

## SHOPLIFTING

### POLICY:

It is the policy of the Omaha Police Department (OPD) to provide timely and accurate investigation of shoplifting complaints.

### PROCEDURE:

#### I. Assessment of the Incident

A. Once officers arrive at a call location, an assessment of the situation shall be conducted:

1. Officers shall first establish probable cause for an arrest.
2. If probable cause is established, the suspect(s) shall be arrested, handcuffed, and thoroughly searched.

**NOTE:** Although shoplifting may seem like a minor offense, shoplifters often carry firearms, knives, pepper spray, or other weapons/instruments of escape, therefore, officers must conduct a thorough search of the suspect(s) person.

3. Officers shall then determine whether a felony or misdemeanor booking is required, if issuance of a criminal citation is warranted, and how many officers are needed at the scene for handcuffing and searching the suspect(s).
  - a. Whenever possible, two (2) officers shall be present for handcuffing and searching the suspect(s). Once the situation is secure, the secondary officer may be released from the scene, at the officer's discretion.

#### II. Determining the Appropriate Crime Class

- A. The designated primary officer shall call the OPD Information Channel by telephone and check the suspect(s) for previous theft convictions and any warrants on file.
- B. Felony shoplifting (i.e., theft) arrests are governed by Nebraska Revised Statute (NRS) [§28-518](#) "Grading of Theft Offenses."
  1. Class IIA Felony: When the value of the theft is five thousand (\$5,000) dollars or more.
  2. Class IV Felony: When the value of the theft is one thousand five hundred (\$1,500) or more but less than five thousand (\$5,000) dollars.
  3. Class I Misdemeanor: When the value of the theft is more than five hundred (\$500) dollars but less than one thousand five hundred (\$1,500) dollars.
  4. Class II Misdemeanor: When the value of the theft is five hundred (\$500) dollars or less.
- C. Officers must also determine the number and specific crime class for previous theft convictions.
  1. If a person has a previous conviction for theft as a Class I Misdemeanor and in the present instance is accused of shoplifting more than \$500 and less than \$1,500 of merchandise, the person shall be charged with a Class IV Felony.

2. If a person has a previous conviction for theft as a Class II Misdemeanor and in the present instance is accused of shoplifting \$500 or less of merchandise, the person shall be charged with a Class I Misdemeanor.
3. If a person has two (2) or more previous convictions for theft, each as Class II Misdemeanors, and in the present instance is accused of shoplifting \$500 or less of merchandise, the person shall be charged with a Class IV Felony.
4. For a prior conviction to be used to enhance the penalty under subsection (5) or (6) of NRS §28-518, the prior conviction must have occurred no more than ten years prior to the date of commission of the current offense.
  - a. Subsection (5) of NRS §28-518 says that a person shall be guilty of a Class IV Felony for any second or subsequent conviction of theft of more than \$500 but less than \$1,500.
  - b. Subsection (6) of NRS §28-518 says that a person shall be guilty of a Class I Misdemeanor for any second conviction of theft of \$500 or less. For any third or subsequent conviction of theft of \$500 or less, the person shall be guilty of a Class IV Felony.
  - c. Prior convictions do not need to be of the exact same type of theft in order for a penalty to be enhanced.

**EXAMPLE:** A suspect may have a prior conviction for Theft by Shoplifting and is currently facing a charge of Theft by Unlawful Taking.
  - d. Theft convictions under state statutes can be enhanced, but theft convictions under city ordinances cannot be enhanced.

### III. Convictions from Other Jurisdictions

- A. A previous conviction of Theft under Nebraska State law from another Nebraska jurisdiction can be included when determining the appropriate crime class.
- B. When citing a conviction from another Nebraska jurisdiction, the officer shall provide the County Attorney with as much information as possible regarding the conviction, such as the date and county of the conviction.

### IV. Alternative Reporting Procedures for Misdemeanor Shoplifting

- A. Many area merchants have established the below-listed procedures for handling misdemeanor shoplifting cases within their establishments.
- B. Once the situation has been declared “safe,” the remaining officer(s) shall:
  1. Make certain evidence has been photographed or documented via BWC recording when feasible.
  2. Confirm identification of the suspect(s).
  3. Obtain records/data checks on suspect(s).
    - a. Determine prior convictions for possible felony offenses.
    - b. If applicable, physical booking is required.

- c. Should the suspect(s) be found to have outstanding warrants, the suspect(s) shall be arrested and booked on the warrants and theft charge.
4. Obtain a Records Bureau (RB) Number.
5. Issue the suspect(s) a citation or book the suspect(s).
6. Submit an OPD Incident Report.
  - a. Officers shall be certain to document the RB number and citation number (if applicable) in the Incident Report narrative.
7. Leave a copy of the citation (if any) and photographs of evidence with store security/loss prevention personnel and notify them of the RB number.
8. The citation copies (if any) and/or booking paperwork shall be handled per OPD policies and procedures.

## **V. Misdemeanor Booking of Shoplifters**

- A. Suspects arrested for misdemeanor shoplifting offenses may be booked when reasonable cause exists. The specific facts and circumstances relevant to reasonable cause will be documented.
- B. Before booking any suspect, the officers shall contact their field sergeant or duty sergeant to obtain authorization to book. The following examples substantiate reasonable cause for booking purposes:
  1. Accused persons who fail to identify themselves satisfactorily.
  2. Officer has reasonable grounds to believe the accused will fail to respond to the citation.
  3. Accused has no ties to the jurisdiction reasonably sufficient to assure a court appearance.
  4. Accused has previously failed to appear in response to a citation.
  5. Officer has reasonable grounds to believe that booking of the suspect is necessary to protect the accused or others when the suspect's continued liberty would constitute a risk of immediate harm.
  6. If there has been a fight or disturbance involving store security or police when taking the suspect(s) into custody, further charges shall be initiated where possible.
- C. In all cases where the officer has reasonable grounds to believe recovering the items unlawfully taken by the suspect(s) is possible, the officer may detain the suspect(s) in a reasonable manner and length of time.

## **VI. Handling of Shoplifted Property**

- A. Officers shall thoroughly document in their reports as much identifying information as possible about the merchandise that was shoplifted.

1. This should include the make, model, serial number, identifying marks, and/or the approximate value of the merchandise at the time it was shoplifted. The time, date, and location where the shoplifting occurred shall also be documented (NRS [§28-511.01](#)).
  2. Officers shall document the name(s), contact information, and employment positions of the person(s) from the business they spoke to while on the scene (NRS [§28-511.01](#)). If officers spoke to witnesses, their names and contact information shall also be documented.
- B. Officers shall document the recovered merchandise (i.e., evidence) via a marker on their Body Worn Camera (BWC) recording (NRS [§28-511.01](#)). Officers shall ensure they capture the totality of the recovered property when using their BWC.
1. If the business has taken photos and recordings of evidence, and wants to send this information to officers, officers may send an Axon Community Request link to the business representative in order to collect the photographic evidence.
- C. Recovered merchandise that is alleged to have been shoplifted will be maintained by the business.
1. The business is responsible for maintaining the chain of custody and the proper presentation of the merchandise to the court at the time of trial.
- D. If a suspect possesses property that the business does not recognize as its own, and the officer develops probable cause or reasonable suspicion (Nebraska State Constitution – NSC [§1-7](#)) that the property may have been stolen from a different business and/or stolen from a citizen, officers shall book the items into the OPD Evidence and Property Unit (EPU) per OPD policies and procedures. See the OPD “[Evidence and Property – Management](#)” and “[Evidence and Property Handling](#)” policies for details.
1. When officers complete reports, they shall document the specific reasons they took the property from the suspect(s) and booked it into EPU (NRS [§28-511.01](#)).
- EXAMPLE:** If the suspect possesses property with a spider wrap anti-theft device, this could be evidence that the property was stolen from a different business. Officers shall document this detail in their report(s).
2. Officers shall document the suspected stolen property via a marker on their BWC recording, when feasible, prior to booking the property into EPU (NRS [§28-511.01](#)).
  3. If an officer cannot develop probable cause or reasonable suspicion, but still believes the property in the suspect’s possession may be stolen, the officer shall document the property via a marker on the BWC recording and thoroughly document the property in their report(s). Officers shall NOT book the property into EPU under these circumstances.
- E. Officers shall refer to the CIB Operations Manual for more details on handling shoplifted property.

## REFERENCES:

### I. Laws

- A. Nebraska State Constitution (NSC) [§1-7](#) (for definitions of probable cause and reasonable suspicion).

- B. Nebraska Revised Statutes: §[28-518](#) is referenced in this policy. NRS [§29-404.02](#) is relevant to this policy.

### **III. Previous OPD Orders**

- A. Previous General Orders: #54-84, 72-87, 34-96, 59-97, 47-99, 47-99 Supplement #1, 19-15, 38-15, 38-19, 10-22, 10-22 Supplement #1 and #2, 70-23, and 24-24.
- B. Previous Information Orders: #150-92.