



INTERNATIONAL
ASSOCIATION OF
PROFESSIONAL
SECURITY
CONSULTANTS

Best Practices

DETENTION OF SHOPLIFTING SUSPECTS BY LOSS PREVENTION AND SECURITY PERSONNEL

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The International Association of Professional Security Consultants has issued this consensus-based and peer-reviewed Best Practice for the guidance of and voluntary use by businesses and individuals who deal or may deal with the issues addressed in the context of third-party premises security litigation.

POSITION STATEMENT

The International Association of Professional Security Consultants has issued this consensus-based and peer-reviewed Best Practice for the guidance of and voluntary use by businesses and individuals who deal, or may deal, with the issues addressed in the context of the detention of shoplifters by retail loss prevention agents.

The purpose of the Best Practice is to provide guidance to organizations in the development of an internal policy for the detention of shoplifters by their agents.

The IAPSC recognizes that some retail companies have adopted policies which prohibit the use of force and have enacted “no touch,” “no chase” policies.

THE LAW

Shoplifting is a form of theft and every state in the Union codifies what constitutes this type of theft. In the private sector, each retailer must craft their policies and procedures to deal with that act, in compliance

with their specific state or local ordinance in which the store is located.

MERCHANT’S PRIVILEGE

Every state also grants, by either statutory or case law, the “merchant’s privilege” (more fully defined below), which entitles the private sector representative to temporarily detain a person who is engaged in theft. In the retail industry, those charged with protecting the store are typically referred to as “Loss Prevention,” “Agents,” or “Associates,” or in some cases Loss Prevention “Detectives” or “Store Detectives.” In other businesses or institutions (such as libraries) where theft is a foreseeable risk, the representatives are typically referred to as “Security Officers.”

The merchant’s privilege provides for detention of persons suspected of shoplifting only when probable cause or reasonable cause exists to believe a person has committed theft and this Best Practice is offered as guidance to those whose task specifically addresses the detection and detention of individuals suspected of shoplifting.

Examples of existing merchant's privilege statutes are as follows:

1. California Penal Code Section 409.5 (f) (1)

A merchant may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant's premises.

490.5 (f) (2)

In making the detention of a shoplifter, a merchant, theater owner, or a person employed by a library facility may use a reasonable amount of non-deadly force necessary to protect himself or herself and to prevent escape of the person detained or the loss of tangible or intangible property.

2. Texas Civil Practice & Remedies Code § 124.001. Detention

A person who reasonably believes that another has stolen or is attempting to steal property is privileged to detain that person in a reasonable manner and for a reasonable time to investigate ownership of the property.

3. New York General Business Law § 218. Defense of lawful detention

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of (a) a retail mercantile establishment for the purpose of investigation or questioning as to criminal possession of an anti-security item as defined in section 170.47 of the

penal law or as to the ownership of any merchandise, or (b) a motion picture theater for the purposes of investigation or questioning as to the unauthorized operation of a recording device in a motion picture theater, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer acting pursuant to his special duties, police officer or by the owner of the retail mercantile establishment or motion picture theater, his authorized employee or agent, and that such officer, owner, employee or agent had reasonable grounds to believe that the person so detained was guilty of criminal possession of an anti-security item as defined in section 170.47 of the penal law or was committing or attempting to commit larceny on such premises of such merchandise or was engaged in the unauthorized operation of a recording device in a motion picture theater. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person (i) has concealed possession of unpurchased merchandise of a retail mercantile establishment, or (ii) has possession of an item designed for the purpose of overcoming detection of security markings attachments placed on merchandise offered for sale at such an establishment, or (iii) has possession of a recording device in a theater in which a motion picture is being exhibited and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise, or possession of such an item or device.

DEFINITIONS

Agent: The term “agent(s)” is intended to include only store plainclothes loss prevention/asset protection personnel, sometimes called “detectives,” and uniformed security officers, also called “security guards” (either proprietary or contract). The term does not include sales clerks, maintenance persons, stockers, or managers, unless trained and so designated. The term “agent(s)” is not intended to apply to off-duty public law enforcement or special police personnel unless they have been instructed by store management to follow the same procedures required of ordinary citizens, which does not include police powers of arrest.

PROPER DETENTION STEPS

For a proper detention for shoplifting, the store’s agent should meet the following six steps:

1. Observe the customer approach the merchandise
2. Observe the customer select the merchandise
3. Observe the customer concealing the merchandise or otherwise carrying it away
4. Keep the customer under constant and uninterrupted observation
5. Observe the customer fail to pay for the merchandise
6. Detain the customer outside the store (if required by state law) or after the customer passes the last point of sale

PURPOSE OF DETENTION

The merchant’s privilege permits detention for limited purposes, which may vary by state. Common among these limited purposes are:

1. Confirming that stolen merchandise is possessed by the suspect,
2. Identifying the suspect,
3. Investigating the alleged theft,
4. Recovering stolen merchandise, and
5. Notifying the police of the offense.

THE PROCESS OF DETENTION

1. The Approach

This Best Practice recommends that the agent approach the departing suspected shoplifter with a non-threatening verbal communication to the effect of “Excuse me sir, I work for the store and I need to talk to you for a minute about the store’s merchandise” while displaying company-issued identification. The customer is then asked to return to discuss and resolve the question of merchandise.

2. Use of Force

Agents following Best Practices avoid the use of force if possible. If the customer voluntarily returns, there is no need to touch him/her. Should the subject become hostile and commence to break away and flee, the agent may seize and hold to prevent escape. Agents should limit the use of force to holding or restraining to affect a detention, in accordance with local law.

Agents using recommended practices do not use weapons such as firearms, mace, or pepper spray in order to apprehend or detain a shoplifting suspect.

(For more information regarding the use of force, refer to "IAPSC Best Practice: Use of Force by Security Personnel.")

3. Pursuits

Loss Prevention agents or security persons normally do not chase suspects by running inside a store or in shopping centers that are occupied by customers. Exceptions occur when necessary, but only in such areas as parking lots, and then only when few people are in the area and it is less likely that a bystander could get hurt. Such foot pursuits should not leave the property or parking lot on which the store is located. Agents should not cross a street in foot pursuit, nor should agents pursue on or off the property in a motor vehicle. If a suspect runs, the recommended practice is for the agent to make a mental note of the appearance of the suspect and the merchandise that appears to have been taken; then report the incident to the police and prepare a written report for the store's files.

If the suspect enters a motor vehicle, agents should not reach into the vehicle or attempt to take possession of the keys. Instead, agents should step back, inform the occupants that the police are being called, write down a description of the vehicle and license plate number, and let the suspect(s) drive away.

4. Use of Handcuffs

Stores using Best Practices occasionally permit the use of handcuffs by loss

prevention and security agents whose training has included documented professional instruction in the proper use of handcuffs when necessary to prevent injury to customers or store personnel. Agents should use handcuffs only when a suspected shoplifter is physically threatening violence or otherwise resisting detention; or when there is, in the good judgment of the security agent, the risk of imminent serious harm absent their use.

The use of restraint hardware to secure persons to prevent violence or flight is permissible in accordance with individual store policy.

5. In the Store's Office

Once in the office, ensure the suspect is not armed by means of a search or pat down in compliance with the local law.

All persons in custody should be treated courteously, irrespective of race, creed, age, or hostile attitude. If a request to use the restroom is made, or a request for water, grant such requests. Grant requests, if made, for a phone call regarding a child or dependent's care. The Best Practice is to recover the merchandise and make a decision as to the disposition. If policy dictates police involvement, they should be called promptly. If the police cannot respond within an hour, notify the police that the information has been recorded and will be given to them upon request. Detainees should not be held more than one hour unless local law or court decision mandates a shorter detention time-period or the police are en route or have requested that the suspect be held until they arrive.

If a detainee is ill, or claims that they are ill, and needs medical attention, call for emergency medical assistance and advise the dispatcher that the person is in custody.

6. Searches to Recover Stolen Merchandise

Every state has its own laws regarding the search of persons by agents in the private sector acting under authority of the “merchant’s privilege.” The store’s policy and procedures should reflect the law.

direct (electronic) real-time communication, a “cooperative unbroken chain of surveillance” may be considered constant observation of the suspect. For example, the agent on camera observes the suspect select the merchandise and/or concealment and communicates the selection and unbroken surveillance to the second agent on the sales floor, who then maintains constant observation of the suspect. If the surveillance has been broken, or if the person has disposed of the merchandise, the agent breaks off from following for that offense, but may continue surveillance if it appears the suspect may commit theft again.

BEST PRACTICES

1. *Practice.* Agents using recommended practices detain a suspect only if they have personally seen the suspect approach the merchandise.

Rationale. The suspect may have entered the store with the merchandise already in hand or otherwise on or about their person (e.g., in a shopping bag or purse).

2. *Practice.* Agents using recommend practices detain a suspect only if they have personally observed the suspect select or take possession of, or conceal the merchandise.

Rationale. Agents trust their own eyes and do not rely on reports by others.

3. *Practice.* Agents using recommended practices detain a suspect only if they have observed the suspect with the merchandise continually from the point of selection to the point where the suspect exits the store (or goes beyond the last point of sale).

- a. If the store utilizes camera surveillance to observe suspects, and there are at least two agents on duty in

- b. In dressing rooms and fitting rooms where customers try on merchandise, the agent is obliged to respect customer privacy. Due to the volume of theft activity in fitting rooms, a Best Practice guideline has been developed to address the problem. A detailed representative guideline can be found in Addendum A.

Rationale. The suspect may have disposed of the merchandise or concealed it. By continually observing the suspect, the agent can observe whether or not the suspect still has the merchandise, even if it has been concealed on the suspect’s person.

4. *Practice.* Agents using recommended practices detain a suspect outside the store after the suspect exits the store (or goes beyond the last point of sale) and has failed to pay for an item of merchandise. At this point, security persons using this Best Practice immediately investigate to verify or refute a suspect’s claim of innocence. Special care and consideration is exercised when merchandise is

displayed for sale outside the store, such as garden supplies, sidewalk sales, etc., or which is displayed for sale inside the store, but beyond the last point of sale.

Rationale. The actions of a suspect make it easier to prove intent to deprive the merchant of an item of merchandise. The farther from the actual taking a suspect is detained, the clearer the offense will appear to a judge or trier of fact. The agent is aware of suspects who might claim they were looking for a matching item or looking for someone to give an opinion on the merchandise before it is purchased. A suspect may, however, offer a logical explanation for actions that initially appeared to the security person to be acts of shoplifting, but which may require only a limited investigation to verify the suspect's explanation.

5. *Practice.* Agents using the best recommended practice ask the subject to surrender the stolen merchandise at the time of the initial stop.

Rationale. Verification by the agent that a subject does indeed have possession of unpaid-for merchandise is best effected in a public place, prior to escorting the subject to the office. In other words, if the agent is going to be proven wrong, it's best to be proven wrong outside of the store and not in the office. Recovering at least one item of unpaid merchandise precludes the subject from disposing of the merchandise deceptively, while en route to the security office.

6. *Practice.* Agents using recommended practices normally do not chase suspects by running inside a store or in shopping centers that are occupied by customers. Exceptions occur when necessary, but only in such areas as parking lots, and then only when few people are in the

area and it is unlikely a bystander could get hurt. Such foot pursuits never leave the property on which the store is located. If a suspect runs, the Best Practice is for the agent is to immediately report the information about the suspect to the appropriate authorities, and then to make a written report for the store's files.

Rationale. When a suspect runs and an agent chases that person by also running, clients and store employees are endangered more by the combination of two persons running, than by the suspect's running alone. Store employees who may intervene to help may be injured by agents in pursuit. When clerks leave their posts, they leave other merchandise exposed to theft. An exception to this recommended practice may exist when it is necessary to chase a suspect down in order to protect customers and store employees from ongoing violence by the suspect.

7. *Practice.* Agents using recommended practices treat suspects equally and fairly regardless of a suspect's race, color, creed, gender, or national origin.

Rationale. Anecdotal information suggests that certain groups have been marked by some store management and security agents for more surveillance and/or more aggressive anti-shoplifting measures. Color, religious or national dress, gender, and race have allegedly been used to identify persons in such groups. However, there is no scientific evidence regarding the validity of such profiling, and security persons using recommended practices avoid this practice. Suspicion of shoplifting depends upon observed actions, not appearance. All law-abiding persons have the right to be treated the same as any other person in the marketplace.

8. *Practice.* Agents using recommended practices normally do not use weapons such as firearms, batons (“nightsticks”), or restraining devices such as “come-alongs,” mace, or pepper spray in order to apprehend or detain a shoplifting suspect. Stores using Best Practices occasionally permit the use of handcuffs by security persons whose training has included instruction in the proper use of handcuffs when necessary to prevent injury to customers or store personnel. Agents following recommended practices use handcuffs only when a suspected shoplifter is physically threatening violence or otherwise resisting detention; or there is, in the good judgment of the security person, the risk of imminent serious harm absent their use.

Rationale. Use of weapons and restraining devices (except handcuffs) should be left to on-duty public law enforcement officers. If it is not possible to get the suspect’s willing cooperation, it is better to let the suspect go free than to risk injuring a suspect or other customer. Risk avoidance is a factor considered in apprehending and detaining suspects. Not all persons caught need restraining. Many people caught shoplifting are humiliated by the incident and are cooperative; in such cases, restraint is not necessary.

9. *Practice.* Agents using recommended practices limit the use of force to holding or restraining to affect a detention. Agents using Best Practices do not use actions such as striking, tackling, sitting on a suspect’s body, employing a chokehold or any other action that might cause physical injury while attempting to detain the suspect.

Rationale. Some holding or restraining may be necessary lest potential thieves learn that by simply resisting they may

come and steal with impunity. Use of limited holding or restraining force is sometimes necessary to detain a suspect until police arrive, or to prevent a suspect from injuring security persons. Under no circumstances should the force applied be that which might result in serious injury or death to a suspect. The better practice is to allow the suspect to depart the premises rather than to cause any injury by the use of force in detaining the suspect. Assuming the suspect can be identified, the merchant can file a complaint; then the police have the option of apprehending the suspect at a later time.

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ADDENDUM A: An Exception to the Continuous Surveillance Step

Fitting rooms and dressing rooms pose a particularly thorny problem for retailers because of the legal expectation of privacy when customers change clothes. Such privacy has proven for decades to be an irresistible temptation for many to steal goods. Hence, every reasonable effort should be made to prevent theft, such as the use of control discs, counts, and attentive service. But despite all known preventative efforts, theft continues unabated, and detection and detention are required.

An exception to the "six steps" can be employed in this fitting room environment. The earlier identified exception is referred to as the "cooperative unbroken chain of surveillance" which satisfies the six steps.

The process of the six steps in this particular setting is in the scenario that follows:

- ◆ Agent A observes the customer select a blue sweater and a red sweater and enter the fitting room. Agent A keeps that fitting room under constant surveillance until the customer exits.
- ◆ If the customer exits with only the blue sweater, Agent A immediately contacts Agent B, who promptly enters the fitting room and thoroughly searches that room and the adjacent rooms to comply with the “cooperative unbroken chain of surveillance” element of the six steps. The agent must be mindful the subject didn’t pass off the red sweater to an accomplice or simply stash it out of view.
- ◆ During that search, Agent A continues her constant surveillance of the subject, pending word from Agent B.
- ◆ If Agent B can not locate the red sweater, the only logical conclusion any reasonable person can draw is the customer must have possession of the red sweater, and this finding is relayed to Agent A, who is now engaged in a “constructive unbroken chain of surveillance.” Thus the subsequent detention is valid.

Founded in 1984, the International Association of Professional Security Consultants (IAPSC) is a widely recognized and respected association committed to establishing and maintaining the highest standards for security consultants in the industry. IAPSC members are independent, non-product affiliated consultants who are required to meet strict educational, experience, and practice requirements, ensuring that they uphold the IAPSC code for professionalism and ethical conduct. For more information, to find an IAPSC security consultant, or to become a member of the association, visit www.iapsc.org.