



POLICY AND PROCEDURE

NO.460

Shoplifting

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The following procedure shall be followed:

If the officer makes the arrest based on probable cause he/she will:

1. Complete an Offense Report containing a statement of probable cause from the store employee and signed by the store employer.
2. Complete the Witness Form listing the store employee who witnessed the offense.
3. Service Division will complete the Application for Complaint and forward the forms to the Court Liaison Office at C.D.C., or the Juvenile Court. In the case of an adult arrest, the complaint will be signed by a Service Division official at Juvenile Court.

The Police Officer that makes the arrest will not be involved in the prosecution of the case unless he was a witness to the crime or some other crime involved.

If the situation dictates that an arrest not be made, i.e.: aged person, adult with small children, item of very low value and the subject has full and complete identification the officer shall:

1. Complete an Offense Report containing a statement of probable cause from the store employee and signed by the store employee.
2. Complete the Witness Form listing the store employee who witnessed the offense.
3. The officer will complete the Application for Complaint form listing his name as the complainant and containing the full and complete identification of the defendant as required on the form: i.e., Name, Address, Zip, D.O.B., place of birth, SS#, Sex, Race, Ht., Wt. Eyes, Hair, Occupation, Employer/School, Mother's maiden name, Father's name.
4. The officer who requests the hearing will not be involved in the prosecution of the case unless he was a witness to the crime.

Officers are to make a determination at the scene, consult with the Sector Sergeant or other official if necessary. If they determine that there was no offense committed they are to inform the store personnel. This does not preclude the store personnel from seeking their own complaints.

1. C.231, S94A

Probable Cause for Defense in Certain Actions for False Arrest, etc.

If a person authorized to make arrests shall have probable cause to believe that a misdemeanor for which he may make an arrest is being committed in his presence, such probable cause shall be a defense in an action for false arrest or imprisonment.

C.231, S.94B

Certain Acts etc., to Constitute Defense in Actions for False Arrest etc., by Persons Suspected of Shoplifting.

... if such person was detained in a reasonable manner and for not more than a reasonable length of time.

2. The store employee shall be notified to appear for the hearing or the continuance date by the court.

MGL: Chapter 266, Section 30 regarding larceny has a new section 30A defining the crime of shoplifting as follows:

SECTION 30A

Any person who intentionally takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof, or any person who intentionally alters, transfers or removes any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the retail value thereof;

or any person who intentionally transfers any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof; or any person who intentionally records a value for the merchandise which is less than the actual retail value with the intention of depriving the merchant of the full retail value thereof; or any person who intentionally removes a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart, shall be punished for a first offense by a fine not to exceed two hundred fifty dollars, for a second offense by a fine of not less than one hundred dollars not more than five hundred dollars and for a third or subsequent offense by fine of not more than five hundred dollars or imprisonment in jail for not more than two years, or both such fine and imprisonment.

Law enforcement officers may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section. The statement of a merchant or his employee or agent that a person has violated a provision of this section shall constitute probable cause for arrest by any Law Enforcement Officer authorized to make an arrest in such jurisdiction.

The Statue Does Several Things:

1. Defines the crime to include the taking or concealing of merchandise, ticket or counter switching, and under ringing.
2. Removes the distinction between larceny under \$250 and over \$250 doing away with concerns over value.
3. Allows law enforcement officers to arrest without a warrant regardless of value on the statement by an owner or employee that a violation of this statute has occurred.

This statement of the owner or employee shall be considered probable cause.

It is important to remember that although the statement of a merchant would constitute probable cause to make an arrest this would not preclude the option of summoning in the party involved if the situation dictated that action.

Per:

Edward P. Gardella
Chief of Police

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