

New Hampshire's Shoplifting, Retail Theft, and Organized Retail Crimes Statutes

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This document contains shoplifting and Organized Retail Crime (ORC) Statutes, highlighting changes made in recent legislative sessions of the NH General Court.

Highlighted in pink is a change made in the 2012 session relative to arrest without a warrant.

Highlighted in blue, the language in 637:3-a, Willful Concealment, was previously found in 644:17, Willful Concealment and Shoplifting. The language was moved from Chapter 644, Breaches of the Peace, to Chapter 637, Theft, by HB 471, Chapter 209 of the Laws of 2009.

Language highlighted in yellow are new inserted by HB 471, Chapter 209 of the Laws of 2009 or SB 205, Chapter 239 of the laws of 2010.

Language highlighted in green are other sections specific to shoplifting / organized retail crime or other recent changes made prior to 2009.

Shoplifting / ORC related sections are accompanied by further descriptions identified by a box.

TITLE LXII - CRIMINAL CODE

CHAPTER 637 - THEFT

Section 637:1

637:1 Consolidation. – Conduct denominated theft in this chapter constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or information.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Section 637:2

637:2 Definitions. – The following definitions are applicable to this chapter:

I. "Property" means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing any thing of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

II. "Obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade secret, to make any facsimile, replica, photograph or other reproduction.

III. "Purpose to deprive" means to have the conscious object:

- (a) To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost; or
- (b) To restore the property only upon payment of a reward or other compensation; or
- (c) To dispose of the property under circumstances that make it unlikely that the owner will recover it; or
- (d) To appropriate the goods or merchandise of a merchant without paying the merchant's stated or advertised price.**

IV. "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

V. "Value" means the highest amount determined by any reasonable standard of property or services.

- (a) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.
- (b) The value of property or services obtained by the actor shall determine the grade of the offense, and such value shall not be offset against or reduced by the value of any property or services given by the actor in exchange.
- (c) Each personal check or credit card shall have a value of \$250.

VI. "Merchant" means the owner or operator of any place of business where merchandise is displayed, held, or stored, for sale to the public, or any agent or employee of such owner or operator.

Source. 1971, 518:1. 1986, 222:1. 2005, 36:1, eff. July 16, 2005. 2009, 209:2, 3, eff. Jan. 1, 2010.

These add clarity to the theft statute.

Section 637:3

637:3 Theft by Unauthorized Taking or Transfer. –

I. A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

II. As used in this section and RSA 637:4 and 5, "obtain or exercise unauthorized control" includes but is not necessarily limited to conduct heretofore defined or known as common law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Section 637:3-a

637:3-a Willful Concealment. –

I. A person is guilty of willful concealment if, without authority, he or she willfully conceals the goods or merchandise of any store while still upon the premises of such store. Goods or merchandise found concealed upon the person shall be prima facie evidence of willful concealment. Notwithstanding RSA 637:11, willful concealment shall be a misdemeanor.

II. A person commits theft if, with the purpose to deprive a merchant of goods or merchandise, he or she knowingly:

- (a) Removes goods or merchandise from the premises of a merchant; or
- (b) Alters, transfers, or removes any price marking affixed to goods or merchandise; or
- (c) Causes the cash register or other sales recording device to reflect less than the merchant's stated or advertised price for the goods or merchandise; or
- (d) Transfers goods or merchandise from the container in which such goods or merchandise were intended to be sold to another container.

Source. 2009, 209:1, eff. Jan. 1, 2010.

This section makes it a crime to conceal merchandise, change a price tag or otherwise cause the price to display differently or leave the premises without paying. These were moved from Chapter 644, Breaches of the Peace, to Chapter 637, Theft, at the recommendation of representatives of the Attorney General's office as a more appropriate place.

Section 637:4

637:4 Theft by Deception. –

I. A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.

II. For the purposes of this section, deception occurs when a person purposely:

- (a) Creates or reinforces an impression which is false and which that person does not believe to be true, including false impressions as to law, value, knowledge, opinion, intention or other state of mind. Provided, however, that an intention not to perform a promise, or knowledge that it will not be performed, shall not be inferred from the fact alone that the promise was not performed; or
- (b) Fails to correct a false impression which he previously had created or reinforced and which he did not believe to be true, or which he knows to be influencing another to whom he stands in a fiduciary or confidential

relationship; or

(c) Prevents another from acquiring information which is pertinent to the disposition of the property involved; or

(d) Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Misrepresents to or misleads any person, in any manner, so as to make that person believe that the person on whose behalf a solicitation or sales promotion is being conducted is a charitable trust or that the proceeds of such solicitation or sales promotion shall be used for charitable purposes, if such is not the fact.

III. Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.

IV. A person commits theft under this section notwithstanding that the victim has suffered no actual or net pecuniary loss.

Source. 1971, 518:1. 1986, 222:2. 1992, 239:4, eff. July 1, 1992.

Section 637:5

637:5 Theft by Extortion. –

I. A person is guilty of theft as he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

II. As used in this section, extortion occurs when a person threatens to:

(a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

(b) Subject the person threatened or any other person to physical confinement or restraint; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse any person of a crime or expose him to hatred, contempt or ridicule; or

(e) Reveal any information sought to be concealed by the person threatened; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(h) Bring about or continue a strike, boycott or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Section 637:6

637:6 Theft of Lost or Mislaid Property. – A person commits theft when:

I. He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return the same to the owner, and

II. He has the purpose to deprive the owner of such property when he obtains the property or at any time prior to taking the measures designated in paragraph I.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Section 637:7

637:7 Receiving Stolen Property. –

I. A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, with a purpose to deprive the owner thereof.

II. The knowledge or belief required for paragraph I is presumed in the case of a dealer who:

- (a) Is found in possession or control of property stolen from 2 or more persons on separate occasions; or
- (b) Has received other stolen property within the year preceding the receiving charged; or
- (c) Being a dealer in property of the sort received, retained or disposed, acquires it for a consideration which he knows is far below its reasonable value, or

(d) Purchases property from a law enforcement officer working in an undercover capacity, or an agent of such law enforcement officer, where such property has been explicitly represented as stolen.

III. As used in this section, "receives" means acquiring possession, control or title or lending on the security of the property; and "dealer" means a person in the business of buying or selling goods.

Source. 1971, 518:1. 2001, 174:1, eff. Jan. 1, 2002.

The Change in 2001 allows law enforcement to conduct a "reverse sting" on suspected "fences", where the items are not actually stolen, but the suspect believes that it is. Fencing operations are a necessary part of the support system in organized retail theft operations, and pose a threat equal to the theft itself.

Section 637:7-a

637:7-a Possession of Property Without Serial Number. –

I. No person shall knowingly remove, deface, alter, change, destroy, obliterate or mutilate, or cause to be removed, defaced, altered, changed, destroyed, obliterated or mutilated the identifying number or numbers or any other identifying mark on any machine, mechanical or electrical device or any other property. Anyone doing so with the intent thereby to conceal the identity of the item or to defraud a manufacturer, seller or purchaser, or to hinder competition in the areas of sales and servicing, or to prevent the detection of a crime shall be guilty of a misdemeanor.

II. Any person who buys, receives, possesses, sells or disposes of any machine, mechanical or electrical device or any other property knowing that the identification number or numbers or any other identifying mark on the item have been removed, defaced, altered, changed, destroyed, obliterated or mutilated shall be guilty of a misdemeanor. However, if a person discovering that the identification number or numbers or any other identifying mark have been removed, defaced, altered, changed, destroyed, obliterated or mutilated shall report the same to the nearest police station, he shall not be charged with violating this section. Further, said provisions do not apply to those persons who, on August 13, 1977, are lawfully in possession of that type of property described in paragraph I which does not have identifying numbers or marks or from which the identifying marks or numbers have been lost inadvertently.

III. The provisions of this section do not apply to those cases or instances where any of the changes or alterations enumerated in paragraph I have been customarily made or done in an established practice in the ordinary and regular conduct of business by the original manufacturer, or by his duly appointed direct representative, or under specific authorization from the original manufacturer.

IV. When property described in paragraph I comes into the custody of a law enforcement officer, it shall be considered stolen or embezzled property, and prior to being disposed of, shall have an identifying number engraved on it or embedded in it.

Source. 1977, 187:1, eff. Aug. 13, 1977.

Section 637:8

637:8 Theft of Services. –

I. A person commits theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor. "Deception" has the same meaning as in RSA 637:4, II, and "threat" the same meaning as in RSA 637:5, II.

II. A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts such services to his own benefit or to the benefit of another who he knows is not entitled thereto.

III. As used in this section, "services" includes, but is not necessarily limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, gas, electricity, water or steam, admission to entertainment, exhibitions, sporting events or other events for which a charge is made.

IV. This section shall not apply to the attachment of private equipment to residential telephone lines unless the telephone company can prove that the attached equipment will cause direct harm to the telephone system. Attached equipment which is registered with the public utilities commission shall not require a protective interconnecting device. If the telephone company cites this section in its directories or other customer informational material, said company shall duplicate the entire section verbatim therein.

Source. 1971, 518:1. 1977, 175:1, eff. Aug. 7, 1977.

Section 637:9

637:9 Unauthorized Use of Propelled Vehicle or Rented Property. –

I. A person is guilty of theft if:

(a) Having custody of a propelled vehicle pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(b) Having custody of a propelled vehicle pursuant to a rental or lease agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time and place, he abandons the vehicle or willfully refuses or neglects to redeliver it to the owner in such manner as he may have agreed; or

(c) Having custody of any property pursuant to a rental or lease agreement whereby such property is to be returned in a specified manner, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

II. [Repealed.]

III. As used in this section, "propelled vehicle" means any automobile, airplane, motorcycle, motorboat or any other motor-propelled vehicle or vessel, or any boat or vessel propelled by sail, oar or paddle.

Source. 1971, 518:1. 1985, 176:1. 1992, 269:22, I, eff. July 1, 1992.

Section 637:10

637:10 Theft by Misapplication of Property. –

I. A person commits theft if he obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a third

person, whether from that property or its proceeds or from his own property to be reserved in an equivalent or agreed amount, if he purposely or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as his own.

II. Liability under paragraph I is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.

III. An officer or employee of the government or of a financial institution is presumed:

(a) To know of any legal obligation relevant to his liability under this section, and

(b) To have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of his accounts.

IV. As used in this section:

(a) "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(b) "Government" means the United States, any state or any county, municipality or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Section 637:10-a

637:10-a Use or Possession of Theft Detection Shielding Devices and Theft Detection Device Removers. –

I. A person commits unlawful use of a theft detection shielding device when he or she engages in the following acts:

(a) Knowingly manufactures, sells, offers for sale, or distributes a laminated or coated bag or device specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(b) Knowingly possesses any laminated or coated bag or device specially designed, marketed, and intended to be used to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit a theft.

II. A person commits unlawful possession of a theft detection device remover when he or she knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise, with the intent to use such tool to remove the detection device from the merchandise without the permission of the merchant or person owning or holding said merchandise.

III. Persons convicted of either the use or possession of theft detection shielding devices or theft detection device removers shall be guilty of a misdemeanor.

Source. 2000, 89:1, eff. April 27, 2000.

This section addresses attempts by individuals to hide merchandise not paid for from electronic theft detection; devices include boxes lined with foil and or duct tape, foil-lined overcoats etc. Also prohibited is the possession of tools intended to remove electronic detection tags, following the burglary laws.

Section 637:10-b

637:10-b Fraudulent Retail Transactions. –

I. A person shall be guilty of a misdemeanor if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces a retail sales receipt or universal product code label with the purpose to deprive a merchant of goods or merchandise.

II. A person shall be guilty of a class B felony if such person possesses, uses, transfers, manufactures, alters, counterfeits, or reproduces 5 or more retail sales receipts or universal product code labels, or any combination of 5 or more sales receipts or universal product code labels, or possesses a device designed or adapted to manufacture counterfeit retail sales receipts or universal product code labels with the purpose to deprive a merchant of goods or merchandise.

Source. 2009, 209:4, eff. Jan. 1, 2010.

These recently-added sections address a form of theft known as “return fraud”.

Section 637:10-c

637:10-c Organized Retail Crime Enterprise. –

A person is guilty of a class B felony, and a class A felony for a second or subsequent offense, if he or she conspires with one or more persons to engage for profit in a scheme or course of conduct of theft as defined in RSA 637:3-a, II or RSA 637:10-b. A conviction under this section shall not merge with the conviction for any offense that is the object of the conspiracy.

Source. 2010, 239:13, eff. July 1, 2010.

This section, like others, is meant to address methods organized gangs use to steal merchandise, where one person involved may not necessarily be the person leaving the premises but is involved with other activities assisting the theft.

Section 637:11

637:11 Penalties. –

I. Theft constitutes a class A felony if:

- (a) The value of the property or services exceeds \$1,500, or
- (b) The property stolen is a firearm, or
- (c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

II. Theft constitutes a class B felony if:

- (a) The value of the property or services is more than \$1,000 but not more than \$1,500, or
- (b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or
- (c) The theft constitutes a violation of RSA 637:5, II(a) or (b), or
- (d) The property or services stolen are from 3 separate business establishments within a 72-hour period, or
- (e) The property is stolen with intent to resell or distribute. It would be prima facie evidence that the offense constitutes theft with intent to resell or distribute when the theft consists of goods or merchandise

in quantities that would not normally be purchased for personal use or consumption, or

(f) The property received in violation of RSA 637:7 consists of goods or merchandise in quantities that would not normally be purchased for personal use or consumption, or

(g) The actor has twice before been convicted of offenses under RSA 637:3-a, II and the present and prior convictions were based on offenses committed within a 36-month period.

III. Theft constitutes a misdemeanor if the value of the property or services does not exceed \$1,000.

Source. 1971, 518:1. 1977, 187:2. 1979, 266:1. 1990, 95:6. 1992, 269:14, 22, II. 2001, 174:2, eff. Jan. 1, 2002. 2010, 239:3, eff. July 1, 2010.

The NH Retail Association requested these two additions as well. (d) was added in 2001 when law enforcement agencies reported to NH Retail Association that they were finding laminated cards on individuals who were caught in major shoplifting events. The cards would describe the value level that kicked the crime up from misdemeanor to felony level in a particular state, and the shoplifter would act accordingly; the value of stolen merchandise from any one location was kept under the threshold. With this change, any amount of theft from 3 places in a 3-day period constitutes a felony.

CHAPTER 651 - SENTENCES

651:6 Extended Term of Imprisonment. –

I. A convicted person may be sentenced according to paragraph III if the jury also finds beyond a reasonable doubt that such person:

- (a) Based on the circumstances for which he or she is to be sentenced, has knowingly devoted himself or herself to criminal activity as a major source of livelihood;
- (b) Has been subjected to a court-ordered psychiatric examination on the basis of which the jury finds that such person is a serious danger to others due to a gravely abnormal mental condition;
- (c) Has manifested exceptional cruelty or depravity in inflicting death or serious bodily injury on the victim of the crime;
- (d) Has committed an offense involving the use of force against a person with the intention of taking advantage of the victim's age or physical disability;
- (e) Has committed or attempted to commit any of the crimes defined in RSA 631 or 632-A against a person under 13 years of age;
- (f) Was substantially motivated to commit the crime because of hostility towards the victim's religion, race, creed, sexual orientation as defined in RSA 21:49, national origin or sex;
- (g) Has knowingly committed or attempted to commit any of the crimes defined in RSA 631 where he or she knows the victim was, at the time of the commission of the crime, a law enforcement officer, a paid firefighter, volunteer firefighter, on-call firefighter, or licensed emergency medical care provider as defined in RSA 153-A:2, V acting in the line of duty;
- (h) Was an on-duty law enforcement officer at the time that he or she committed or attempted to commit any of the crimes defined in RSA 631;
- (i) Has committed a crime listed in RSA 193-D:1 in a safe school zone under RSA 193-D;
- (j) Possesses a radio device with the intent to use that device in the commission of robbery, burglary, theft, gambling, stalking, or a violation of any provision of RSA 318-B. In this section, the term "radio device" means any device capable of receiving a wireless transmission on any frequency allocated for law enforcement use, or any device capable of transmitting and receiving a wireless transmission;
- (k) Has committed or attempted to commit negligent homicide as defined in RSA 630:3, I against a person under 13 years of age who was in the care of, or under the supervision of, the defendant at the time of the offense;

(l) Has committed or attempted to commit any of the crimes defined in RSA 637 or RSA 638 against a victim who is 65 years of age or older or who has a physical or mental disability and that in perpetrating the crime, the defendant intended to take advantage of the victim's age or a physical or mental condition that impaired the victim's ability to manage his or her property or financial resources or to protect his or her rights or interests;

(m) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, I(l) or RSA 632-A:2, II where the defendant was 18 years of age or older at the time of the offense;

(n) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, III, and one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(l) or RSA 632-A:2, II, or both, and the defendant was 18 years of age or older when the pattern of sexual assault began;

(o) Has purposely, knowingly, or recklessly with extreme indifference to the value of human life committed an act or acts constituting first degree assault as defined in RSA 631:1 against a person under 13 years of age where the serious bodily injury has resulted in brain damage or physical disability to the child that is likely to be permanent;

(p) Has committed murder as defined in RSA 630:1-b against a person under 13 years of age;

(q) Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members:

(1) Violent crime as defined in RSA 651:5, XIII.

(2) A crime involving the distribution, sale, or manufacture of a controlled drug under RSA 318-B:2.

(3) Class A felony theft where the property stolen was a firearm.

(4) Unlawful sale of a pistol or a revolver.

(5) Witness tampering.

(6) Criminal street gang solicitation as defined in RSA 644:20; or

(r) Has committed an offense under RSA 637 where such person knowingly activated an audible alarm system to avoid detection or apprehension, or cause a distraction during the commission of the offense.

I-a. As used in this section:

(a) "Law enforcement officer" means a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail, or corrections institution, a probation-parole officer, a juvenile probation and parole officer, or a conservation officer.

(b) "Criminal street gang member" means an individual to whom 2 or more of the following apply:

(1) Admits to criminal street gang membership;

(2) Is identified as a criminal street gang member by a law enforcement officer, parent, guardian, or documented reliable informant;

(3) Resides in or frequents a particular criminal street gang's area and adopts its style of dress, its use of hand or other signs, tattoos, or other physical markings, and associates with known criminal street gang members; or

(4) Has been arrested more than once in the company of individuals who are identified as criminal street gang members by law enforcement, for offenses that are consistent with usual criminal street gang activity.

(c) "Criminal street gang" means a formal or informal ongoing organization, association, or group of 3 or more persons, which has as one of its primary objectives or activities the commission of criminal activity, whose members share a common name, identifying sign, symbol, physical marking, style of dress, or use of hand sign, and whose members individually or collectively have engaged in the commission, attempted commission, solicitation to commit, or conspiracy to commit 2 or more the following offenses, or a reasonably equivalent offense in another jurisdiction, on separate occasions within the preceding 3 years:

(1) Violent crimes, as defined in RSA 651:5, XIII;

(2) Distribution, sale, or manufacture of a controlled drug in violation of RSA 318-B:2;

(3) Class A felony theft;

(4) Unlawful sale of a pistol or revolver; or

(5) Witness tampering.

II. A convicted person may be sentenced according to the terms of paragraph III if the court finds, and includes such findings in the record, that such person:

(a) Has twice previously been convicted in this state, or in another jurisdiction, on sentences in excess of one year;

(b) Has previously been convicted of a violation of RSA 630:3, II, RSA 265-A:3, I(b) or II(b), or any crime in any other jurisdiction involving driving or attempting to drive a motor vehicle under the influence of controlled drugs or intoxicating liquors, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b); or

(c) Has twice previously been convicted in this state or any other jurisdiction, for driving or attempting to drive a motor vehicle under the influence of intoxicating liquors or controlled drugs, or both, and such person has committed a crime as defined under RSA 630:3, II or RSA 265-A:3, I(b) or II(b).

III. If authorized by paragraph I or II, and if written notice of the possible application of this section is given the defendant at least 21 days prior to the commencement of jury selection for his or her trial, a defendant may be sentenced to an extended term of imprisonment. An extended term is, for a person convicted of:

(a) Any felony, other than murder or manslaughter, a minimum to be fixed by the court of not more than 10 years and a maximum to be fixed by the court of not more than 30 years;

(b) A misdemeanor, a minimum to be fixed by the court of not more than 2 years and a maximum to be fixed by the court of not more than 5 years;

(c) Manslaughter, a minimum to be fixed by the court of not more than 20 years and a maximum to be fixed by the court of not more than 40 years;

(d) Murder, life imprisonment;

(e) Two or more offenses under RSA 632-A:2, life imprisonment without parole;

(f) A third offense under RSA 632-A:3, life imprisonment; or

(g) Any of the crimes listed under RSA 651:6, I(j), a minimum to be fixed by the court of not less than 90 days and a maximum of not more than one year.

IV. If authorized by subparagraphs I(m), (n), or (o) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial:

(a) There is a presumption that a person shall be sentenced to a minimum to be fixed by the court of not less than 25 years and a maximum of life imprisonment unless the court makes a determination that the goals of deterrence, rehabilitation, and punishment would not be served, based on the specific circumstances of the case, by such a sentence and the court makes specific written findings in support of the lesser sentence. Before the court can determine whether the presumption has been overcome, the court shall consider, but is not limited to, the following factors:

(1) Age of victim at time of offense.

(2) Age of the defendant at the time of the offense.

(3) Relationship between defendant and victim.

(4) Injuries to victim.

(5) Use of force, fear, threats, or coercion to the victim or another.

(6) Length of time defendant offended against victim.

(7) Number of times defendant offended against victim.

(8) Number of other victims.

(9) Acceptance of responsibility by defendant.

(10) Defendant's criminal history.

(11) Use of a weapon.

(12) Medical or psychological condition of the victim at the time of the assault.

(b) The sentence shall also include, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. The defendant shall comply with the conditions of lifetime supervision which are imposed by the court or the department of corrections. Violation of any of the conditions of lifetime supervision shall be deemed contempt of court. The special sentence of lifetime supervision shall begin upon the offender's release from incarceration, parole, or probation. A defendant who is sentenced to lifetime supervision pursuant to this paragraph shall not be eligible for release from the lifetime supervision pursuant to

RSA 632-A:10-a, V(b).

(c) Any decision by the superior court under subparagraph (a) may be reviewed by the sentence review division of the superior court at the request of the defendant or at the request of the state pursuant to RSA 651:58.

V. If authorized by subparagraph I(p) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment as follows: a minimum to be fixed by the court of not less than 35 years and a maximum of life imprisonment.

VI. A person shall be sentenced according to the terms of paragraph VII if the court finds, and includes such findings in the record, that such person:

(a) (1) Committed a violation of RSA 632-A:2, I(l), RSA 632-A:2, II, or RSA 632-A:2, III, in which one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(l) or RSA 632-A:2, II, or both, after having previously been convicted of an offense in violation of one of the aforementioned offenses or any other statute prohibiting the same conduct in another state, territory or possession of the United States, and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(b) (1) Committed a violation of RSA 631:1 after having previously been convicted of an offense in violation of RSA 631:1, or any other statute prohibiting the same conduct in another state, territory or possession of the United States, if the earlier offense also involved a victim under 13 years of age where the serious bodily injury resulted in brain damage or physical disability to the child that is likely to be permanent; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(c) (1) Committed a violation of RSA 630:1-b after having previously been convicted of an offense in violation of RSA 630:1-b, or any other statute prohibiting the same conduct in another state, territory, or possession of the United States; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release.

VII. If the court has made the findings authorized by RSA 651:6, VI, and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment of life without parole.

Chapter 651 allows the court to include, as a condition of probation or conditional discharge, restitution to the victim as provided in RSA 651:62-67 or performance of uncompensated public service as provided in RSA 651:68-70, and establishes parameters and obligations for restitution. This applies to much more than shoplifting. In addition, the extended prison term provisions under 651:6 now includes the use of an emergency exit or other action that causes an alarm to sound.

TITLE XXXI: TRADE AND COMMERCE

CHAPTER 358-Q: SALE OF CERTAIN ITEMS

358-Q:1 Restriction on Sale of Certain Items. –

I. In this section "flea market" means any location other than a permanent retail store at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors. This term shall not include those persons who sell by sample, catalog, or brochure for future delivery, or those persons who make sales presentations pursuant to a prior invitation issued by the owner or the legal occupant of the premises.

II. No person shall sell, offer for sale, or permit the sale at any flea market of the following products:

(a) Infant formula.

(b) Food manufactured and packaged for sale and consumption by a child under 2 years of age, for which the expiration date has passed.

(c) Drugs, as defined in RSA 146:2, II(1) and (2); provided that this subparagraph shall not include durable medical equipment.

III. Any other product being offered for sale at a flea market beyond the expiration date shall be clearly marked indicating that the sale expiration date has passed and should be noted by the buyer.

IV. Any person who violates any provisions of this chapter shall be punished by a fine of up to \$100 for each violation.

Source. 1997, 224:1, eff. Jan. 1, 1998.

RMANH requested this language to address the rash of theft in large quantities of these particular items.

TITLE LXII: CRIMINAL CODE

CHAPTER 638: FRAUD

638:29 Use of Scanning Device or Reencoder to Defraud Prohibited. –

I. A person is guilty of the crime of using a scanning device or reencoder to defraud when the person knowingly:

(a) Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or

(b) Uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

II. Using a scanning device or reencoder to defraud is:

(a) A class B felony if such person has one or more prior convictions in this state or another state for the conduct described in this section.

(b) A class B felony if such person used a scanning device or reencoder to defraud 2 or more times in violation of this section.

(c) A misdemeanor in all other cases.

Source. 2003, 210:1, eff. Aug. 29, 2003.

RMANH was the impetus for this legislation as well. The NH legislature has not made an update of this language, to address contactless payment methods, a priority.

TITLE LII - ACTIONS, PROCESS, AND SERVICE OF PROCESS

CHAPTER 507 - ACTIONS

507:8-f Civil Actions for Theft. – When the conduct of a person would constitute willful concealment as provided in RSA 637:3-a, the person shall be liable to the merchant for damages as provided in RSA 544-C:1. An action for recovery of damages, pursuant to this section, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of such court, or in any other appropriate court. The provisions of this section are in addition to other civil remedies and shall not limit the rights of merchants or other persons to elect to pursue other civil remedies.

Source. 1986, 222:4. 1992, 106:3. 2009, 209:6, eff. Jan. 1, 2010.

TITLE LV -PROCEEDINGS IN SPECIAL CASES

544-C:1 Recovery of Civil Damages for Shoplifting. –

I. For purposes of this chapter, "shoplifting" shall mean shoplifting or willful concealment as defined in RSA 637:3-a.

II. A person who shoplifts shall be liable for civil damages to the merchant up to \$400 plus the merchandise or the value of the merchandise if it has been damaged or rendered unrecoverable.

III. A merchant may recover civil damages for shoplifting by bringing suit in a district court or by executing a settlement agreement in the form set out in paragraph IV of this section.

IV. A merchant and a person accused of shoplifting by such merchant may agree to execute a civil settlement agreement for up to \$400 in civil damages, plus the return of the merchandise or the replacement value of the merchandise within 60 days of the date the agreement is signed. The form of the settlement agreement shall be as follows:

Settlement of Claim for Taking Merchandise Without Payment

The undersigned, _____, having failed to pay for certain merchandise, more specifically described as follows _____, hereby agrees to pay, within 60 days of the date this agreement is signed, civil damages up to \$400, plus the merchandise or the replacement value of the merchandise. The parties agree that this payment shall constitute full and complete payment of damages to the following establishment _____. The following establishment _____ agrees to waive any and all claims it may have for civil damages.

Nothing in this agreement shall constitute an admission of guilt for purposes of criminal law. If this agreement is signed and payment is made in full within 60 days, no police report or criminal complaint will be filed by the merchant relative to this incident. However, nothing in this agreement can or will bar the state of New Hampshire from instituting such criminal prosecutions as it deems necessary.

Party #1

Party #2 for the following establishment:

Source. 1992, 106:2. 2006, 84:1, eff. July 4, 2006.

This allows a retailer to avoid the criminal process and enter into a civil agreement to receive the merchandise, or its value, plus a penalty. Many times a case of shoplifting is minor and the expense of taking the crime through the criminal process is more than the value of the merchandise itself. The minor amendment here in the 2006 session changed the amount allowed for civil recovery from \$200 to "up to \$400".

TITLE LXII - CRIMINAL CODE CHAPTER 627 - JUSTIFICATION

627:8-a Use of Force by Merchants. –

I. A merchant, or his or her agent, is justified in detaining any person who he or she has reasonable grounds to believe has committed the offense of willful concealment, as defined by RSA 637:3-a, on his or her premises as long



as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

II. A motion picture theater owner, or his or her agent, is justified in detaining any person who he or she has reasonable grounds to believe has committed the offense of unauthorized recording in a motion picture theater on his or her premises, as defined by RSA 644:19, as long as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

Source. 1981, 344:2. 2005, 70:1, eff. Jan. 1, 2006. 2009, 209:8, eff. Jan. 1, 2010.

III. Notwithstanding RSA 594:10, a peace officer may arrest a person who has been detained pursuant to this section, without a warrant, if the peace officer has probable cause to believe that the person has committed the offense of willful concealment and if the merchant or his or her agent witnessed the offense or if the unlawfully obtained goods or merchandise of the store were recovered from the person.

A weakness in the preexisting law led to this change in statute via HB 1184 in 2012. This declares that police have probable cause to make an arrest "upon the statement of the merchant or the merchant's agent or employee that he or she witnessed the offense, or if unlawfully obtained goods or merchandise of the store were recovered from the person". Under RSA 594:10 an arrest can be made without a warrant, for example, in the case of felony, if the person is expected to flee and / or destroy evidence, or the officer witnessed the crime. This change is aimed primarily at shoplifting cases where police are asked to make an arrest based upon video tape of persons concealing merchandise.

TITLE LXII - CRIMINAL CODE CHAPTER 638 - FRAUD

638:6-b Dealing in Counterfeit Goods. –

(highlights)

II. Any person who purposely or knowingly manufactures, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell, or distributes any goods bearing or identified by a counterfeit mark shall be guilty of a class A misdemeanor for a first offense and a class B felony for any subsequent offense. Each individual good bearing or identified by a counterfeit mark shall constitute a separate offense.

III. Evidence that a person had possession, custody, or control of more than 25 items bearing a counterfeit mark shall be prima facie evidence that the person had possession with the intent to sell or distribute the items.

IV. Any goods that bear or consist of a counterfeit mark used in committing a violation of this section shall be subject to forfeiture to the state of New Hampshire and no property right shall exist in such property. At the conclusion of all criminal proceedings, the court shall order such items be destroyed or disposed of in another manner with the written consent of the trademark owner.

V. (a) The following property is subject to forfeiture for an offense under this section:

- (1) Any property used by the defendant in any manner to facilitate, aid, or abet, a violation of this section; and
- (2) Any property constituting or derived from any proceeds obtained by the defendant, either directly or



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