

**CRIMINAL LAW: PROPERTY CRIMES**

**ONLINE**

**PRESENTED BY:**

DPS – Law Enforcement Academy  
Santa Fe, New Mexico

Date: \_\_\_\_\_

## **GOALS**

- Students will gain an in-depth understanding of certain property crimes including Larceny, Receiving Stolen Property, Shoplifting, Criminal Damage to Property, Graffiti.
- Students will develop an understanding about charging possession of stolen property.

## **OBJECTIVES**

Upon completion of this course, students will be able to:

- Know the difference between larceny and possession of stolen property.
- State the different ways to charge receiving stolen property.
- Know the alternative ways to commit shoplifting.
- State the legal presumption when one conceals an item inside a store.
- Know the difference between larceny and shoplifting.
- Articulate the difference between criminal damage to property and graffiti.
- Understand how to establish value of stolen and recovered property.

## **SOURCES**

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated
- State and federal case law.

## **ESTIMATED TIME**

Included in a ten hour block on Criminal Law.

## **PREPARED BY**

Legal Instructor  
Department of Public Safety  
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## **INTRODUCTION**

We are going to discuss certain property crimes that police officers are most likely to come in contact with and have questions about.

- In 2006 the amount to become a felony for most property crimes increased from \$250 to \$500.

## **LARCENY**            NMSA 1978, Section 30-16-1

The elements of larceny are:

- stealing anything of value
- which belongs to another
- defendant intended to permanently deprive the owner of the property at the time he or she took it.

### Penalties for Larceny

#### Larceny

The penalty for larceny will generally depend upon the value of the item stolen. Larceny over \$500 is a fourth degree felony (18 months), over \$2500 a third degree felony (three years), and over \$20,000 a second degree felony (nine years).

#### Larceny of livestock

Whoever commits larceny when the property . . . is livestock is guilty of a third degree felony, regardless of value.

#### Larceny of a firearm

Whoever commits larceny when the property . . . is a firearm is guilty of a fourth degree felony when its value is less than \$2500.

## **RECEIVING STOLEN PROPERTY**            NMSA 30-16-11

The elements of Receiving Stolen Property are:

- intentionally

- receiving, retaining or disposing of stolen property
- knowing that it is stolen or believing it to be stolen
- unless the property is received, retained or disposed of with intent to restore it to the owner.

A point of confusion:

In New Mexico the statute for possession of stolen property is called RECEIVING STOLEN PROPERTY and it can be charged in one of three ways:

- the property may be “received,” or
- the property may be “retained,” or
- the property may be “disposed.”

Each one of these three ways or charges has distinctive characteristics.

#### SITUATION #1

An offender steals and is apprehended by police in possession of stolen property. Can we charge Larceny and “Retaining” of stolen property? (no)

Answer:

Since larceny is a continuing offense, we can charge larceny or “retaining” of stolen property but not both. Officers charge larceny if it can be proven the person stole the item. However, if a person is in possession of stolen property and it can’t be proven how they got the item, the correct charge would be Receiving Stolen Property (retain). State v. Smith (1983).

#### SITUATION #2

An offender steals items and disposes of them at two different locations. Can we charge Larceny and “Disposing” of stolen property? (yes)

Answer:

The offender can be charged with larceny **and** “disposing” of stolen property. The act of “disposing” of an item is different from larceny of an item. Since the items were disposed at two locations, there would be two counts of Receiving Stolen Property (dispose). State v. Mitchell (1974).

#### SITUATION #3

Police execute a search warrant at offender’s residence. Numerous stolen items were

recovered belonging to five victims. Each item had a misdemeanor value but together they had a felony value. Do we have one count of “retaining” or five?

Answer:

Although the offender “retains” stolen items from different victims, the offender will only be charged with one count of “retaining” stolen property. Sanchez v. State (1982).

### Receiving stolen property of a firearm

Whoever commits receiving stolen property when the property is a firearm is guilty of a fourth degree felony when its value is less than \$2,500. NMSA 1978, Section 30-16-11 (D).

FACTS:

Defendant received some generic stolen property (DVD’s, camera equipment, gym bags) and also some stolen firearms. The property was taken from the same victim at the same place and time, and it was acquired and possessed by Defendant at the same time. Do we have one count of receiving stolen property or two? (two) State v. Watkins (2008).

Answer:

Court of Appeals affirmed convictions for Receiving Stolen Property and Receiving Stolen Property (Firearm). This is not double jeopardy since the legislature clearly intended that possession of a stolen firearm would be an additional or separate crime.

### SHOPLIFTING NMSA 1978, Section 30-16-20

There are four different ways to commit shoplifting:

- willfully taking possession of any merchandise.
- willfully concealing any merchandise.
- willfully altering any label, price tag or marking upon any merchandise.
- willfully transferring merchandise from one container to another.

In each of these four ways to commit shoplifting, the offender has the intent to deprive the merchant of all or some part of the value of the merchandise.

You may have noticed the word “willfully” in describing the four ways to do a shoplifting. Suppose someone conceals an item on his or her person. A loss prevention officer (LPO) stops the person. The person says they inadvertently, accidentally put the item inside their coat pocket. What should the loss prevention officer do?

NMSA 1978, Section 30-16-22 mention a presumption that might be helpful:

NMSA 1978, Section 30-16-22. Presumptions created.

- Any person who willfully conceals merchandise on his or her person or on the person of another or among his or her belongings or the belongings of another . . . on or outside the premises of the store shall be . . . presumed to have concealed the merchandise with the intention of converting it without paying for it.

Note:

An example of a person concealing merchandise on the person of another would be a parent using a child to conceal items.

To arrest for most misdemeanors, the offense must occur in your presence. A shoplifting occurs outside your presence. What options do you have in this situation?

NMSA 1978, Section 30-16-23

- Normally, an officer must witness a misdemeanor to make an arrest. This section allows an officer to make an arrest (with probable cause) although it occurred outside the officer's presence.
- The officer still has a choice, however, as to whether to arrest a person or issue a citation.

FACTS:

A person goes to a store and steals an item. The wholesale price is \$399, the retail price is \$449, and with tax the price is over \$500.

Answer:

Market value is used when value is an issue. Supreme Court of New Mexico has held that the terms "market value" and "retail value" are identical. Tunnell v. State (1983).

Does market value include taxes?

Answer:

Tax is not to be considered when determining value of an item, unless the advertised retail or actual market price of an item includes the tax. Tunnel v. State (1983).

How do we determine value if a private citizen is a victim of property theft?

Answer:

It is a general rule that an owner of property is competent to testify as to the value of his or her property. State v. Romero (1975).

### LARCENY V. SHOPLIFTING

- A. "store" means a place where merchandise is sold or offered to the public for sale at retail;
- B. "merchandise" means chattels (items) of any type or description regardless of the value offered for sale in or about a store. NMSA 1978, Section 30-16-19.

Note:

It's shoplifting if a person takes merchandise (an item offered for sale) in a store. What charge if a person stole cash from a cash register?

Answer:

It would be larceny since cash is not merchandise.

#### Another difference between larceny and shoplifting

- Shoplifting involves taking merchandise from a store. It allows an officer to make a misdemeanor arrest even though the offense did not occur in the officer's presence. NMSA 1978, Section 30-16-23.
- Larceny generally refers to a theft occurring other than a store, i.e., a bicycle on someone's front lawn or a tire on a front porch. For a misdemeanor larceny, an officer cannot make an arrest unless the offense occurred in his or her presence.

#### CRIMINAL DAMAGE TO PROPERTY

NMSA 1978, Section 30-15-1

The elements are:

- intentionally
- damaging any real or personal property of another
- without the consent of another.

For most crimes the dollar amount for a felony is \$500. For criminal damage to property the dollar amount to become a felony is \$1,000.

#### UNAUTHORIZED GRAFFITI ON PERSONAL OR REAL PROPERTY

Graffiti consists of intentionally and maliciously defacing any real or person property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or the use of any subject without the consent or reasonable ground to believe there is consent of the owner of the property. NMSA 1978, Section 30-15.1.1.

For this charge the dollar amount to become a felony is \$1,000. This statute provides for mandatory restitution and community service.

#### CONCLUSION

The crimes discussed are some of the property crimes officers are most likely to encounter. Knowing the elements of these crimes will assist our ability to more accurately charge them.

