
SURVIVAL GUIDE

FOR THOSE ACCUSED

OF A THEFT CRIME

IN SAN DIEGO



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Survival Guide for Those Accused of a Theft Crime in San Diego

First Edition

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Law Office of David P. Shapiro, A Professional Law Corporation

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Introduction

Accusations fit on a bumper sticker; the truth takes longer. –Michael Hayden

Police recently arrested you on theft crime charges in San Diego. Since that moment, your life has been flipped upside down. Some people literally shake when they see the flashing lights or feel the handcuffs on their wrists. Others report feeling shocked, horrified, embarrassed, and afraid.

It's easy to feel so overwhelmed that you start making mistakes that compound the challenges in the immediate weeks ahead. It's time to take a deep breath, clear your head, and plan your next steps.

Understanding Theft in San Diego

First and foremost, recognize that not all theft crimes are equal.

For instance, in California, **larceny-theft** occurs when you intend to take another person's property (e.g. money, personal items, real estate, or funds owed for labor.)

Theft by false pretenses, by contrast, happens when you lie to convince someone to give you property. For example, Trevor finds a car for sale online. He promises to pay half upfront and return later with the remainder, but he drives off and never returns with the second half.

Petty theft occurs when the items stolen are worth \$950 or less. **Grand theft** occurs when the value is greater than \$950. (Under

certain situations—for instance, sometimes when you steal a firearm—you can be charged with grand theft even if the item is worth less the \$950.)

Defending Your Rights and Reclaiming Your Life

The hours after your arrest are crucial. Here's a short checklist of what you should be focusing on:

1. **Research and retain a quality, locally experienced, criminal defense lawyer;**
2. **Prioritize your personal/professional obligations.** For instance, you may need to break the news to loved ones, protect your job, arrange for alternative care for children, and much more;
3. **Educate yourself** about your charges and legal options moving forward.

In this eBook, we'll walk you through exactly what you need to do to regain control of your future after being accused of committing a theft offense. This content should serve as a complement, not a substitute, to meeting with a reputable criminal defense law firm.

To defend a theft crime charge, call the Law Office of David P. Shapiro for a confidential [case evaluation](#) at (619) 295-3555.

What Happens After Your Arrest for Theft?

Perhaps you and a few friends raided a store in a moment of senseless debauchery. Or maybe you stole a car or bike as part of a gang initiation—despite serious misgivings. In any case, the police caught you, and now you're panicking about what's going to happen next.

Here's what you need to know.

Legal Procedures During an Arrest

Police must take certain steps during the arrest that begin the moment you are detained. Law enforcement must inform you of the following rights, should the prosecutor wish to introduce those statements into evidence at trial, before they can begin asking questions:

- *It is your right not to answer questions, and instead remain silent.*
- *Prosecutors can use what you say against you in court, if you do speak.*
- *You can speak to a lawyer before responding to the police and have one present during questioning.*
- *The court can appoint you a lawyer before questioning begins, if finances are an issue.*
- *You can stop answering questions and request an attorney at any point.*

Police Procedures During Booking

Law enforcement may pat down your clothing while you are detained to see whether you're carrying anything that could be used as a

weapon. You can expect your entire body to be searched during the jail booking process. The police may also try and conduct a more extensive search that includes your vehicle or immediate surroundings to see if they find evidence of stolen goods or any other crime.

Police will ask you to sign an inventory of what they receive if they remove any of your belongings. Such inventoried items usually include but are not limited to your keys, wallet/purse, and cell phone. You will be asked for personal identifying information such as your date of birth and address during the booking process. Police will also request your fingerprints and take your booking photo. If identity is an issue, you may be required to participate in a line-up.

Post-Booking

The prosecutor needs to file charges within 3 business (court) days of an arrest. At your arraignment you will be advised of the charges against you and your constitutional rights. You will almost always, irrespective of the state of the evidence against you, enter a plea of not guilty at your arraignment, future court dates will be set, and the issue of your bail status will be addressed.

In our next chapter, we'll explore different types of theft in greater detail and discuss how and when to work with an attorney.

Punishments for Theft Crimes in California

The severity of your punishment, if convicted, will depend on what you're accused of stealing and how you are alleged to have stolen it.

Grand theft involves taking property worth more than \$950. For instance:

- You shoplifted electronics from Best Buy to mine Bitcoins;
- You embezzled thousands of dollars from your company's secret slush fund that had been set aside to buy holiday gifts for employees;
- You stole a couch, TV set, and artwork from a home.

A grand theft misdemeanor can be punished by up to a year in county jail. Felony grand theft can result in up to three years of incarceration.

Petty theft involves stealing property worth \$950 or less. For instance:

- You and some friends swiped snacks and Red Bulls from a 7-11;
- You borrowed a gaming system from a friend and never intended to return it;
- You lied to a neighbor to get her to give you property.

Petty theft offenders can face a \$1,000 fine and/or up to six months in jail.

How a Qualified Defense Attorney Can Help

Theft is treated seriously in court and a conviction will stay on your record. A conviction will show up as a crime of moral turpitude when future employers or landlords run a background check on you. An

experienced San Diego criminal defense attorney can help you fight back, potentially reducing the severity of your penalties, or even getting the charges dropped completely. A lot will depend on how you handle yourself while the case is pending and on which criminal defense law firm you hire.

When qualifying prospective attorneys, look for someone with these traits:

- **Empathy.** The people accusing you aren't on your side. Your friends and family might be looking at you with disappointment or anger. You need an attorney who understands both the legal and emotional implications of your charges.
- **Experience.** The law firm you hire should have successfully handled many cases like your own.
- **Results.** Hire a San Diego criminal defense law firm with a proven record of success.

How to Break the News to Family and Friends About Your Arrest

One of the hardest tasks you'll face in the coming days after a theft arrest is breaking the news to the people you love and respect. Whether you are guilty or not, you are likely dreading these conversations:

- Maybe you're bracing for an obnoxious "I told you so!" from a stepparent who never trusted you or your friends.
- Maybe you're worried your girlfriend will break up with you when she hears the news.
- Maybe you're terrified of getting kicked out of school and/or losing a professional license you have worked so hard to attain.

Here are some insights to help you navigate the days and weeks ahead.

Consult an Experienced San Diego Defense Law Firm

It may be tempting to divulge details to your spouse or mother. But revealing these details can complicate your legal situation. Talking to your loved ones about the arrest can also make *their lives* more difficult. Your first step should be to retain the services of a qualified criminal defense attorney. He or she can advise you about how, if at all, to break the news to family and friends.

Practice Before You Have Any Conversations

Given the ultra-sensitive nature of what you'll be discussing—as well as the emotional charge of the news and the potential implications for your relationships—it's worth your time to prepare. This sounds silly,

but it's a useful process. Almost as if you were getting ready for a job interview, create a script for what to say and how to say it. Anticipate questions and reactions, and plan in advance how you'll respond. Your attorney can help you do this and give you guidelines for what to say and, sometimes more importantly, what not to say.

The point of this planning isn't to avoid conflict, nor is it to stay "on script." It's to help you concentrate and avoid making a bad situation worse.

To the extent that your lawyer deems appropriate, be forthcoming. Just because you made a mistake or used bad judgment doesn't mean you're a "bad person" or beyond redemption. But remember to choose your words carefully.

Avoid Texts, Letters or Emails

A text, letter, or email generally leaves too much room for miscommunication. Let your loved ones know you have something serious to share with them. Set aside a time for private conversation. Realize that their reactions are likely motivated by concern, even if they react negatively at first.

Explain What They Can Expect

Your loved ones will want to know what might happen to you and how it impacts them. You should have a better idea if you've already met with your lawyer. Speak from the heart. Explain what the allegations are without necessarily admitting guilt. If the conversation becomes intense, stay calm. Allow them to react. Realize they're dealing with some of the same fear and uncertainty you felt when you were first arrested. Give them space to process what they're feeling, and keep

communication lines open even if the first conversation doesn't go well.

Before you discuss details of your arrest with anyone, consult with an experienced San Diego theft defense law firm.

How to Save Your Job Following an Arrest

You worry about the legal and personal consequences when you get arrested for theft, but you also need to think about how it might impact your job. Your boss might already be aware something is up if you missed work because you were in jail. If not, you may wonder at what point (if any) you are required to tell your employer. You may be tempted to try to protect your reputation and wait until the legal outcome is determined. Sometimes saying less is more to your employer, but each situation is different.

After Your Arrest

You are not required to tell your boss about an arrest as soon as it happens, but some employee handbooks or contracts state that you must provide notice of any criminal activity. Talk to your lawyer about your specific situation and see what they advise you to do.

Sometimes it may be better to talk to your superiors about what is alleged to have happened before they find out about it on their own. The last thing you want is for them to be caught off guard if detectives show up to interview them.

When in doubt, blame your attorney for why you cannot divulge too many details. Tell them that your attorney has advised you to limit what you can say about the facts of the case. Relay the arrest allegations—say that's all they are, *allegations*—and nothing more.

Also, practically speaking, realize that you're going to need time off for hearings and other court obligations, and it will be easier to arrange if you're not trying to hide your arrest. If you're lying to a boss about

your absences, that could make it worse as your boss might choose to fire you for excessive absences and/or dishonesty.

What Your Employer May Do

In the event your employer suspends or terminates your employment after an arrest, try to get that notice documented in writing. Do not try and talk your way into staying by sharing additional, otherwise confidential, information about the charges.

The facts of the arrest may have an impact on an employer's decision whether to suspend or terminate your employment. The employer is responsible for maintaining a safe work environment: the company could be sued if they knew an employee showed signs of potentially creating a dangerous work environment and did nothing to protect other employees from being harmed. Therefore, if the charge includes an element of violence (i.e. assault with a deadly weapon), the employer is more likely to terminate or suspend you, than if the arrest related to a non-violent offense (such as shoplifting/petty theft).

The scope of your employment will also determine how your boss will respond. For example, if you regularly handle merchandise or are responsible for company receipts, your employer may feel the company is at risk of theft. As such, you may find yourself reassigned to a different position with less fiduciary duties.

Your arrest may also have consequences, depending on the nature of the company's business. For example, if you work with children, and are charged with a crime of moral turpitude, your boss is more likely to terminate your employment. Upon conviction, they may be legally required to do so. Potential adverse consequences on professional licenses as a result of an arrest will also impact your continued employability.

Remain calm and keep lines of communication open. Explain how the case will affect your work, and proactively come up with remedies to improve the situation, such as:

- Have a calendar ready and offer scheduling suggestions for missed work due to incarceration, court appearances, etc.
- If the charge makes it difficult to keep you in your current role, suggest being temporarily transferred to another position within the company.
- If you are suspended in some way, ask about possible reinstatement upon sentencing or acquittal.
- Refer your employer to your attorney if they want to know more about the facts of the case and court procedures. Be sure to let your attorney know what you are, and are not, comfortable with your employer knowing about your case.

Just as you should prepare the conversation you'll have with family and friends, plan what you are going to say to your employer. Communicate effectively, respond thoughtfully, and then perform at work to the best of your ability.

Misdemeanor Vs. Felony Theft

A common misconception is that petty theft is automatically a misdemeanor, while grand theft always results in a felony. However, the determination is based on what was stolen, the way the theft was conducted, and whether or not the accused has a previous criminal history. Since a felony carries more serious and long-lasting consequences than a misdemeanor, it is important to understand the difference between the two charges.

Misdemeanor vs. Felony

While there are many other consequences for a conviction, the basic dividing line between a misdemeanor and a felony is the maximum allowable custodial sentence for that crime. In a misdemeanor, the longest possible custodial sentence is 364 days or less (i.e., one year maximum) in jail. Felony sentences could be greater than one year in custody and, depending on the exact charge, may need to be served in state prison as opposed to local jail.

What Qualifies as Theft?

People typically think of theft as picking pockets, shoplifting, or forcing someone to turn over goods at gunpoint, but the following offenses can also be considered theft:

- Lying about ownership to sell items to a pawn shop;
- Selling or turning over a debit card or credit card without the account holder's permission;

- Using someone else's financial information to qualify for property or services;
- Keeping property you rented or borrowed—even if you had permission to have it in the first place.

Petty Theft vs. Grand Theft

As we discussed in a previous post, the law considers something to be *petty theft* if the total value of the stolen property is \$950 or less. If the stolen property is more than \$950 in value it is considered *grand theft*.

Petty theft is almost always a misdemeanor, with a county jail sentence of up to six months and a fine of as much as \$1,000 for those convicted of the offense.

There is also an infraction version of the petty theft statute which would result in neither jail time nor probation, rather a fine of a few hundred dollars.

Penalties can be increased, however, if other aggravating factors are present. For example, if the theft involved a weapon or if the accused has certain prior convictions.

A theft crime of shoplifting is a misdemeanor, punishable by up to a year in jail. To be convicted of shoplifting in California, it must be proven that the defendant planned to steal merchandise, before even entering the store during normal business hours. If the prosecutor cannot prove that intent, then a defendant will probably face another charge (i.e. petty theft).

The prosecutor can charge grand theft as a misdemeanor or as a felony. Felony grand theft is punishable by imprisonment up to three years.

It's also important to note that, in California, you may also face civil penalties for theft in addition to criminal punishment.

Should I Accept a Plea Deal or Go to Trial?

Let's say, for example, Elsa, a 19-year-old college student, stole a bicycle in Balboa Park. The prosecutor discovers that the bike was worth \$2,500. However, because of an email in evidence, the prosecutor is certain that this is the first time Elsa ever stole anything. Elsa did it as a sorority dare, and she believed the value of the bike was no more than \$200. While the value of the bike is high enough to meet the standard of a felony grand theft charge, the prosecutor offers Elsa a plea deal to a misdemeanor charge. What are the factors that Elsa (and you) should know, before accepting that offer?

Traditionally, in a plea agreement, a more serious charge is dismissed in exchange for a guilty plea being accepted to a lesser charge. Sometimes the plea agreement is solely based on sentencing (i.e. where the accused pleads to the charge the prosecutor filed but there is a favorable agreement with respect to sentencing).

At the standard plea hearing, the defendant will testify—often on a fact- by-fact basis—that they committed the crime, and that they are prepared to accept a certain punishment, as agreed upon. The defendant also must initial and sign a “change of plea” form where they are advised of the rights they have, and the rights they are giving up if they plead guilty. These rights include but are not limited to the right to trial, the right to appeal, and the right to confront and cross-examine witnesses.

The goal of any plea agreement is for the defendant to be in a better position than they would be if they go to trial and get convicted of the offenses which would be dismissed as part of the plea agreement.

Another factor to be aware of: the criminal conviction will likely be used against the defendant in any related civil proceeding, greatly due to the lower burden of proof in non-criminal proceedings. Even if a civil case is not filed, the criminal court may retain jurisdiction for purposes of any restitution claims. To use our earlier example, if the bike owner wants to sue Elsa for damage to the bike, or if the owner turns out to be a professional bicyclist who could not earn a living until he recovered and repaired his bike, Elsa's guilty plea could lead her to paying not only for the bike damage, but also for the bicyclist's lost income.

There are many reasons why defendants opt for a plea deal over exercising their constitutional right to a jury trial. Sometimes the evidence against them is overwhelming. Other times, the accused prefers the known outcome of a plea deal as opposed to the unknown of trial. The additional costs, in time, money, and the emotional toll trial can take also factors in to the equation.

The most important aspect of a plea deal is that the defendant is making a knowing and intelligent decision as to what they believe is in their best interests. That is where having a highly skilled and experienced criminal defense attorney by your side can make all the difference in providing you with all the answers you need to feel comfortable in the decision you ultimately make.

Innocent? Do You Still Need an Attorney?

Perhaps an eyewitness to a crime swore she saw you leave the scene with someone else's wallet, but you couldn't have done it-you were across town at the time. Or maybe you were hanging out with friends who decided to do something stupid, like shoplift at the mall. You didn't actively participate, but the police still arrested your entire crew, including you.

If you know that you're innocent of a theft charge, can't you just plead your case directly to the court? After all, you've got nothing to hide. The truth, as they say, should set you free.

In an ideal world, maybe things would work that way. Unfortunately, our world is full of imbalances, and innocent people can be treated very unfairly by the system, sometimes even getting wrongfully convicted.

Avoid the mistake of treating your charges lightly, assuming the system will somehow exonerate you without effort on your part. Errors that you make in your defense, even days or weeks after your arrest, can have profound consequences for your future. Those who are wrongfully accused of a crime need a quality criminal defense lawyer more than ever. A client who represents themselves when facing criminal charges has a fool for a lawyer.

Basic Concepts to Understand About Best Defending Yourself If You're Factually Innocent

An experienced San Diego theft crime defense lawyer can help you accomplish the following critical tasks:

- Investigate the facts of your arrest, and the behavior of law enforcement involved, to make sure your rights weren't violated;
- Prepare your case to prove your factual innocence and exclude any arguably incriminating evidence;
- Correctly file applicable court motions correctly and on time;
- Work with the judge and the prosecutors to come up with a fair and reasonable resolution;
- Leverage the relevant law logically. If you defend yourself, the court will not give you even the slightest bit of deference as a non-lawyer; any mistakes you make will still be yours. They can, and will, risk you being convicted and incarcerated for a crime you did not commit.

Important Points to Keep in Mind

- **Guilty people claim innocence, too.** Every day, the courts are filled with people who committed a crime but who are willing to swear on a Bible that they didn't. Judges can't see your heart, and they spend every day listening to criminals who are very good liars.
- **There could be a case against you.** Law enforcement already has evidence they plan to use to establish your guilt. Hire a qualified attorney as soon as possible to preserve evidence in your favor.
- **You don't know what you don't know.** Unless you're an attorney practicing in the area where your court appearances will take place, you don't know the process, or the key players involved. A locally experienced criminal defense lawyer knows the arguments prosecutors typically use and how each judge has ruled on similar issues in the past.
- **A conviction can be profoundly costly.** You intuitively might think it's a waste of money to pay an attorney when you're innocent, but the cost of a conviction can be devastating. Even a

misdemeanor conviction can include jail time and significant fines and court costs. A theft conviction also tells future landlords, lenders, and employers you may have questionable ethics as theft convictions are crimes of moral turpitude.

Guilty? Why Bother Hiring an Attorney?

You know you did it, and so do the police and prosecutor. They may have video footage of you committing the crime, or maybe authorities caught you red-handed with the stolen property in your possession. Perhaps a witness watched you put a plan into action, and they are willing to testify. You may wonder what's the point in hiring a defense attorney when you plan to plead guilty.

First, a **qualified attorney can help you plead correctly**. The nature of your theft charge is everything. The same act could be construed very differently, depending on how it's presented. Subtle differences could impact the severity of your punishment. For instance, pleading guilty to a felony theft charge (versus a misdemeanor) can have life altering adverse effects.

Also, you (probably) don't know the law. You don't know whether you're guilty under the law, even if you did the act. Just because someone does an act which, on its face, appears to be a crime does not mean all the elements of the alleged crime can be proven beyond a reasonable doubt. Also, **there could be mitigating factors** that might encourage the court to be lenient with you in the event you are convicted. Those factors should be presented most appropriately by a qualified, experienced, criminal defense lawyer.

For instance, maybe you took something from a store (e.g. a scarf) and walked out without paying. You technically took the property without the owner's consent, but you genuinely did it by accident, because maybe you were distracted by an email from your brother. If you can demonstrate that you didn't have the requisite intent, you may be able to get the charges dismissed or at least significantly reduced.

Or maybe you live in a bad neighborhood, and a gang member said that you had to steal some prescription drugs from a pharmacy or he'd hurt your family. In such a case, under the doctrine of necessity, you may be able to avoid criminal liability. In such an instance, the law affords you a defense when you only did the act because you had to protect yourself and loved ones from a greater harm. It is not a matter whether you committed the act alleged; rather, it is whether the law affords you a viable defense.

In addition, an attorney can **assist with sentencing negotiation**. You may be eligible for alternative sentencing, such as diversion programs. Without a good lawyer on your side, you might never learn about these options and fall victim to an overzealous prosecutor.

Some people don't hire an attorney because they feel like they deserve punishment. They realize they made a mistake, and they trust the judge to assign an appropriate sentence. They choose to represent themselves, thinking if they answer questions honestly, the feelings of guilt and shame will soon end. Going that route, however, often makes things worse. For instance, you might find yourself providing information that leads to prosecution for another offense and/or closes avenues to certain defenses you may have to your current charges.

One of the biggest reasons people don't hire an attorney is they **don't think they can afford one**. The Law Office of David P. Shapiro offers free case evaluations to those seriously interested in hiring the firm. Part of that evaluation process, assuming both parties (client and law firm) wish to work together, is to evaluate your financial options moving forward. Just because you did something wrong does not mean you must (or should) face your theft crime charges alone.

What Are Your Rights Following an Arrest?

Being arrested—for shoplifting, stealing a car, or any theft charge—can be a shocking experience. In addition to emotional pain and humiliation, the arrest can cause physical trauma, especially if you were involved in an altercation or if the police had to aggressively pursue you to initiate your arrest. Processing what happened may take time. Did police treat you appropriately before, during, and after the arrest? What should you do to avoid making a bad situation worse? We address these and other common concerns below:

Can Police Enter Your Home to Arrest You for Theft?

The answer depends on context. If the police have a warrant, you must allow them access. Police also have the right to enter without your permission if they think someone inside is in danger, or if there is a crime in progress. If the police do not have a warrant, and you refuse consent to enter, yet they do anyway, your attorney may be able to explore filing a suppression motion alleging an illegal search and seizure to keep certain items out of evidence.

What Rights Do You Have at the Police Station?

Police will take you in for booking and questioning after your arrest, but that doesn't mean you are guilty of a crime. The entire time you're there, you have the right to be treated respectfully. You also have the right to know why you've been arrested and to speak with the officer in charge of your personal welfare. You have the right to request someone be notified you were arrested, and you can speak privately with an attorney.

How Should You Handle Police Questions?

The law requires the arresting officer to read you your rights prior to questioning while you are detained. One of those rights is to not answer any questions. You may believe your case is a simple matter you could clear up quickly if you explain things. However, even seemingly innocuous statements you make could inadvertently complicate your legal situation. It's always best to speak with a qualified criminal defense attorney before talking to law enforcement. You cannot be penalized for choosing not to answer questions, but anything you say can and will be used against you in court. You also have the right to refuse any tests until you consult with an attorney. Less is more when it comes to your interactions with law enforcement.

How the Bail Process Works

If you're arrested and charged with theft, you will most likely have to pay bail to get out of jail. How does this process work? What do you need to do to protect yourself and minimize the financial consequences?

Clearing Up Misconceptions About Bail

Assuming you bail out, it may be weeks or months between the time you are arrested for theft and your first court date. You can pay the amount yourself, agree to a lien against your assets, or obtain help from a bail bondsman. How much bail costs—and whether you even have the option—depends on the nature of your theft crime.

How to Post Bail

- You may be able to sign a statement and get **released on your own recognizance** ("O.R.") to return to court for your court date.
- Assuming you have enough to cover the full bail amount, you can deliver it to the court by **cash or check**. Assuming you make all your court dates, you should receive the money deposited after your case concludes, irrespective of the outcome.
- If you cannot post bail, you may be able to **request a lien against your property**. (This would be an unusual situation in a simple theft case.) It takes longer to arrange for this type of bail, because you must have your property appraised, and the person posting the bail must be able to show they have twice the bail amount in equity in the property. For example, if your bail is set at \$10,000, you will need to prove you have at least \$20,000 equity in the property.

- You can also **hire a bail bondsman**. Typically, you post a percentage of the bail, and the bondsman puts up the rest. The bondsman will likely require upfront payment (generally between seven and ten percent of the bail amount), which they get to keep as their fee.

Bail Hearings in California

The law provides that a reasonable bail must be set in nearly all types of criminal cases. The purpose of bail is to protect the community and to ensure the defendant's presence at all future court hearings. You can request a bail review hearing to have the amount reduced or petition to be released on your own recognizance a few days after the court first sets your bail amount at the arraignment. The judge has the authority to modify or eliminate your bail after weighing the following:

- The crime you allegedly committed
- Your previous criminal record
- The probability you will return for your hearing
- Whether or not the alleged theft involved violence
- Relationship/ties in the community
- Access to leave the jurisdiction. (This tends to be a frequent issue here in San Diego given our proximity to Mexico).

An experienced attorney can help evaluate your bail options and present more favorable conditions to the judge.

The Arraignment Hearing

After you've been arrested and charged with theft, the next step in the legal process is your arraignment hearing. This process informs you of the specific charges against you and gives you the opportunity to enter a plea of guilty or not guilty. The court will not hear evidence or determine guilt or innocence at this point; it will only accept your plea, address bail, and set dates for further exploration.

Arraignment Timing

Every defendant has a right to a speedy trial. Arraignment must take place within a reasonable time after you are arrested; in California that generally means within 48 business hours of your arrest. For example, if you are arrested on a Friday at 2pm, arraignment will need to take place by the following Tuesday. If for some reason you are charged with a crime, and the arraignment doesn't happen until after the permissible time period, your attorney can ask that the court dismiss your case, or, in the alternative, that you be released from custody without bail pending trial.

During Arraignment

The arraignment hearing happens in a courtroom presided over by a judge. You will be advised of your right to trial, to counsel, and your right not to incriminate yourself. You will be advised what charges you face and what the maximum possible consequences for those charges can be.

The judge will ask how you plead after you are informed of the charges. Most defense attorneys advise defendants to plead not guilty at arraignment, irrespective of what happened. This gives attorneys on

both sides time to review the case, and it allows the defendant to think through their options.

The judge may sentence you the same day, and usually does for misdemeanors, if you plead guilty. Your attorney can help negotiate your plea and obtain the best possible outcome in sentencing. A plea of no contest basically means there is evidence you committed the crime, and you don't intend to argue with the prosecution. Despite being treated the same as guilty pleas for all purposes in criminal court, "no contest pleas" are becoming more and more rare, as prosecutors have been tending to refuse to accept them.

Bail Review

With most theft cases, you will be allowed release through your bail payment if you posted bail prior to your arraignment. Your lawyer may be able to negotiate a more favorable bail amount if you are still in custody at the time of your arraignment. Your attorney can also review the evidence against you to start planning your defense, begin negotiating for reduced charges, or possibly even have the charges dismissed.

Possible Defenses to Theft Charges

Law enforcement and prosecutors will use the facts of your case to argue you should be found guilty. A good criminal defense attorney knows what facts to look for as evidence that charges should be reduced or dismissed. Here are some examples of ways to defend against theft charges.

Consent

Police arrested you for stealing a MacBook Air belonging to your friend's college roommate. You're in shock, because your friend told you that you could have the computer. No one in his dorm was using it anymore. The roommate didn't know about that conversation, though. He assumed you just stole it and called the police. You can argue that the charges should be dismissed, because you had been given permission by the owner of the property.

Intent

Perhaps you *did* take the laptop without asking, but you never intended to keep it. You just wanted to complete an essay for class because your own computer broke. So you grabbed your friend's roommate's Mac for a few hours without telling him. The prosecution might struggle to convict if you can prove that you never intended to hold onto the computer for such a period of time where it deprived the owner of its use and enjoyment. By contrast, if you kept the Mac for weeks and ignored the roommate's requests to return it, arguing "lack of intent" would not get you very far.

Intoxication

Maybe you accidentally took too much of a prescription medication and, while in a state of intoxication—and not in your right mind—you stuck your friend's roommate's Mac in your backpack.

Or perhaps you stole in desperation to fuel a drug or alcohol addiction. In that case, perhaps the court could recommend alternative sentencing including drug/alcohol rehab.

Return of Property

The prosecution must prove you intended to keep the property for an extended period of time. If you showed off the MacBook Air you stole to friends, claiming it as your own, this can be counted as evidence. By contrast, if you can prove you intended to return the laptop, maybe you can get the charges dismissed. Intent is always difficult to prove, absent a confession; in theft cases, this fact can work in your favor.

Preparing for Trial

The hardest part of preparing for a criminal trial isn't finding a qualified lawyer or deciding whether you should testify. It isn't paying your attorney on time or planning for the worst-case scenarios. It's the waiting. Here's how you can prepare intelligently:

- **Be honest with your attorney about what happened before, during, and after your arrest.** Do not lie to them, and do not lie on the witness stand if you decide to testify. The attorney cannot actively represent you if they have good reason to believe you are going to lie or enter false evidence. In fact, if you plan on doing so, the attorney may immediately try and withdraw from case. The prosecution is digging into your previous criminal history, reviewing evidence gathered during arrest and talking to everyone involved. Your lawyer must be prepared for everything the prosecution could bring up.
- **Let your attorney talk to witnesses** if they might help your case.
- **Ask your lawyer any questions** you have about the charges, the evidence, and the plan for defense.
- **If the prosecutor or a cop approaches you directly after you are represented, do not respond.** Politely tell anyone who tries to talk to about your case to “talk to [your] lawyer.”
- **Watch what you say to anyone.** For instance, if you're incarcerated while pending trial, do not “spill the beans” to a fellow inmate unless you want that inmate to testify against you.
- **Speak with your lawyer about whether you should testify.** Testifying might allow you to explain your side of what happened or provide context, but it also subjects you to cross-examination by the prosecutor. If you have a prior criminal history, deciding to testify may “open the door” to some of your

past coming into evidence which may be kept out if you do not testify.

- **Behave appropriately.** Follow any rules the court has set leading up to your case. Obey all conditions of your bail. Be respectful of the court and court staff. Avoid being anywhere a crime might take place or hanging out with friends who get in legal trouble. Avoid talking about your case with family members and friends, both in person and online, so information can't be twisted in retelling. Don't talk to the police unless your lawyer is present and advises it. Hold yourself out to be a model citizen, even if you feel stressed and frustrated.

Once the Day Arrives

Dress suitably. Both men and women should dress conservatively. Women should wear a skirt or pants with a nice shirt. Men should wear slacks and a button-up shirt if they do not have a suit. Avoid the following:

- Anything too tight or revealing
- Tank tops, T-shirts or crop tops
- Athletic or exercise clothing
- Shorts or cut-offs
- Clothing with holes in it, even if they came that way

Listen to your attorney's advice regarding how to conduct yourself during trial. Your attorney should (key word) have experience in the courtroom, maybe even with the judge you're going to face, and can help you put your best foot forward.

Sentencing

A sentencing hearing is the last step in a criminal case. An experienced attorney can potentially save you money in penalties and time in jail by helping you prepare.

What Triggers a Sentencing Hearing?

Sentencing hearings take place either when the defendant pleads guilty or no contest to theft charges, or when convicted at trial. At the hearing, the judge allows both the defense and the prosecution to suggest appropriate sentences. The victim and defendant also have the right to personally address the court.

When Does a Sentencing Hearing Occur?

In California, misdemeanor sentences are rendered at least six hours but no more than five days after conviction or the entering of a guilty plea. The defendant can choose to receive an immediate sentence after pleading guilty, or could request sentencing be put off well outside the five day window. Felony sentences are typically scheduled at least 20 court days after the guilty plea or verdict.

What You Can Do to Prepare

One of the reasons it's important to be honest with your attorney when preparing for trial is that the same questions often come up again before sentencing! The judge will weigh aggravating and mitigating factors in deciding your sentence.

Factors that might *mitigate* your sentence:

- You take responsibility for wrong actions;
- You're positively involved in your community;
- You work a job to support a family.

Factors that might *aggravate* your sentence:

- You showed anger and impatience during the trial;
- You failed to follow court instructions;
- You have a previous criminal history.

If you must meet with a probation officer before sentencing, do so with a good attitude. Follow any instructions politely and with humility.

Your attorney will want to show evidence of employment and receive letters in support from those who can attest to your character. If your co-workers or other acquaintances are willing to share with the court examples of your honesty, kindness, and helpfulness, you may receive a more lenient sentence.

It can help to give the court an idea of who you were/are before and after the commission of the crime. Maybe you have a compelling background, such as an abusive childhood, an addiction or painful medical condition that led to desperate decision-making.

Dress conservatively, like you did for your hearing. If the judge speaks to you sternly, remain calm. Accept what the court has to say. With the right preparation and a humble attitude, you may be able to avoid a harsh sentence.

Filing an Appeal for a Theft Conviction

Even if the court found you guilty of a theft crime, you aren't completely out of legal options. An appeals court can overturn a judge's decision in some cases. This process can change your conviction and sentence.

In general, you appeal not because the case was wrongly decided, but because there was some legal error at trial. For instance:

- The judge applied the wrong law;
- A wrong procedure lead to a conviction;
- Your lawyer was so bad their performance adversely affected your ability to have effective counsel;
- The jury illegally discriminated against you because of your race;
- The prosecutor improperly discriminated against a potential juror by striking them without permissible cause.

For instance, the judge should have excluded certain evidence but ended up accepting it anyway—and then the jury used that evidence as the basis of the conviction.

Who Can File an Appeal?

The defendant or their attorney can file an appeal of any conviction or court ruling. However, sometimes plea bargains explicitly require the defendant waive their right to appeal of their sentence, provided they are sentenced consistent with the plea agreement.

Appealing Your Sentence

There's a brief time frame during which you may file a notice of appeal after conviction. How soon you must file your notice of appeal depends on whether your conviction was for a misdemeanor or felony. As a matter of good practice, your attorney can file it for you immediately after sentencing, even if they do not plan on representing you in the appeal. Your appellate attorney will likely request a trial transcript (for felony trials) for use in writing appellate briefs.

Appealing Legal Errors

Sometimes judges make mistakes. If the court issued an inappropriate sentence, gave you penalties unsupported by law, or failed to take into account special provisions, like disability or mental illness, an appellate court may rule in your favor. Higher courts have the authority to vacate the lower court judge's sentence and require you to be re-sentenced. Your new sentence will still be at the lower court judge's discretion.

The judge may state during sentencing the facts that led the court to make the decision. If one of those facts was based on error, you may have grounds for an appeal. You will have to demonstrate both that the facts were incorrect and that they impacted your sentence.

Winning an appeal doesn't necessarily mean you are free from conviction and penalties. You could just have to do the trial or sentence over again with the correct law and legal procedures in place.

Finding a Job After a Theft Conviction

It is not easy to obtain and maintain stable employment without a theft conviction. It certainly won't be any easier after a theft conviction. Employers will view your application with trepidation, fearing you could steal from them as well.

Consider these steps to get your life back on track after a theft conviction.

Research Your Rights

When you're searching for a job, you generally don't have to tell a potential employer about the following:

- Arrests for which you weren't convicted of an offense;
- Ongoing adjudication for non-criminal offenses;
- Offenses for which you were convicted as a juvenile if you've become an adult.

Find out what convictions are on your record and think about positions that might be a good fit. For example, after being convicted of theft, you probably won't get a job at a bank, but you might be eligible for work as a chef, mechanic or graphics designer.

In most situations, employers cannot automatically disqualify you because of a criminal conviction. Employers may also be more likely to hire you if a long time has passed since you were convicted of theft.

Use Your Connections

Your friends and family members may know someone who is hiring. Their endorsement can help you get a job. Ask for letters of

recommendation from people you know, which discuss your character and provide examples of your strengths. Recommendations can also inform potential employers about how you learned from, or changed after, your conviction.

Start Small

You may not be able to work in the same role or make the money you did before your conviction. View entry-level jobs as an opportunity to showcase your ability to be responsible and worthy of trust. Handle small tasks to the best of your ability. Over time, you can work your way up.

Temp agencies may place you in roles that help get your foot in the door. Organizations like the National Transitional Jobs Network and America Works specialize in helping people who are struggling to find work.

Did an Addiction Push You to Steal?

You may have a problem with substance abuse if you made bad choices under the influence of drugs or alcohol. Part of your sentencing might involve treatment in lieu of jail time. One of the best ways to move on and avoid repeating the same mistakes is to address the addiction once and for all, even if you are not ordered to do so by the court.

Signs of Addiction

Food, alcohol, and a range of other substances and activities create feelings of pleasure. Look for these signs to determine whether a pleasurable indulgence has become an addiction.

- **The substance takes priority in your life.** You make choices based around its availability.
- **The substance feels like a reward** when good things happen and a comfort when life goes wrong.
- You regularly find yourself doing or taking **more than you planned.**
- When you think about stopping, it makes you feel **anxious and dissatisfied.** If you try to quit, that feeling intensifies.
- Even after your substance use either directly or indirectly caused a criminal conviction, you are having **a hard time giving it up.**

Treatment Options

Addiction is a chronic disease. Treatment can help you stop using drugs or alcohol, stay away from these substances permanently, and restore relationships they might have damaged. It will be easier to be an effective employee after treatment, and avoiding unhealthy behaviors related to substance abuse will be a desirable outcome for you and your loved ones.

Treatment typically involves detoxification, counseling or therapy, evaluation for mental health conditions like depression or post-traumatic stress disorder, and long-term follow up. Drug and alcohol abuse change the way the brain works. Treatment helps those struggling with addiction develop new skills and attitudes that allow them to make lifestyle changes.

Paying for Treatment

A [study](#) by Substance Abuse and Mental Health Services Administration (SAMHSA) found 22.5 million Americans over the age of 12 need treatment for drug or alcohol abuse, but only 18.5 percent of them receive treatment. One reason is the cost associated with effective treatment.

Even low-cost treatment might not be an option when you're looking for a job and paying legal fees. California offers [free rehab centers](#) individuals can search for by city. If you qualify for Medicaid, there are several [treatment providers](#) that accept it. State funded centers usually require proof of your address and citizenship. They will also evaluate your ability to pay for treatment based on your income, your insurance provider, and other factors.

Surrounding Yourself with the Right People

The people around you profoundly impact your behavior. Those who are honest, trustworthy and kind will encourage those same characteristics in you. Those who engage in substance abuse, violent behavior or crime also affect your choices. Give yourself the best chance for success by associating with people of good character after an arrest and/or criminal conviction.

Probation and parole conditions may force you to cut off family, friends and even move. If you have problems with that, talk to your lawyer about whether you can change the conditions or negotiate such conditions prior to being convicted and sentenced. Probation violations tend to create big problems. For instance, you could have a suspended sentence, but if you violate conditions to hang out with known felons, your sentence may start immediately, and you may be sentenced up to the maximum amount of time the law permits for those charges you were initially convicted of.

Evidence Peers Influence Behavior

A Philadelphia [study](#) followed 7,166 young men to evaluate the relationship between peer behavior and crime. When one young man broke the law, researchers saw a spike in that type of crime committed by others within a one-mile radius. Another [study](#) found that peer pressure is a strong motivator in adult crime. It may be difficult to break ties with old friends, but if you continue to associate with people who commit crimes, your likelihood of winding up just like them increases.

Friends Can Keep You from Healthy Behaviors

Being with friends who drink or do drugs makes it hard to avoid doing the same if you struggle with substance abuse. If you are tempted to steal, and your friends regularly shoplift, going to a retail center with them will almost certainly result in disaster. If being with your friends makes you feel insecure, unhappy or off balance, their friendship may keep you from healthy change.

When friends regularly engage in a behavior together, it begins to feel normal. To break habits, think about who you want to be in the future and surround yourself with people who embody those characteristics.

Choose Friends with Strong Values

Evaluate your strengths and weaknesses and choose friends who are strong in areas where you'd like to see improvement in yourself. If they have daily habits that make them good employees, strong parents, and/or excellent listeners, study those habits and start incorporating them into your life. Seek out people who are uplifting and encouraging, who see the best in you, and who aren't afraid to speak up if they see you falling back into old habits.

Find Friends with Whom You Can Be Yourself

After a criminal conviction, it's a struggle to find a job, fulfill legal requirements and get back on track. Find people who will celebrate your successes and encourage you to reach your goals.

Can You Expunge Your Criminal Record?

If you have a conviction on your record, it's always at the back of your mind. You know your conviction costs you job opportunities, and it's an embarrassing part of any background check. You may be able to have previous convictions dismissed so they can't haunt you in the future.

What Is Expungement?

Anyone who wants to see your criminal record can search for, and obtain, information related to your conviction. [Expungement in California](#) reopens your case and withdraws the guilty verdict, enters a not guilty plea, and dismisses the case. However, "expungement" is not the same as having your records sealed and destroyed. It does not automatically make you eligible to apply for California professional licenses, nor does it necessarily help you avoid immigration consequences. After expungement, if you apply for a job, you don't have to tell your potential employer about the conviction if the position is in the private sector.

Qualifying for Expungement

You generally *won't* be eligible for expungement if:

- If you are currently charged with another criminal offense;
- You are on probation;
- You are still serving your sentence;
- You were sent to state prison.

If you completed your probation for a misdemeanor or a felony and if you are currently not charged with an offense, you may be eligible. The law first requires you to:

- Commit no new crimes during probation;
- Pay all fines;
- Complete court mandated counseling;
- Turn in all community service hours;

If you violated the terms of your probation, it is harder to get an expungement, but not impossible. The court may still grant one based on your criminal history, your employment status, your community involvement and other factors which the court finds are “in the interest of justice.”

The Expungement Procedure in San Diego

Your attorney can help you analyze your case to determine whether you are eligible and complete the necessary paperwork. Misdemeanor administrative expungement petitions can take as long as 8-12 weeks to be processed and ruled upon. Felony petitions, and those filed which require an actual court date, tend to be heard within 4-6 weeks

Expungement Limitations

Expunging your criminal record may make it easier to get a job, but expunging a felony conviction will not restore your right to own or possess a firearm. Additionally, if you commit theft in the future, the prosecution can use the priorability of your previous conviction to argue for increased punishment.

Conclusion

How many people are completely successful in every department of life? Not one. The most successful people are the ones who learn from their mistakes and turn their failures into opportunities. –Zig Ziglar

If you always do what you've always done, you'll always get what you always got. –Mark Twain

Perhaps police arrested you for a seemingly minor, isolated incident—you shoplifted from a gas station, for instance. Or maybe authorities charged you with multiple counts, including theft, drug violations and assault. No matter what challenges stand in your way, you need insight.

Before we conclude, let's summarize some of the key takeaways.

General Principles to Remember If You Have Been Arrested for Theft

- **Avoid discussing your situation with the police.** Even if you are innocent (or if you want to correct an obvious misunderstanding), exercise your right to remain silent.
- **Find a qualified criminal defense attorney ASAP.** Your attorney can protect your rights, develop an intelligent strategy to minimize your penalties and give you peace of mind.
- **Understand your charges.** In California, *misdemeanor theft* carries a penalty of less than a year in jail and a fine of up to \$1,000. *Felony theft*, meanwhile, can be punished by 16 months to three years in a state prison—a felony can impact your right to buy a firearm or vote; it also affects your immigration status.
- **Get clarity on the root cause of your arrest, and learn from what happened.** For instance, maybe friends peer-pressured

you into doing something against amoral. If so, be more selective when choosing your inner circle. Or perhaps you stole out of boredom—or because you felt angry or dissatisfied about your job situation. In either case, do some introspection—perhaps with the help of a counselor—to learn to make better decisions.

Your Next Steps

Take control of your future—and of your case—by connecting with an experienced, compassionate attorney. In 2017, The Law Office of David P. Shapiro was rated as one of San Diego's top three criminal defense law firms. Our team can protect your rights and reputation. We can work diligently to put the past behind you and emerge from this experience better prepared to live the life you want. Please reach out today for a [free case evaluation](#), or call (619) 295.3555.

Resources for California Theft Defendants

Struggling with Addiction?

Did substance abuse problems lead to your theft arrest? If so, review the following resources:

- The National Council on Alcoholism and Drug Dependence offers a [free quiz](#) to help you gauge the severity of your addiction;
- American Addiction Centers has compiled a useful list of [common treatment programs](#);
- Addicted.org offers this list of [free or low-cost rehabilitation centers](#) in California;
- Here's a list of free and reduced cost rehab [resources in San Diego](#);
- How to find rehabilitation centers that [your insurance covers](#);
- Read this article to learn about to [avoid relapse triggers](#);
- Find out about [co-occurring mental health disorders](#).

After treatment, you may prefer to spend time in a halfway house rather than immediately return to your previous living arrangement. This [California halfway house directory](#) allows you to search by city.

Was Your Child Arrested for Theft?

If so, explore these resources:

- California's [Guide to Juvenile Court](#);
- [Understanding Juvenile Delinquency](#);
- [Sealing Juvenile Records](#);
- [Frequently Asked Questions](#) about Juvenile Delinquency;

- Learn [why teens shoplift and how to talk to your child](#) after an arrest.

Did Mental Health Issues Contribute to the Theft Arrest?

Special laws protect people with mental illnesses. Review the following:

- The [San Diego County Arrest Guide](#);
- The National Alliance on Mental Illness (NAOMI) offers [this advice](#).

Finding a Job after a Theft Conviction

The [National Transitional Jobs Network](#) helps **struggling Americans find jobs**. They provide skills training and job placement services, and they have an [online application](#) interested parties can complete.

[America Works](#) has **matched Californians with employers** since 1984. Reportedly, most applicants find a job within four weeks of enrolling.

Read what [U.S. News and World Report](#) says about **talking to a potential employer about your criminal history**.

Disclaimer

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