

 <p><b>Cambridge Police Department</b></p>	<b>POLICY &amp; PROCEDURES</b>		<b>No. 533</b>
	Subject/Title: <b>Shoplifting</b>		
	Issuing Authority: 	Review Date: <b>May 10, 2010</b>	Issue Date: <b>August 5, 2010</b>
	Robert C. Haas Police Commissioner	Effective Date: <b>September 1, 2010</b>	Rescinds: <b>Policy #2001-1</b>
References/ Attachments:		Accreditation Standards:	

## I. PURPOSE:

The purpose of this policy is to establish a uniform approach and response when officers are called upon to enforce a violation of the shoplifting statute (M.G.L. c. 266, § 30A). To this end, this directive will accomplish the following:

- Describe the options that officers may take when investigating and responding to a shoplifting violation.
- Describe the factors that officers should take into consideration when deciding whether to make an arrest or seek a complaint application when sufficient probable cause exists for a shoplifting charge.
- Describe the reporting requirements associated with any enforcement action for a shoplifting violation.

## II. POLICY:

To promote predictability and consistency in police response to shoplifting incidents, police officers will adhere to the criteria set forth within this directive. Further, prior to taking any enforcement action in response to a report of shoplifting, investigating officers will ensure that all the elements of shoplifting have been satisfied.<sup>1</sup>

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<sup>1</sup> See M.G.L. c. 266, § 30A

### III. GENERAL CONSIDERATIONS AND GUIDELINES:

Shoplifting is perhaps the most prevalent crime in the retail industry, and results in significant financial losses to retailers. Often retailers struggle with the how best to display and make merchandise available to their customers, and also protect their property from theft. Many retailers have invested a great deal to take affirmative steps to prevent or apprehend shoplifters. The shoplifting law has been written to provide retailers some latitude in detaining persons suspected of shoplifting. Likewise, the law expressly allows the police to rely upon the reporting party's (merchant, employee, or agent) account in establishing the probable cause required for an enforcement action. Although the law allows greater latitude for making a warrantless arrest for shoplifting, an officer still must ensure that all of the elements of the crime have been satisfied prior to taking the any enforcement action, particularly warrantless arrests. Special considerations apply to juveniles suspected of shoplifting.

The elements of M.G.L. c. 266, § 30A, are as follows:

1. The individual intentionally engaged in one of the following prohibited acts in relation to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment:
  - a. Took possession of, carried away, transferred or caused to be carried away or transferred merchandise without paying to the merchant the value thereof ; or
  - b. Concealed upon his person or otherwise any merchandise with the intent to deprive the merchant of the proceeds, use or benefit of the merchandise, or converting the same to the use of such person, without paying the merchant the value thereof or
  - c. Altered, transferred, or removed any label or price tag(s) or marking indicia of value, and attempted to purchase personally or in consort with another at less than the full retail value; or
  - d. Transferred merchandise from one container to any other container with the intent to deprive the merchant of all or some part of the retail value thereof; or
  - e. Recorded less than the actual retail value with the intent of depriving the merchant of the full retail value thereof; or
  - f. Removed a shopping cart from the premises without the merchant's consent with the intent to permanently deprive the merchant of the possession, use or benefit of such cart;

The statute does authorize warrantless arrest where an officer has probable cause to believe that a person has committed the offense of shoplifting. Furthermore, a merchant

or employee’s statement that a person violated this law constitutes probable cause for arrest.

Retail merchandise must be the object of the theft. This term refers to products or goods that are offered for sale directly to consumers. It refers to merchandise sold in an ordinary store open to the public, as opposed to “wholesale merchandise” which refers to goods sold in bulk to merchants but not directly to the public.

Shoplifting is complete when merchandise is “concealed.” The statute was drafted in this fashion because merchants did not want to have to wait until offenders left their store in order to be justified in calling the police. “Conceal” means to cover an item to keep it out of sight, or to withdraw it from observation to prevent its discovery.<sup>2</sup> Proof that the items were stolen may be inferred from the business customs of the retail establishment.<sup>3</sup> Police may only charge shoplifting if retail of goods stolen is less than \$100. M.G.L. c. 266, § 30A specifically states: “if the retail value of goods obtained is less than \$100, this section shall apply to the exclusion of § 30.” Police still have discretion to charge shoplifting incidents under the general larceny statute, M.G.L. c. 266, § 30, if the theft involves goods worth \$100 or more.

M.G.L. c. 231, § 94B provides merchants with a defense against civil liability when they reasonably detain a suspected shoplifter on their premises pending the arrival of the police. This statute is designed to insulate merchants from retaliatory civil suits from disgruntled shoplifters or those reasonably suspected of shoplifting.

#### IV. PROCEDURES:

**A. Responding to Reports of Shoplifting:** When officers are dispatched to a reported shoplifting incident, the investigating officers will initially determine whether all of the elements of the crime have been satisfied. Unlike most other crimes, the statement of the a merchant, employee, or agent that a person has violated of the provisions of the shoplifting statute alone constitutes probable cause for arrest or the issuance of criminal charges by any law enforcement officer. As part of the officer’s investigation, he/she should accomplish the following:

1. The officer still must ensure that the elements of shoplifting have been satisfied by virtue of the reporting party’s statement and observations.
2. The officer should secure a full report from the merchant or employee who is reporting the incident.

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<sup>2</sup> *Commonwealth v. Balboni*, 26 Mass. App. Ct. 750 (1989)

<sup>3</sup> *Commonwealth v. Torrealba*, 316 Mass. 24 (1944)

3. The officer should obtain the name, address, and date of birth of the person(s) being accused of shoplifting, verify the individual(s) identity, and conduct a check for outstanding warrants.
4. The officer should explain the various options the reporting party may pursue in response to shoplifting report, as outlined further within these guidelines.

**B. Declining Prosecution:** Often, merchants or their employees prefer not to pursue criminal charges; their main objective is the recovery of their merchandise. If the reporting party (merchant, employee, or agent) elects not to follow through with the prosecution of the individual(s) being detained, once the individual has been identified and cleared of outstanding warrants, the individual should be released without any further delay. The officer will complete an Incident Report which fully documents the incident.

**C. Seeking Prosecution/Defendant Not Present:** If the reporting party (merchant, employee, or agent) wishes to pursue the prosecution of an individual(s) for shoplifting but the person(s) involved is not present, the officer will carry out the following steps:

1. Obtain a full report of the circumstances of the incident, incorporating all of the elements of the crime;
2. Obtain the full identification of all of the witnesses;
3. Obtain a full description of the property that was involved in the shoplifting incident;
4. If the property is recovered, take photographs if a camera is available.
5. Explain what steps the reporting party will need to take in pursuing a complaint application, instructing the reporting party to go to the Cambridge District Court during normal business hours, where one of the department's Prosecuting Officers will assist the reporting party in securing a complaint application.
6. In all circumstances, the reporting party will retain control of the merchandise, which was stolen and recovered.
7. The investigating officer will complete an Incident Report incorporating all of the relevant information into the report, referring the report to the Police Prosecutor's Unit for the appropriate follow up action.

**D. Seeking Prosecution/Defendant Being Detained:** If the reporting party (merchant, employee, or agent) has detained the defendant(s), and wishes to seek prosecution, the investigating officer will carry out the following steps:

1. Obtain all of the information surrounding the circumstances of the theft, incorporating all of the elements of the crime;
2. Obtain the full identification of all of the reporting party, the offender, and any witnesses involved;
3. Obtain a full description of the property (and photographs, if possible) that was involved in the shoplifting incident;
4. Additionally, officers will do one of the following:
  - a. If the officer is satisfied there is sufficient probable cause to make an arrest, the officer will exercise his or her discretion as to whether to make an arrest or to pursue a complaint application. A criminal complaint should be sought as an alternative to arrest if the officer has adequately verified the defendant's identity.
  - b. If the officer is satisfied there is sufficient probable cause to make an arrest, but is not able to verify the defendant's identity satisfactorily (or if there are existing warrants), the officer will place the defendant(s) into custody.
5. The investigating officer will explain to the reporting party the action that person will need to take in response to the actions being taken by the officer.
6. In all circumstances, the reporting party will retain control of the merchandise, which was stolen and recovered. When available, the officer will obtain a store printed receipt of the items taken from the merchant for purposes of prosecution. Likewise, the officer will take photographs of the items taken when possible.
7. The investigating officer will complete an Incident Report incorporating all of the aforementioned information into the report. If an arrest is made all of the ancillary reports associated with arrest will be completed.
8. In the event there is a disagreement between the reporting party and the investigating officer as to the appropriate action to take, the officer should contact the sector sergeant who will advise the officer on the course of action to take. This information should also be incorporated into the investigating officer's report.

## E. Special Procedures for Juvenile Offenders

If the reporting party (merchant, employee, or agent) has detained a juvenile for shoplifting, and wishes to seek prosecution, the investigating officer will do as follows:

1. Obtain all of the information surrounding the circumstances of the theft, incorporating all of the elements of the crime and confirming that probable cause exists for the charge of shoplifting;
2. Obtain the full identification of all of the reporting party and any witnesses involved;
3. Attempt to ascertain and verify the identity of the juvenile offender;
4. Obtain a full description of the property (and photographs, if possible) that was involved in the shoplifting incident;
5. Either release or arrest the juvenile in accordance with the following protocol:
  - a. Attempt to contact the juvenile's parent or legal guardian. Once contact is made, the juvenile (if 13 to 17 years of age) may be released from custody to the street, and the merchant should be directed to seek complaints.
  - b. If an officer is unable either to confirm the true identity of the juvenile or to make contact with the juvenile's parent or guardian, or where extenuating circumstances exist, the officer will take the juvenile (if 13 to 17 years of age) into custody (*See Policy No. 430 -Juvenile Justice Guidelines*).
  - c. If the juvenile is of "tender age" (defined as 12 or under), the juvenile may *only* be released to his or her parent or legal guardian.<sup>4</sup> If after two (2) hours, either no parent or guardian can be located, or the parent or guardian has not retrieved the child after contact, officers should file a report for neglect pursuant to M.G.L. c. 119, § 51A, and await the arrival of a DCFS investigator who will take custody of the child.

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<sup>4</sup> See M.G.L. c. 119, § 54