



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

Shoplifting

2019-58

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Chief Paul Shastany

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Accreditation Standards: **1.2.6**

Optional Accreditation Standards:

Policy It is the policy of the Braintree Police Department to assist retail establishments in the protection of their assets and merchandise.

General Considerations The following criminal acts are prohibited under M.G.L c. 266 § 30:

1. Shoplifting
2. Concealing merchandise
3. Price tag switching
4. Container switching
5. Ringing up a false price
6. Removing a shopping cart

Instances when the dollar value of stolen items exceeds \$1,200 elevates the criminal charge to a felony (Larceny over \$1,200).

Investigation Though both Shoplifting and Larceny Over \$1,200 are arrestable upon establishing probable cause, Braintree Officers are permitted to exercise discretion as to what enforcement action is taken.

Enforcement actions include arrest, summons arraignment, setting up a Clerk Magistrate's hearing, or allow the retail establishment to handle the incident internally. **[1.2.6]**

Officers assigned to the incident should determine their enforcement action based on the totality of the circumstances. When determining their enforcement action, Officers should consider the following information:

- Identity Confirmation
 - Identity can be verified using a driver's license, passport, school identification, a RMV photo provided by dispatch, etc. If unable to positively identify an individual the preferred response is to arrest.

- BOP Check
 - If a suspect has open cases, their criminal history reflects a pattern of similar criminal activity for which they've been detained, or they are on active probation, the preferred response is to seek charges against the suspect in court. If there is an indication that the suspect would not appear for a summons arraignment or Clerk Magistrate's Hearing, the preferred response is arrest.

- Warrant Check
 - If the suspect has an active warrant(s) in the Warrant Management System or through NCIC, the suspect shall be arrested. See department policy for **Arrests**.

- III (Interstate Identification Index)
 - Officers should check a suspect's interstate criminal history if they believe one exists for the suspect. If one does exist, Officers should weigh the available information from the suspect's III in a manner consistent with how information on a BOP would be considered.

- Braintree Police Database Check:
 - Officers should consider the suspect's contact (i.e. first contact; multiple contacts; previously charged or never charged by Braintree Police etc.) with the Braintree Police Department for similar type offenses as reflected in the Braintree Police Database.

- Frequent/Repeat offender at the store:
 - Officers should consider whether the suspect has targeted the store before, whether there are previous incidents in which the store's Loss Prevention has not been able to apprehend the individual and/or whether the store caught and did not charge the individual before.

- Value of stolen merchandise:
 - Officers should consider the value of the stolen merchandise. If the value is or exceeds \$1,200, the charge is felonious and the preferred response is to seek criminal charges against the suspect.

- If more than one suspects are involved in a theft, the value of the stolen merchandise is cumulative under the joint enterprise theory. As an example, if two suspects acting in concert steal \$650 worth of merchandise each, they are both to be charged with Larceny Over \$1,200.
- Violence Committed or Threatened Against Loss Prevention:
 - If violent action is taken or threatened against a retailer's Loss Prevention personnel during the course of their duties, generally the Department's preferred response is to seek charges against the suspect(s).
- Theft Detection Deactivator Device
 - If a Theft Deactivator Device, which as defined under M.G.L. c. 266 § 30B is a tool possessed by a shoplifter designed to allow the deactivation of a theft detection device or to allow the removal of a theft detection device from merchandise, was used or possessed during the commission of the offense, the preferred response is to seek charges against the suspect.
 - Officer should note that this charge is a felony, the possession of such device on a suspect may imply intent aforethought and often times is used by members of Organized Retail Crime to assist in their criminal activities.
- Aggravated Shoplifting
 - There are three categories of Aggravated Shoplifting, all of which are felonies.
 1. Shielding Device: A theft detection shielding device is an item intended to shield merchandise from theft detectors. Any of the following five acts are prohibited under this category:
 - Knowingly manufacture or distribute a shielding device; or
 - Possess a shielding device with the intent to commit or aid a theft; or
 - Knowingly possess a tool or device designed to deactivate or remove a theft detector; or
 - Knowingly manufacture or distribute a tool or device designed to deactivate or remove a theft detector; or
 - Intentionally remove a theft detector prior to purchase, with the intent to steal the item.
 2. Return Receipt: The suspect(s) possessed, uttered, altered, or reproduced a sales or return receipt, price ticket, or universal code label with the intent to cheat or defraud a retailer.
 3. Organized Retail Crime: While acting in concert with two or more people and within a 180 day period, the

suspect stole, embezzled or obtained by fraud retail merchandise worth over \$2,500 in order to re-sell the merchandise.

Vehicle Search As part of the investigation into calls for service regarding shoplifting/retail larcenies, Officers assigned to the incident should question the suspect(s) in regards to how they arrived at a particular retail establishment. If an Officer is able to ascertain information about a motor vehicle involved then they may rely on the motor vehicle exception, consent, or vehicle inventory to legally search a suspect(s) vehicle.

Motor Vehicles may be legally searched if:

- a. An Officer, standing outside of the vehicle, observes evidence in plain view;
- b. A shoplifter leaves a store with stolen merchandise and is able to get inside the vehicle before being apprehended;
- c. Shoplifters used their vehicle during a crime spree. This occurs when suspect(s) are seen driving to and from different stores or when suspect(s) are seen exiting the store(s), returning to their vehicle and then proceed back into the retail establishment.
- d. Consent.
- e. Vehicle Inventory (see policy on ***Towing of Motor Vehicle***)

Juveniles When an Officer is dealing with a juvenile shoplifter, he/she shall employ all of the same investigatory techniques they do with an adult shoplifter. Every effort shall be made to positively identify the juvenile and run the juvenile through CJIS.

If a juvenile is arrested, he or she shall be treated in accordance with guidelines set forth in the Department's ***Juveniles*** policy.

The Braintree Police Department and its Officers are not responsible for juveniles not in its custody, regardless of a retailer's policy. If a juvenile is detained by a retailer for a larceny related offense(s) and it is determined that the juvenile is not going to be arrested, the onus is on that of the retailer regarding arrangements for the juvenile's release. Officers may, at their discretion, offer assistance in contacting the juvenile's guardian(s) and/or assisting in transportation arrangements.

Evidence Photograph and Return to Stores:

Although the stolen merchandise is a critical element in regards to evidence of the crime, it is not necessary to seize stolen items and physically place them in the Braintree Police Department's evidence

lockers. Whenever practical, stolen merchandise should be photographed and returned to its rightful owner rather than be brought to the Police station. All photographs should be added to the External Reference file of the Braintree Police incident.

There are times when it is not practical to immediately return items to stores and/or times when an Officer is unable to determine which store a piece of stolen merchandise belongs to. In those instances, an Officer may elect to bring stolen merchandise to the Police station to process. If at the Police station an Officer is able to identify that the stolen merchandise belongs to a store within Braintree, they should photograph those items and place them in safe keeping in evidence. The Officer should then return the items as soon as practical or make arrangements to have the items returned to the stores as soon as possible.

It is not necessary to enter each individual retail piece of merchandise item into property. Similar articles (e.g. clothes, perfumes, handbags, shoes) can be grouped together and entered with a cumulative total dollar value and cumulative quantity. If like items are from multiple stores then a Property Record should be entered for each store with a cumulative dollar value and quantity for each store.

Loss
Prevention
Reports

Whenever possible an Officer should obtain from the victim store an itemized list of stolen merchandise. Additionally, if the store is writing a loss prevention report, then that report shall be forwarded to the reporting Officer. Both the itemized list of stolen merchandise and the loss prevention report shall be added to the External Reference file of the Braintree Police incident.

Surveillance
Video

When available and practical Officers should obtain a copy of the store's security surveillance video. Whether or not the store has video available should be noted in the Officer's report. If a store has video but is unable to provide a copy of the video at the time of arrest, it is the Officer's responsibility to obtain that video as soon as possible and enter it into evidence in the Police report.

Follow-Up
Investigations

There are times when the Braintree Police Department is called to a retail establishment for a shoplifting that has occurred in the past. In these cases the reporting Officer should obtain all pertinent information. The reporting officer should obtain at a minimum; a list of items stolen, value of said items and any relevant video if available. If an Officer is able to identify a suspect, that Officer should seek charges if deemed appropriate.

The reporting Officer should provide as much information as possible so that the Detective Bureau can make a determination as to whether or not the case will be assigned for investigation by Detectives. All shoplifting and larceny reports are reviewed by Detective Supervisors, who accept and assign cases at their discretion.