

1 **14-1610. Shoplifting; conversion of property without payment; essential elements.¹**

2 For you to find the defendant guilty of shoplifting [as charged in Count _____]^{[4]2},
3 the state must prove to your satisfaction beyond a reasonable doubt each of the following elements
4 of the crime:

5 1. [~~The~~ defendant] _____ (*name of defendant*) [took
6 possession^{[2]3} of]^{[3]4} [concealed] _____ (*describe merchandise*);

7 2. This merchandise had [a] an aggregated retail market value^{[4]5} [over
8 \$ _____^{[5]6}];

9 [[3]. This merchandise was offered for sale to the public [~~in a store;~~]⁶ by
10 _____ (*name of retailer or store*), a retailer⁷, located at _____ (*address of*
11 *retailer or store*);

12 4. At the time [~~the~~ defendant] _____ (*name of defendant*) took this
13 merchandise, [~~the~~ defendant] _____ (*name of defendant*) intended to take it without
14 paying for it;

15 5. This happened in New Mexico on or about the _____ day of
16 _____, _____.

17 USE NOTES

18 1. If using the aggregated retail market value of merchandise based on a person
19 engaging in shoplifting more than once over a ninety (90)-day period under NMSA 1978, Section
20 30-16-20(D), each discrete act of shoplifting should be instructed separately unless the parties
21 agree to include multiple instances within a single instruction, in which case this instruction may
22 be modified accordingly. If there is dispute about whether the incidents occurred within a ninety
23 (90)-day period, a special verdict form in UJI 14-1610A NMRA should be used.

1 [1-] 2. Insert the count number if more than one count is charged. If a particular count
2 number includes multiple instances of shoplifting within a ninety (90)-day period which the parties
3 instruct on separately, then a letter referring to each incident should be given after the count
4 number.

5 [2-] 3. Use UJI 14-130 NMRA if “possession” is in issue.

6 [3-] 4. Use applicable alternative.

7 [4-] 5. See UJI [14-1602] 14-1617 NMRA for the definition of aggregated retail market
8 value. Use this bracketed provision for merchandise if the value is over \$250. State whether the
9 value of the merchandise at issue is ["over \$250," "over \$500," "over \$2,500," or "over \$20,000."]
10 “over \$250,” “over \$500,” “over \$2,500,” or “over \$20,000.” If the charge is a petty misdemeanor
11 (\$250 or less), do not use this bracketed provision.

12 [5-] 6. If the charge is a second-degree felony (over \$20,000), use \$20,000 in the blank. If
13 the charge is a third-degree felony (over \$2,500), use \$2,500 in the blank. If the charge is a fourth
14 -degree felony (over \$500), use \$500 in the blank.

15 [6-] 7. [~~For use if there is an issue as to whether or not the items taken were merchandise~~
16 ~~in a store.~~] If there is an issue about whether the merchandise was taken from a retailer, UJI 14-
17 1618 NMRA, the definition of “retailer,” should be given.

18 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as
19 amended by Supreme Court Order No. S-1-RCR-2025-00167, effective for all cases pending or
20 filed on or after December 31, 2025.]

21
22 **Committee commentary.** — See NMSA 1978, § 30-16-20 (2023). UJI 14-1610 NMRA
23 is to be used when the defendant is accused of taking possession of or concealing merchandise

1 with the intent to convert it without paying for it. UJI 14-1611 NMRA is to be used when the
2 defendant is accused of altering a price tag or other marking on the merchandise or transferring
3 the merchandise from one container to another with the intent to deprive the merchant of all or part
4 of its value.

5 ~~[Although the statute, in defining degrees of the offense, uses the term "value," without~~
6 ~~specifying how value is to be determined, the statute is interpreted to mean "market value." *State*~~
7 ~~*v. Richardson*, 89 N.M. 30, 546 P.2d 878 (Ct. App. 1976). *See also* commentary to UJI 14-1602.]~~

8 NMSA 1978, Section 30-16-22 [~~NMSA 1978~~] creates two presumptions in the offense of
9 shoplifting. The first is the presumption that one who willfully conceals merchandise intends to
10 convert it. The second is the presumption that merchandise found concealed on a person or in [~~his~~]
11 that person's belongings has been willfully concealed. If the state is relying on either of these
12 presumptions, UJI 14-5061 NMRA, Presumptions or inferences, should be given.

13 Section 30-16-20 was amended in 2023 to provide definitions for "aggregated retail market
14 value" and "retailer," which are now set forth in UJI 14-1617 NMRA and UJI 14-1618 NMRA,
15 respectively. *See* 2023 N.M. Laws, ch. 194, § 1 (effective June 16, 2023). In addition, the
16 Legislature added Subsection D, permitting the prosecution to charge an individual with larceny
17 "based on either the aggregated retail market value of merchandise shoplifted from a single retailer
18 at a single location or in a single charge based on the aggregated retail market value of merchandise
19 shoplifted" when the "individual has engaged in shoplifting more than once over a ninety-day
20 period." *See* § 30-16-20(D). Although this language gives prosecutors the option of either pursuing
21 multiple incidents of shoplifting as separate charges or of relying on multiple incidents of
22 shoplifting to elevate a single charge to a higher degree of offense, the Committee believes that
23 each discrete act of shoplifting should be instructed separately unless the parties agree otherwise.

1 The Committee believes that separate instructions for each discrete incident will ensure that the
2 jury resolves any disputes about a defendant’s involvement at a particular location on a particular
3 date or about the amount taken from that location on that date.

4 Furthermore, if the parties dispute that the incidents occurred within a ninety-day period
5 and determination of precise dates is required, the Committee believes that use of the special
6 verdict form in UJI 14-1610A NMRA will ensure that the jury resolves the dispute. The Committee
7 does not believe such specificity is necessary for the date requirement in UJI 14-1610 because it
8 applies to both separately charged and combined incidents. Additionally, a more generalized date
9 range, as represented by the “on or about” language contained in UJI 14-1610, may not give rise
10 to disputes about whether the incidents occurred in a ninety (90)-day period. Finally, even if the
11 jury uses the special verdict form in UJI 14-1610A and finds that the specific date of an incident
12 is outside the ninety (90)-day period allowing for aggregation, the conviction can be upheld as a
13 standalone incident based on the jury’s findings under UJI 14-1610.

14 [As amended by Supreme Court Order No. S-1-RCR-2025-00167.]