



# Washington State

## Shoplifting & 3rd Degree Theft

II. A Legal Guide published by John Tymczyszyn and John T Law, PLLC

**Understanding this guide:** This guide is designed for persons who have been detained or arrested for retail theft by loss prevention officers (LPO) or police in Washington State. This is general information for first-time offenders that are accused of stealing merchandise valued less than \$750 under RCW 9A.56.050. RCW 9A.56.050 is a Gross Misdemeanor in Washington state and punishable by up to 1 year in jail and a \$5000 fine. This is not a substitute for representation by a qualified criminal defense attorney.

### 1. INTRODUCTION:

At this point, you have likely been detained by loss prevention (LP) employees at a retailer such as: Costco, Macy's, Nordstrom, Whole Foods, or other retailer. You were likely asked to sign a "notice of trespass" that prohibits you from returning to the retailer for a period of two years or more. At that point, you may have been arrested by police and taken to jail. If police did not arrest you then the retailer may forward charges to police under the retail theft program (RTP) law. Additionally, you may have been either presented or mailed a "civil demand letter" from the retailer that demands money. Many people want to immediately take action like paying the civil demand letter or apologizing to loss prevention and police. STOP. Now is the time to slow down, get good information and NOT take any action before you understand the implications these actions could have on your case.

### 2. CONSIDER CONSULTING WITH AN ATTORNEY:

This guide is designed to give you generalized information. In order to obtain specific information, you may want to get a consultation with an attorney. Most criminal defense firms offer a free initial consultation.

### 3. CONSIDER NOT PAYING THE CIVIL DEMAND:

Civil demands in Washington State generally range from \$300 to \$1000, depending on the retailer and the value of the merchandise in question. Simply paying the retailers "civil demand" may not work in your favor and may ultimately backfire on you if you intend on maintaining your innocence. Additionally, paying the civil demand prior to negotiating with the retailer is not advisable. You need to obtain the proper paperwork and agreements in exchange for your money. Your goal in this case is obtaining closure without a criminal record. If you pay this civil demand, then you should negotiate for a letter in exchange that indicates that the retailer will not pursue a civil lawsuit against you and/or does not wish to actively pursue criminal charges. Remember, if you are paying someone money then you should get a legal advantage out of it. If they are not offering you closure, and just want money in exchange for nothing, then consider not paying.

### 4. KEEP THE LOSS PREVENTION OFFICER (LPO) OUT OF COURT:

Loss Prevention Officers have many official duties. These duties include:

- 1) Write a report of events that led to detention of a suspect;
- 2) Turn over photos, security video, and documents that you have signed to police;
- 3) Report any confessions that you have made;
- 4) Give their position on a case to local prosecutors;
- 5) Testify in court proceedings; and
- 6) Testify at sentencing hearings.

Loss prevention officers are generally paid their hourly rate to testify in court. Giving witness testimony is part of their official duties and they are allowed to wear their official uniform while doing so. This generally leads to judges and jurors giving their testimony extra weight and respect. As part of the bargaining process in the civil demand, it is advisable that you attempt to reach an agreement with the retailer's loss prevention department or attorney such that the loss prevention officers are *not* sent to court. Chances are, if the retailer does not take a strong stand on your case, it will be easier to negotiate with the prosecutor. Negotiate the payment of the civil demand and try to keep the loss prevention officer out of court.

**5. DO NOT PLEAD GUILTY AND CONSIDER EMPLOYMENT CONSEQUENCES:**

If you are a first time offender and do not have a criminal record, you may qualify for *alternative sentencing* that does not include a permanent criminal record or jail time. Having a permanent criminal record for theft will be public information and available on the Washington State Patrol (WSP) website. Below is an example of a sample report:

NAME:	JANE DOE
AGENCY:	BELLEVUE POLICE DEPARTMENT
OFFENSE:	THEFT 3 <sup>RD</sup> DEGREE
STATUS:	GUILTY
SENTENCE:	-364/361 (3 DAYS JAIL) -8-HOUR THEFT COURSE -12 MONTHS SUPERVISED PROBATION -REPORT SENT TO US IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

This record will be available to the 1) the general public; 2) future potential employer; 3) current employer; 4) School or non-profit where you may volunteer; and 5) College or University where you may apply. Notice that the word "shoplifting" is not included in the report and that Washington state law does not distinguish between different types of theft.

**\*Note for Juveniles:** Virtually all college and university applications ask if you have ever been convicted of a crime. Turning 18 years of age does not *seal* one's juvenile record. If a university does not automatically reject an applicant with criminal history, they will likely ask for 1) an essay explaining the situation; and 2) a copy of the police report to make a determination.

**\*Note for Non-U.S. Citizens:** Theft in the 3<sup>rd</sup> degree is considered a “crime of moral turpitude” (CMT) and therefore is likely to impact your ability to become a US Citizen and possibly remain in the United States.

## 6. UNDERSTAND ALTERNATIVE SCENTENCING

A criminal record for shoplifting will indicate “THEFT 3<sup>RD</sup> DEGREE: GUILTY.” This record will be a matter of public record and listed on the Washington State Patrol website. This record will be available to the 1) the general public; 2) future potential employer; 3) current employer; 4) School or non-profit where you may volunteer; and 5) College or University where you may apply. Alternative sentencing in Washington State varies by the city or county, depending on where you were arrested. I have listed some examples of alternative sentencing below that may be available in your city or county in Washington State.

- a. **Pre-trial Diversion:** This option is generally supervised by a probation officer and involves 12-months of voluntary probation. Conditions of probation may include theft classes, community service, work crew (the people you see in neon vests cleaning up trash on the side of the road), alcohol or drug classes and regular meetings with a probation officer. Do not attend a pre-trial diversion meeting with a probation officer without your own attorney present. You should demand that you be allowed to have an attorney present at this meeting when conditions are set. If the probation officer decides to drop you from the program, you could be found guilty.
- b. **Compromise of Misdemeanor:** This option includes negotiating with the “victim” (retail store), the prosecution, and the judge. By negotiating an agreeable resolution with the retail store, prosecution and judge, you may be able to create a situation where the retailer is not motivated to pursue criminal charges against you. This option is the reason that I have suggested NOT paying the civil demand letter. If you simply pay the civil demand letter, you may create a situation where the retailer will no longer negotiate with you. Remember, if you are going to pay the civil demand letter, get something in return.
- c. **Deferred Sentence:** If you do not have criminal history you may qualify for a deferred sentence. This means that a plea of “guilty” is entered and a 12-month probationary period begins. Conditions of probation may include theft classes, community service, work crew, alcohol or drug classes and regular meetings with probation. If you successfully complete the terms of probation, the guilty plea may be withdrawn and charges dropped.

**CONCLUSION:** This is a complex subject. Legal strategies in theft cases are complex and numerous. Most people that are facing a first time criminal charge for theft are facing devastating damage to employment opportunities, college admissions and possible immigration consequences. “Alternative Sentencing” is a general term that presents the possibility of avoiding jail time and a criminal conviction on your record. These options and possibilities vary greatly depending on the specific retailer that the incident occurred, and the city, or county where you are facing charges. You and your attorney should craft a strategy based on your specific and individual situation.