

Defining Theft Under New Mexico Law

New Mexico criminal statutes use the term “larceny” to encompass theft crimes. Larceny is defined as “the stealing of anything of value that belongs to another.” (N.M. Stat. Ann. § 30-16-1(A).)

So, the crime of larceny can involve the taking of any kind of property, services, money, and intangible items that have value. New Mexico laws also recognize a number of specific theft-related offenses, including:

- Receiving stolen property (§ 30-16-11.)
- Falsely obtaining services or accommodations (§ 30-16-16.)
- Shoplifting (§ 30-16-20.)
- Identity theft (§ 30-16-24.1.)
- theft of a credit card (§ 30-16-26.), and
- Fraudulent acts to obtain or retain possession of a [rented or leased vehicle](#), or other personal property (§ 30-16-39.).

Classification of Theft and Penalties in New Mexico

Like most states, New Mexico classifies larceny offenses largely according to the value of the property stolen. In some cases, such as with respect to firearms and livestock, the classification of the theft depends upon the type of the property stolen. Now, let’s take a closer look at the specific classifications and penalties for larceny.

Misdemeanor Petty Theft. When the value of the property stolen is **\$250 or less**, larceny is considered a petty misdemeanor in New Mexico. (N.M. Stat. Ann. § 30-16-1(B).) A petty misdemeanor is punishable by no more than six months of incarceration in county jail or a fine not to exceed \$500, or both. (§ 31-19-1.)

Misdemeanor Theft. When the value of the property stolen is **more than \$250 but not more than \$500**, larceny constitutes a misdemeanor in New Mexico. (§ 30-16-1(C).) A misdemeanor is punishable by a term of incarceration of one year or less in the county jail, a fine of no more than \$1,000, or both. (§ 31-19-1.)

Fourth Degree Felony Theft. When the value of the property stolen is **more than \$500, but not more than \$2,500**, or if the stolen property is a firearm valued at less than \$2,500, larceny is a fourth degree felony in New Mexico. (§ 30-16-1(D), (H).) A fourth degree felony is punishable by 18 months of imprisonment and a \$5,000 fine. (§ 31-18-15.)

Third Degree Felony Theft. When the value of the property stolen is **more than \$2,500, but not more than \$20,000**, or if the property stolen is livestock of any value, the crime of larceny constitutes a third degree felony in New Mexico. (§ 30-16-1(E).) A

third degree felony is punishable by three years of imprisonment and a \$5,000 fine. (§ 31-18-15.)

Second Degree Felony Theft. When the value of the property stolen is **more than \$20,000**, the offender is guilty of a second degree felony. (§ 30-16-1(F).) A second degree felony is punishable by nine years of imprisonment and a \$10,000 fine. (§ 31-18-15.)

Civil Penalties for Theft in New Mexico

In addition to criminal penalties, any adult who has been convicted of shoplifting in New Mexico may be civilly liable to the merchant or store owner for the following damages:

- the retail value of the merchandise (unless the merchandise is returned undamaged)
- punitive damages of at least \$100, but not more than \$250
- reimbursement of the store owner's costs in bringing the lawsuit, and
- reimbursement of the store owner's reasonable attorney's fees. (§ 30-16-21.)

If the merchandise is returned to the merchant or store owner in an undamaged condition, so that the item could potentially be resold, then the merchant or store owner cannot recoup the retail value of the merchandise from the offender.

Effects of Prior Convictions on Current Theft Charge

New Mexico larceny statutes do not specifically address the effects of prior convictions on a current larceny charge, but New Mexico "habitual offender" laws will likely impose a harsher sentence on persons convicted of a felony larceny offense if their criminal records include one or more felony convictions in the last 10 years.

Typically, New Mexico adds one year to a sentence for a felony larceny offense if the offender has one other prior felony conviction. Likewise, New Mexico law adds four years to an offender's sentence if the offender has two prior felony convictions, and eight years to an offender's sentence if the offender has three or more prior felony convictions over the past 10 years. (§ 31-18-17.)

30-16-21. civil liability of adult shoplifter; penalty. (1977)

Shoplifting under Section 30-16-20 NMSA 1978, may be civilly liable for the retail value of the merchandise, punitive damages of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250), costs of the suit and reasonable attorney's

fees. However, the merchant shall not be entitled to recover damages for the retail value of any recovered undamaged merchandise.

30-16-22. Presumptions created. (1965)

Any person who willfully conceals merchandise on his person or on the person of another or among his belongings or the belongings of another or on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his belongings it shall be prima facie evidence of willful concealment.

30-16-23. Reasonable detention. (1965)

If any law enforcement officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise, and that he can recover the merchandise by detaining the person or taking him into custody, the law enforcement officer, special officer or merchant may, for the purpose of attempting to affect [effect] a recovery of the merchandise, take the person into custody and detain him in a reasonable manner for a reasonable time. Such taking into custody or detention shall not subject the officer or any person who has reached the age of majority and who has been convicted of merchant to any criminal or civil liability.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of shoplifting. Any merchant who causes such an arrest shall not be criminally or civilly liable if he has probable cause for believing the person so arrested has committed the crime of shoplifting.

New Mexico State Official Website

Store's approach to shoplifting spurs lawsuit, raises concerns

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By Andrew Oxford

The Taos News | [1 comment](#)

TAOS — Would you fight a man for a sandwich and bottle of Coca-Cola Zero? Staff at one Taos grocery store did in foiling a would-be shoplifter, purportedly leading to the injury of an elderly customer, spurring a lawsuit and raising the question of how far businesses should go to protect merchandise.

While shoplifting is a challenge for many retailers, court records and police reports indicate employees of Smith's Food & Drug have taken a particularly aggressive approach to the problem by using physical force to apprehend suspected thieves.

But that tack not only runs counter to the policies of other major retailers, law enforcement officials say it also can be dangerous — for staff, suspects and customers, as well.

The Taos News sent a series of questions to Smith's Food & Drug about its policies on using physical force to stop shoplifters and what training its employees receive to safely handle such incidents.

In a statement, Vice President of Media Affairs Marsha Gilford said: "We take the safety of our associates and customers very seriously in every aspect of our operations. For obvious reasons, we regret we are unable to participate in stories that outline our practices regarding shoplifting or other crime deterrents."

One example is now the subject of a lawsuit against the store.

An elderly local woman claims she was injured in 2012 when she was knocked to the ground after a would-be shoplifter broke free from a manager who had attempted to detain him.

An employee told Taos Police Department officers June 19, 2012, that he recognized a man in the store who was thought to be a regular shoplifter. The worker reported watching the man conceal a submarine sandwich, walk through the liquor aisle and proceed toward the store's exit.

According to a police report, the employee approached the suspected shoplifter and informed him he must pay before leaving the store. The worker said the suspected shoplifter then pushed him to the ground and fought with other employees.

A manager told police he was struck by the suspected shoplifter. But the manager said he was able to pin the man against a self-checkout register.

The manager said the man calmed down. Video of the incident recorded by a surveillance camera shows a staff person holding the suspected shoplifter against a register for at least 30 seconds.

But the suspected shoplifter then pushed himself back to his feet and attempted to run from the store, the manager told police. The suspected shoplifter broke from the manager's grip, knocking an elderly customer to the ground, before being restrained by staff again until police arrived.

The customer complained of pain in her left hip and leg, and she was taken by ambulance to Holy Cross Hospital.

The sandwich and bottle of Coca-Cola Zero that the suspected shoplifter was accused of trying to steal were worth a total of \$5.09. He was arrested and charged with shoplifting and battery, but later he was ruled mentally incompetent.

The elderly shopper who said she was injured in the fracas filed a lawsuit earlier this year against the would-be shoplifter, Smith's Food & Drug, and several of its employees.

The lawsuit alleges negligence led to her injury, suggesting not only that the would-be shoplifter had behaved carelessly, but also that employees were careless in their efforts to stop him.

"Smith's knew or should have known that hiring and retaining unqualified employees, agents and/or staff, and failing to adequately train and supervise its employees, agents and/or staff in safely apprehending shoplifting suspects would create an unreasonable risk of injury to its patrons and the public," states the lawsuit filed by attorney Dennis T. Sánchez.

The case is pending in 8th District Court.

Not an isolated incident

The scuffle that gave rise to the lawsuit is not an isolated incident.

Police reports indicate staff at Smith's Food & Drug continue to use force in apprehending suspected shoplifters.

Employees pinned a man to the ground in an incident June 9, for example.

A manager told police he had watched a young man hide merchandise in his pants. The manager confronted the man as he tried to leave through the front door without paying, but the man reportedly tried to run away.

A witness told 911 dispatchers that staffers forced him to the ground.

“They’re holding him down. You need to hurry. They have him on the floor and they’re fighting with him. He knocked over a customer,” the caller said.

The would-be shoplifter was accused of trying to steal \$122.18 worth of shaving razors, shampoo and conditioner. He was charged with a petty misdemeanor count of shoplifting. He also was charged with possession of a controlled substance and possession of drug paraphernalia after police found heroin and a syringe while searching him.

Demonstrating the persistent challenge that theft represents for retailers such as Smith’s Food & Drug, records show police had been called to the store for another suspect earlier in the day.

Financial losses

Stopping shoplifters is an urgent task for retailers, as thefts can amount to substantial financial losses.

While New Mexico law allows for merchants to apprehend shoplifters, it is unusual for staff at major retailers to use physical force when detaining suspects, given the legal liability and danger.

While a shoplifter might make off with a few dollars or hundreds of dollars worth of merchandise, companies could end up on the hook for the medical expenses of employees or customers injured if efforts to apprehend the suspect turn violent. Add the legal costs of ensuing lawsuits, like the one filed in Taos this year, and laying hands on a suspected shoplifter may not seem worth it.

That calculation has given rise to industry standards that effectively prohibit the use of force in apprehending thieves.

A spokesman for the nation’s largest brick-and-mortar retailer, Wal-Mart, said there is “no situation when staff are to engage physically with a suspect.”

“If a suspect got physical or tried to run away, that’s when staff know to call police,” a spokesperson said.

Taos Police Chief David Weaver maintains officers have taken a tough approach to shoplifting.

Though shoplifting less than \$250 worth of merchandise from a store only constitutes a petty misdemeanor, officers are instructed to arrest suspects rather than merely issue citations.

Weaver says booking more shoplifters initially led to a decline in reported incidents, though shoplifting has trended upward again in recent months.

It is not clear whether that increase demonstrates the tougher approach is proving ineffective, whether stores are improving their processes for identifying and reporting shoplifters or if more people are pilfering goods from local retailers.

But should retailers take matters into their own hands?

“I would kind of prefer they not,” Weaver said.

“Merchants do have the lawful authority to detain shoplifters inside their store and effect that arrest,” the chief noted. “But they should weigh the severity of the crime to the danger posed to their staff and customers. Once it’s all done, can they articulate why they used the force they did?”

This story first appeared in The Taos News, a sister paper to The Santa Fe New Mexican.