

A Reflection on Shoplifting Apprehension Policies....so many years with so little progress!

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I entered the retail industry in 1961 and an ever present problem was the persistent attack by shoplifters and the security department's organized effort to deal with that problem. About 70% of the staff concentrated on shoplifting and the balance worked on internal investigations, physical security of stores and fraud.

Over the course of time much has changed, including the switch from the department's name from "security" to "loss prevention". Ironically this latter tag doesn't really reflect what the department's real focus is, i.e. it isn't "loss prevention". It's just as it was decades ago.

One of the major changes, other than the growth and use of various electronic devices, has been the specter of lawsuits filed against retailers for their efforts to protect themselves against the shoplifting problem.

I've personally served as a consultant and expert witness in numerous lawsuits across the country, representing both the plaintiff and the defense. As a consequence of *all* my experiences, I've come to conclude the following:

1. If a store has a policy of not detaining a shoplifter, it becomes known and the store becomes a target.
2. If a store detains but doesn't prosecute, that becomes known and the store becomes a target.
3. If the store detains but don't prosecute up to a minimum amount, it becomes known you can steal with immunity up to that set dollar amount.
4. If the store has a policy of arrest and prosecution, irrespective of the amount stolen, the police, prosecutor and courts will object.

5. If the store arrests and prosecutes and the offender is found not guilty in trial, the store is subject to a lawsuit.
6. If the store arrests and prosecutes and for a wide variety of reasons (e.g. the security employee wasn't subpoenaed or is no longer employed and can't be located) and the court or prosecutor dismisses the case, the store is subject to a suit.
7. If the store detains and subsequently releases without a signed "admission", the store is subject to a false arrest suit.
8. If the store detains and release with a signed "admission", the store may be subject to a suit claiming the agent extorted the signature, i.e. made promises or threats to obtain the confession.
9. If the store detains but has a policy of *no force to be used*, it becomes known as a free target....all the thief has to do is pull-away or resist and walk.
- 10.If the store has a policy of no chasing, it becomes known and the thief only needs to run, and is free.
- 11.If the store detains and policy allows the use of reasonable force, there's a risk injury to by-standers and the shoplifter and the store is subject to a lawsuit claiming negligence or excessive use of force.
- 12.If the store detains and policy allows the use of reasonable force, there's a risk of injury to security employees and workman's compensation claims.
- 13.If the store detains and calls for the police and they arrive after a long delay (because transporting or citing a shoplifter has a low priority) the store is subject to a false imprisonment suit for holding a person for an excessive amount of time.
- 14.If the store detains and the shoplifter **admits the theft** but claims some form of security misconduct, such as refusing to allow a phone call for someone to pick-up a waiting child, or refusing the person the use of the

restroom, or agents making racial comments, or refusing a person medical attention, etc., the store is subject to a lawsuit.

15. If the store detains, arrests and prosecute because they have a “perfect case” in every way, including the written admission of the person arrested, the case can still be lost in trial for any number of reasons, and the store may be subjected to a lawsuit.

The dilemma reflected in the above points can best be addressed by the proactive philosophy and strategy that emphasizes prevention and de-emphasizes detention and arrest. De-emphasis means just that, i.e. it doesn't mean the elimination or prohibition of detentions for theft. Policy should advocate fewer arrests, of higher quality, made when deemed necessary, e.g. a known shoplifter, and/or when the crime can't be prevented.

But alas...the decades-old “hook ‘em & book ‘em” mentality prevails!