary program. See [Chapter 3: Shoplifting Penalties – Diversionary Programs](#).

## **Juvenile Defense**

As noted in [Chapter 3: Shoplifting Penalties – Consequences for Juveniles](#), juvenile shoplifting cases are generally heard by a Family Court judge. During those proceedings, the juvenile is required to have an attorney.

Usually, the juvenile's parents or guardians will be responsible for getting an attorney. But if the parents or guardians can show overwhelming evidence that they can't afford one, it may be possible to get a public defender.

Juvenile cases tend to move quickly, so it's important to get the help of an attorney immediately. Because the judge has a lot of discretion in sentencing a juvenile, having an experienced attorney on your side can make a big difference in outcome.



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**Chapter 5:  
Handling Future Shoplifting  
Accusations**

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# Chapter 5:

## Handling Future Shoplifting Accusations

A lot of large department stores, retail chains, and malls employ loss prevention officers to deal with shoplifters.

If these officers have adequate reason to believe you shoplifted merchandise, they have the right to stop you from leaving while they search your belongings or until the police arrive.

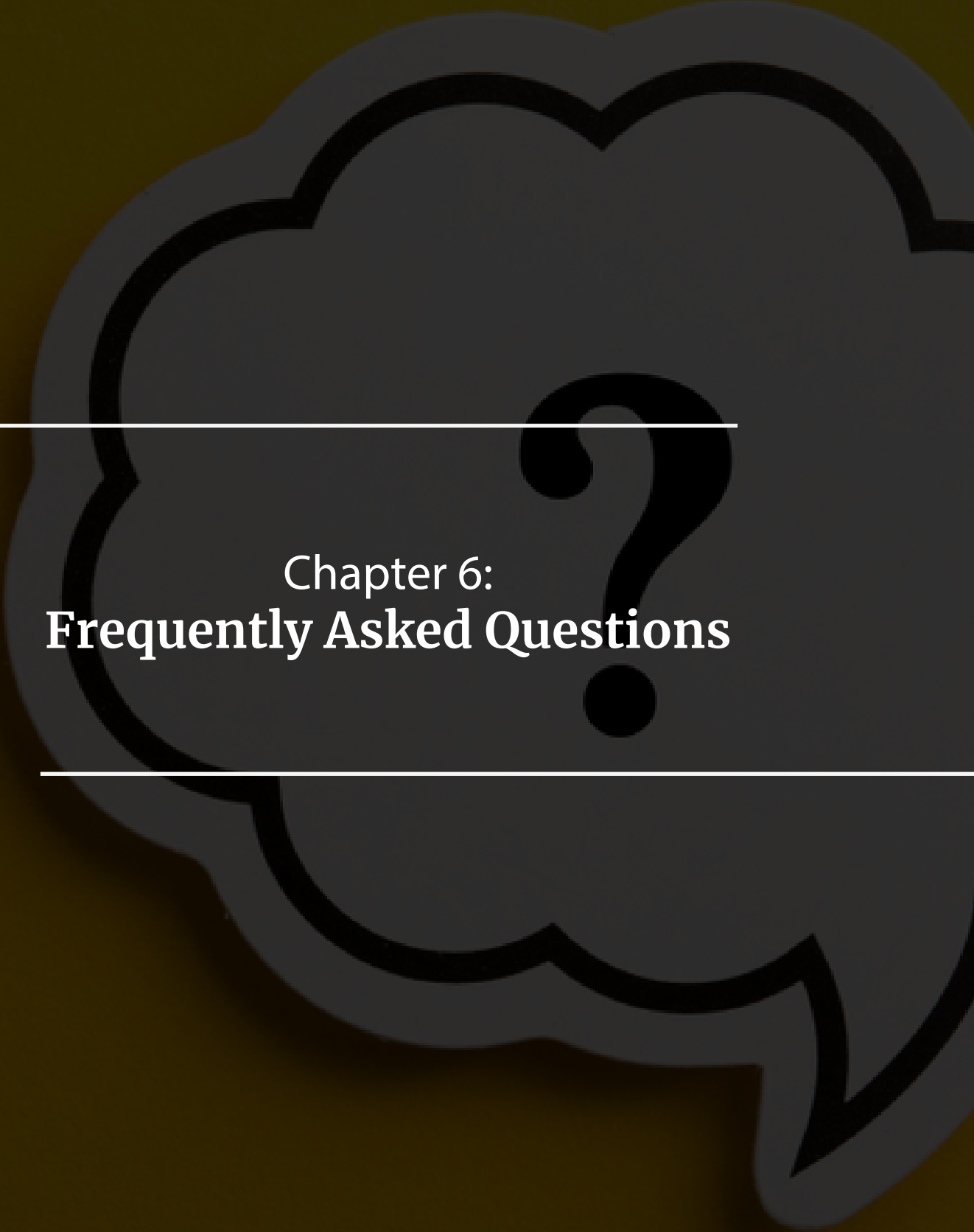
Sometimes, these officers are under-trained and may use aggressive tactics. Knowing your rights when confronted by store staff can help you reduce negative consequences.

If you're accused of shoplifting in a store in the future, you should follow these guidelines:

- **Don't admit anything.** Often, the store's staff will try to get you to confess to intentionally shoplifting. They may claim that they have solid evidence against you, so you might as well admit to it. But you should never admit to anything. In fact, it's best to say as little as possible. Anything you say could be used against you in a criminal or civil court case later on. You also shouldn't sign anything.
- **Ask for an attorney.** Once you're accused of shoplifting, you should ask for an attorney. The store's employees may ask why you need one if you didn't do anything wrong, but you don't have to answer their questions. It's best not to argue with them. Just repeat your request for a lawyer.



- **Follow police instructions.** Sometimes the store will call the police when they catch a shoplifter. If that happens to you, you should comply with the officers' reasonable requests, such as asking for your identification. But you should still not admit to anything or sign anything. You should also remain calm. Getting argumentative or hostile will only make the situation worse for you.
- Don't return to the store if you're told not to. Sometimes, the manager will let you go but tell you never to return. You should take this seriously. If you get caught in the store again, you could get arrested for trespassing.



Chapter 6:  
**Frequently Asked Questions**

# Chapter 6:

## Frequently Asked Questions

If you're facing a shoplifting charge, you likely have a lot of questions about your case. Below are some common questions about shoplifting in New Jersey. To discuss the specifics of your case, you should contact a criminal defense attorney.

### Can you go to jail for shoplifting?

Yes. Depending on the circumstances of your case, you may face:

- up to six months for merchandise valued at less than \$200,
- up to 18 months for merchandise valued between \$200 and \$500,
- 3-5 years for merchandise worth between \$500 and \$75,000, or
- up to 10 years for merchandise worth more than \$75,000.

This is in addition to other penalties, such as fines, community service, and restitution to the business owner.

In many cases, however, you have a good chance of avoiding jail time for first-time offenses other than second degree shoplifting convictions. See [Chapter 3: Shoplifting Penalties](#).

### Should you plead guilty to your shoplifting charge?

If you're charged with shoplifting, your first step should be to hire an experienced criminal defense attorney. You should not plead guilty until you've consulted with your attorney.

Shoplifting penalties can be severe, and a shoplifting conviction will result in a criminal record. This can have a serious impact on your life for many years, including employment.

Even if the evidence against you seems strong, your attorney may be able to get your case dismissed or negotiate with the prosecutor to downgrade the charge. This may save you from a criminal record or at least reduce the severity of your penalties. See [Chapter 4: Building a Shoplifting Defense](#).

### **Can you get your shoplifting charge dismissed?**

It's possible. Video surveillance evidence is common in shoplifting cases. If you're caught on camera purposely concealing an item, removing a price tag, or doing anything else that qualifies as shoplifting in New Jersey, then there's little chance of dismissal.

But sometimes you can get your case dismissed if the prosecutor can't produce that video on time, or if witnesses don't appear in court.

Your attorney can review the facts of your case and determine the best strategy. Even if you can't get the charge dismissed, your attorney may be able to negotiate to downgrade the charge. See [Chapter 4: Building a Shoplifting Defense](#).

### **Can you get a shoplifting charge downgraded to a lesser charge?**

Many shoplifting cases are resolved through a plea agreement to downgrade the charge.

For example, for a first time disorderly persons offense, the Municipal Court prosecutor will often agree to downgrade the charge to a municipal ordinance violation. A municipal ordinance violation doesn't carry jail time and won't give you a criminal record.

Even if you're facing an indictable offense charge, your attorney may still be able to negotiate a reduced charge for you. See [Chapter 4: Building a Shoplifting Defense – Plea Bargaining](#).

### **What happens if a minor is caught shoplifting?**

Sometimes minors who are caught shoplifting are immediately released into the custody of their parents or guardians with a warning.

But if charges are filed, the case will likely be handled through the juvenile justice system. This means the case will be heard in a New Jersey Family Court.

Juvenile courts have a lot of discretion to determine the proper consequences for a minor. Those consequences will be designed to prevent future criminal conduct. But they can still be serious. Possible penalties include:

- paying restitution for the stolen merchandise or other fines,
- performing community service,
- serving probation, and
- serving time in a juvenile detention facility.

See [Chapter 3: Shoplifting Penalties – Consequences for Juveniles](#).

## **Can you be charged with shoplifting even if you didn't take merchandise?**

Yes. Under New Jersey Law, there are six acts that are considered “shoplifting”:

1. taking or carrying away merchandise offered for sale;
2. hiding or concealing merchandise;
3. switching, removing, or altering a price tag or label;
4. transferring goods from one container to another;
5. causing the cash register to reflect less than the full retail value of the merchandise (or “under-ringing”); and
6. removing a shopping cart from the store.

If you commit any of these acts, you can be charged with shoplifting – even if you never walk out of the store with the merchandise. See [Chapter 1: New Jersey Shoplifting Basics – New Jersey's Shoplifting Statute](#).

## **What happens if you accidentally walk out of a store with merchandise?**

Accidentally taking merchandise is not considered shoplifting.

To be convicted of a shoplifting offense, you must have intended to deprive the owner of the value of the merchandise. If you forgot that you had an item and walked out of the store, you wouldn't have the required intent.

But if circumstances *suggest* that you had intent, you may still face a charge.

And security officers may still detain you if you leave a store with merchandise without paying, even if by accident. So it's important to always be aware of what merchandise you have in your possession when you leave a store.

See [Chapter 4: Building a Shoplifting Defense – Lack of Intent](#).

## **What happens if you get caught shoplifting and they let you go?**

Sometimes stores will let a suspected shoplifter go without asking them to sign any papers or calling the police.

This may be because the manager or owner of the store doesn't want the hassle of dealing with a shoplifting case. Or they may already have the suspected shoplifter's information. In that case, the store may still choose to file a complaint later.

The store has up to one year to file charges for a disorderly persons offense and up to five years for an indictable offense. See [Chapter 1: New Jersey Shoplifting Law Basics – Statute of Limitations](#).

Even if a store lets you leave, you shouldn't admit to shoplifting to anyone – even to friends or family. This information could be used against you later in a criminal or civil case.

## **If you receive a civil demand letter after shoplifting, do you have to pay?**

Most likely. Large department stores like Target and Walmart sometimes send letters to accused shoplifters demanding money and threatening to press charges if they don't pay. These are called "civil demand letters."

Civil demand letters are generally a legal way for stores to pursue a civil remedy against you for their losses. See [Chapter 3: Shoplifting Penalties – Civil Penalties and Restitution](#).

If you receive one of these letters, you should not ignore it. But you also should not make any payments or respond to the letter before speaking to an attorney.

## **Can you get your shoplifting conviction expunged?**

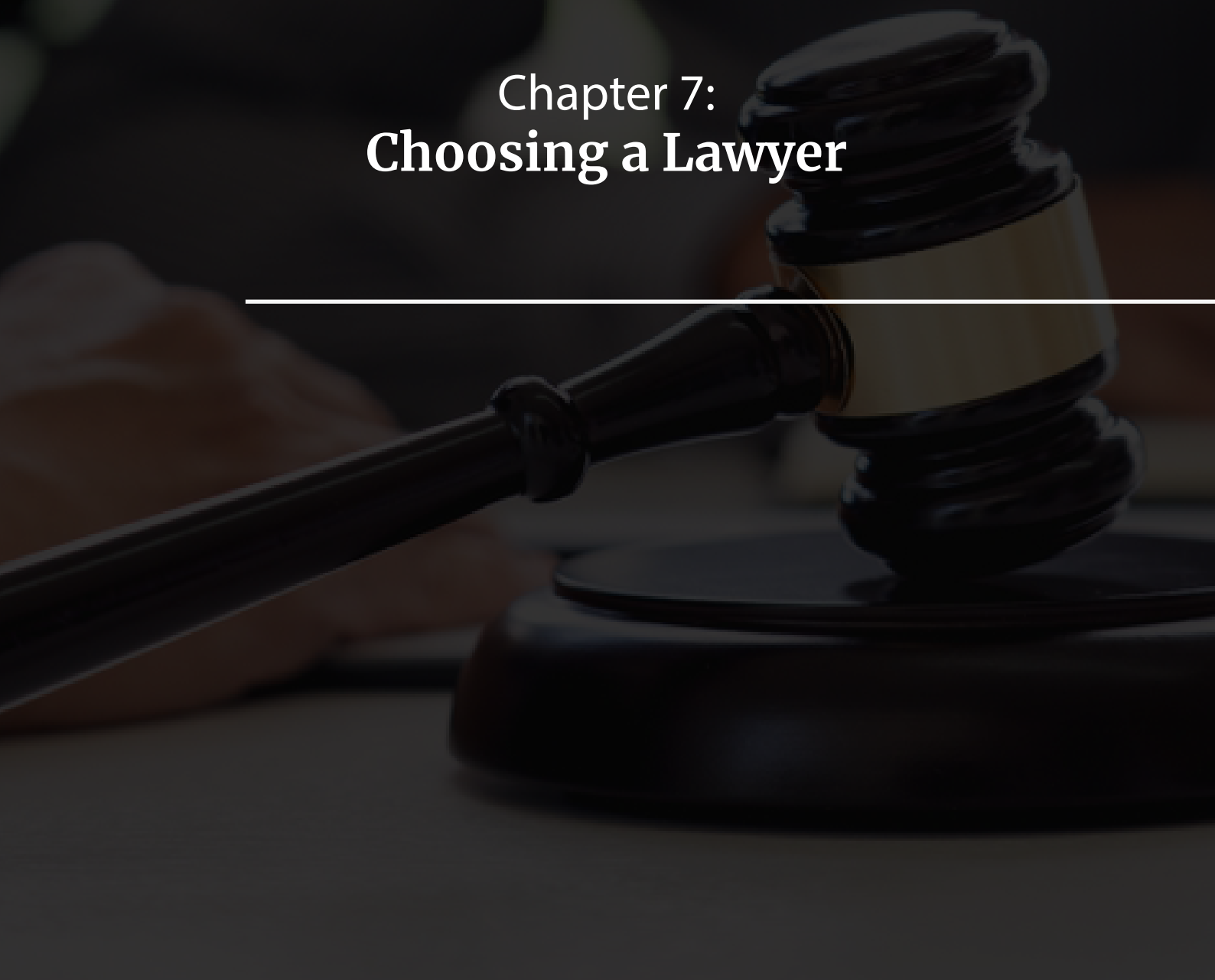
Shoplifting is an expungeable offense in New Jersey. But whether your conviction is eligible for expungement depends on a number of factors, such as the number of convictions on your record. See [Chapter 2: What to Expect After a Shoplifting Charge – Expungement](#).

If you're interested in expungement, you should contact an expungement attorney to discuss the details of your case.

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Chapter 7:  
**Choosing a Lawyer**

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# Chapter 7:

## Choosing a Lawyer

Although shoplifting is one of the most common criminal offenses in New Jersey, a conviction can still be embarrassing and result in serious consequences.

To reduce the negative impact of a shoplifting charge, you should get the help of an experienced New Jersey criminal lawyer as early in the process as you can.

Your lawyer will help you navigate the legal process, identify all possible defense strategies, and fight on your behalf for the best possible outcome.

### What to look for in an attorney

Here are a few things you should look for when hiring a lawyer:

- **Experience.** Your attorney should have a deep understanding of New Jersey shoplifting laws and how they apply to your case. They should also have the knowledge and skills to challenge the evidence against you, effectively negotiate with the prosecutor, and build the strongest possible defense. During your initial consultation, you can ask about how long they've been practicing and how many cases they've handled. You can also ask about their results in other shoplifting cases.
- **Attentiveness.** An attorney who pays proper attention to your case is crucial. Otherwise, you may not have time to build a strong defense before negotiating with the prosecutor or going to trial. Ask during your initial consultation how you'll be able to communicate with them if needed, and how long they typically take to return your messages. It's best to get a feeling for how quickly they'll respond to you before you hire them.

- **Fees.** Given the potential severe penalties, a criminal lawyer is a worthwhile investment in almost all cases. But unexpected fees are never welcome. When choosing a lawyer, be sure to ask about their fee structures. They should be able to give you a straightforward answer so you can plan accordingly.

## Private attorneys vs. public defenders

In shoplifting cases, you have the right to an attorney. If you can't afford one, you can request the help of a public defender. But it's usually much better to hire a private criminal defense attorney if at all possible for following reasons:

- **Public defenders carry heavy caseloads.** New Jersey has many excellent public defenders. But public defender offices are also overwhelmed with heavy caseloads. That means they may not have as much time to meet with you or to prepare your case before hearings. They also tend to have fewer resources. A private attorney, on the other hand, is able to control their caseload. That means they're more likely to be able to dedicate the right amount of attention to your case. They'll also have more time to investigate and prepare the best arguments for your defense.
- **You must apply for a public defender.** Not everyone who requests a public defender will get one. You have to apply for representation by a public defender and meet certain financial standards to qualify. The court will review your application and ultimately make the decision based on your financial information. This can take a little time. But if you hire a private lawyer, they'll be able to get to work on your case right away.
- **You can't choose your public defender.** If the court grants your request for a public defender, it will appoint one to you. You won't have an option of who you want to represent you.

It won't matter if you're not comfortable with your public defender or if they have the experience you're seeking. But when you hire a private attorney, you can choose an experienced, responsive lawyer who you trust.

Overall, even if you're eligible for a public defender, you're likely to get a much better outcome with a private attorney.

In addition, contrary to what most people think, having a public defender doesn't mean you don't pay *anything*.

While the public defender will be paid by the court, you'll have to pay the court an application fee. There are also certain other costs associated with having a public defender that you'll be expected to pay – regardless of your income.

### **Questions about shoplifting charges in New Jersey?**

At Rosenblum Law, we understand just how stressful it can be to face a shoplifting charge. One small lapse in judgment can result in you facing thousands of dollars in fines and fees and even jail time. With over 50 years of collective education and experience, our attorneys have fought on behalf of clients all across New Jersey for the best results possible.

If you or a loved one needs help defending a shoplifting charge, call us today at 888-235-9021 or contact us through our website at [www.rosenblumlaw.com/contact](http://www.rosenblumlaw.com/contact). We're passionate about protecting the rights and future of every one of our clients – and our consultations are always free.



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