

## **Civil Recovery: Make The Thieves Pay !**

Testimony of Read Hayes, CPP, CST

Good morning Chairman Caltagirone and fellow members of the Judiciary Committee. I appreciate the opportunity to present the following testimony to you regarding civil recovery procedures for theft.

For too long, you and I, the honest consumer, have had to pay for theft and expensive security measures by paying higher prices in our favorite stores. But now, retailers and consumers are fighting back against this type of injustice with the passage of new civil laws which hold shoplifters and dishonest employees financially accountable for their activity.

In 1973, the Nevada State Legislature passed state law 598.033. Since that time, over thirtyfive other states have passed similar laws that are commonly referred to as "civil demand" statues. The intent of these laws is to allow retailers and other businesses to demand an amount of money from those persons apprehended for committing theft against them. This money is collected to cover a company's cost of security and loss prevention efforts. In short, the idea is to pass the high cost of theft on to the thieves instead of on to consumers through higher prices. When the civil demand process is handled properly, merchants can significantly offset their security budget. They will also discover that the civil penalty is a very effective deterrent to both shoplifting/external crime and employee theft. Many "hardcore" criminals or even first time offenders realize that because the criminal justice system is grossly overcrowded, their chances of jail time are almost nonexistent. The collection of \$200.00 or three times the dollar amount, whichever is greater, plus court costs (Florida Statues) is often a strong deterrent to even professional criminals. This deterrent effect tends to prove strongest when dealing with

juvenile theft. By holding the parent or guardian financially responsible for their child's actions, closer supervision is a common result. But, whether dealing with juveniles or adults the end result of using civil remedy, in addition to criminal action, is deterrence.

Every business needs a loss prevention program of some kind regardless of the market they serve. These programs can be very simple, but should include at a minimum: employee awareness meetings, control policies, detection methods, and a criminal/civil action policy. Civil demand helps pay for an effective loss control program as well as being an important part of it.

A person apprehended for theft can usually be prosecuted criminally, asked or sentenced to provide restitution and civilly demanded simultaneously. All persons apprehended for theft should be treated in a fair and consistent manner. The decision to prosecute criminally and/or civilly demand should be based solely on the merits of the case (its provability) and not on an individual's financial ability to pay civil damages. These decisions are normally made at a corporate level instead of at the store level to avoid the appearance of a civil compromise.

Retailers are advised to consult with their attorney for specifics, but the recovery process is relatively simple.

To collect the damages under most demand statutes, a business can either use an outside firm (the national trend due to the time and expense of setting up an in-house program) to handle the process or designate a person within the company to initiate and follow-up on all cases. Typically a suspect is detained and a written report is made by the merchant. Every attempt should be made to obtain a correct current mailing address either from the subject himself or through the police. All reports must be reviewed for completeness and to confirm that the case satisfies elements required to prove that the detained subject in-fact committed theft. Next, the case is entered into a computer and a letter of demand referring to the incident and state statute is sent to the subject. Also included is a copy of the appropriate state law and the name and phone number of the

company's contact person. If no response is received within a specified time, a second letter is sent. In some cases a third letter may also be sent .

Also, many states allow a parent or guardian to be held civilly liable for their juvenile's actions. In addition to shoplifting and employee theft prevention, closer supervision can have a positive impact on many of today's problems, including drug abuse and high-school dropout rates.

Most companies surveyed claim that they are experiencing between 20-50% of demanded subjects paying the demanded damages amount. Also, some merchants have experienced approximately 50% of their shoplifters attempting to give them a false name and/or address. This is a problem that the individual retailer needs to work on in conjunction with their local law enforcement agencies.

If a subject refuses to respond to demand letters, the final option is court action. This is normally handled in small claims court for a small fee. If, after all facts have been submitted and the court rules in the retailer's favor, the defendant must pay the claim and any court costs or a lien may be attached on property they own. It is important for the merchant to meet and discuss the state statute with affected local judges and attorneys to familiarize them with the law. Civil Recovery firms provide standard Civil Recovery Programs to all types of retailers. They also provide a "Final Notice" program to those retailers who have an existing in-house system. This type of program follows up on those subjects who do not respond to the initial letters as well as field the multitude of questions asked by demanded subjects, their attorneys and parents. The main advantage of outside firms is that the demand process is handled in a conservative, consistent manner statewide.

All retailers should exercise caution when implementing a civil recovery program. Each state law should be thoroughly researched and demand letters appropriately written. A consistent, fair program includes avoiding discrimination in any form or the appearance of "making deals". The use of funds collected by retailers is not usually addressed in state

statutes, but they are generally used to provide funding for loss control training, programs and equipment.

The spirit and intent of these "Civil Demand" laws, to help local merchants defer the enormous cost of theft that we all must pay, mean that any business that experiences theft now has a valuable tool to help combat this growing problem.

By passing on the cost of theft and security to the offender and not on to the buying public, we all benefit by lower consumer prices.

At this time I would be more than happy to answer any questions you might have regarding the concept and practice of civil recovery.