

15 SEPTEMBER 1997

Law

SHOPLIFTING

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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OPR: 6 ARW/JA (Lt Col Groves)

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This instruction implements AFPD 51-5, Military Legal Affairs, and AFI 51-502, Personnel and Government Recovery Claims. It provides guidance for the collection of claims resulting from shoplifting incidents pursuant to AFI 51-502 and Section 772.11 of Florida Statutes Annotated, as well as suspension and revocation of exchange privileges in accordance with AFR 147-14, Army and Air Force Exchange Service (AAFES) Operating Policies. It applies to individuals apprehended for shoplifting at Army and Air Force Exchange Service (AAFES) facilities at MacDill Air Force Base FL. It is implemented by AAFES, Security Forces, and Judge Advocate base-level organizations at MacDill Air Force Base.

1. AAFES Responsibilities:

1.1. Upon detention of an individual suspected of shoplifting (herein after referred to as "subject"), determine the amount of actual damages caused by the shoplifting. The subject may be liable to AAFES for three times the actual damages sustained or two hundred dollars (\$200.00), whichever is greater, reasonable attorney's fees, and court costs. Attorney's fees and court costs are not incurred unless the subject is sued. Actual damages are direct and consequential costs reasonably close in time and place to the incident. This includes the lost value of damaged or destroyed merchandise, its packaging or labeling, and/or the temporary loss of the product for resale. Not included are indirect costs of detection and processing subjects.

1.2. When a shoplifting incident causes actual damages, complete and hand or mail the subject (or sponsor) a payment demand memorandum (see [Attachment 1](#)) with the payment receipt (see [Attachment 2](#)) demanding payment for the damages within 30 days. The memorandum will contain a provision advising that payment of the claimed amount may be considered as a mitigating factor in determining what additional action, if any, may be taken. Finally, the memorandum shall notify the subject that all payments must be made to the General Manager of the MacDill Exchange Office.

1.3. Inform the 6th Security Forces Squadron (6 SFS) of any aggravating circumstances and the subject's history of prior detentions for shoplifting.

- 1.4. Provide receipt for payment of civil restitution and release of liability to subject (see [Attachment 2](#)).
- 1.5. Provide the 6th Air Refueling Wing, Civil Law Office (6 ARW/JAC), a collection receipt upon payment of damages.
- 1.6. Provide copies of checks, AAFES collection receipts, and any other pertinent information to the Claims Office (6ARW/JAD).

2. Security Forces Responsibilities:

- 2.1. The responding law enforcement officer shall:
 - 2.1.1. Respond to shoplifting complaints when requested and ensure safekeeping of evidence. Follow established 6 SFS procedures to process the suspect. 6 SFS procedures will be coordinated with 6 ARW/JA and will provide, at a minimum, that Security Forces:
 - 2.1.1.1. Ensure that adult and juvenile subjects are given written notice of preliminary suspension of AAFES/Commissary privileges.
 - 2.1.1.2. Seize subject's DD Form 1173, Uniformed Services Identification and Privilege Card (for all dependents). ID cards of active duty, reservists, and retired personnel will not be seized.
 - 2.1.2. Release the subject upon completion of processing. Active duty military personnel should be released to their first sergeants or commanders. All others, with the exception of juveniles, will be released on their own recognizance upon completion of the appropriate forms. In most instances, juveniles should be released to a custodial parent or guardian.
- 2.2. Within 7 days of the incident, deliver to 6 ARW/JAC a copy of any description of aggravating circumstances, any criminal record, the demand memorandum, the incident report, the preliminary suspension memorandum and DD Form 1805, Violation Notice, as applicable.
- 2.3. Coordinate all AAFES/Commissary privilege suspensions/revocations with the Commander, 6th Support Group (6 SPTG/CC), or his or her designee.
- 2.4. Individuals found in AAFES facilities (other than exceptions listed in the memorandum of suspension) after their privileges have been suspended or revoked may be charged with a violation of Article 92 of the Uniform Code of Military Justice for failure to obey a lawful order (Military) or trespass (civilian).

3. 6 SPTG/CC Responsibilities:

- 3.1. Review all evidence and conduct a hearing, if requested.
- 3.2. Withdraw the preliminary suspension of privileges on closing the case if 6 SPTG/CC believes it is appropriate.
- 3.3. In all other cases, except for good cause shown by the subject, suspend or revoke the subject's AAFES privileges. If the evidence supports a conclusion that the subject committed the offense, the subject shall receive one of the following:
 - 3.3.1. Minimum one year suspension with automatic reinstatement provided the claim for damages has been fully paid.

3.3.2. If the subject has committed another shoplifting offense within the past five years, permanent revocation of privileges with reinstatement possible after 24 months, provided the claim for damages is fully paid.

4. 6 ARW/JAC Responsibilities:

4.1. Fully prosecute or dismiss, with or without prejudice, criminal complaints against nonmilitary subjects.

4.2. Pursue restitution when appropriate (i.e., when subject fails to honor AAFES demand memorandum) in accordance with Florida Statutes Annotated, which is enforceable in United States District Courts pursuant to 28 U.S.C. 1345. See U.S. v. Belanger, 598 F. Supp. 598 (D. Me. 1984) (Citing U.S. v. Little Lake Miscro Land Co. Inc; 412 U.S. 580 (1973); Clearfield Trust Co. v. U.S., 318 U.S. 363 (1943)).

5. 6 ARW/JAD Responsibilities:

5.1. Upon notification by AAFES that subject has paid civil restitution, initiate a claim file.

5.2. Open and immediately close out a nonappropriated fund claim (collection) in the Air Force Claims Information Management System.

JOHN D. BECKER, Brig Gen, USAF
Commander

Attachment 1

SAMPLE PAYMENT DEMAND MEMORANDUM

(Date)

MEMORANDUM FOR _____
(Name of suspected shoplifter)

FROM:General Manager
MacDill Exchange Office
Bldg. 18, P.O. Box 6842
MacDill AFB, FL 33608-6842

SUBJECT: Demand for Payment of Damages Subsequent to Apprehension for Shoplifting

1. You have been apprehended for shoplifting at the MacDill Exchange.

2. In accordance with Florida Statute 772.1 1, AA.FES hereby demands that you pay damages in the amount of three times the actual damages (3 x _____P_____) or two hundred dollars (\$200.00), whichever is greater. You must return the attached payment receipt with your check or money order to the address listed on the payment receipt within thirty (30) days, at which time AAFES will provide you with a release from further civil liability. If not received within thirty (30) days, the Exchange may recover attorney's fees and court costs. Payment may be considered as a mitigating factor in determining what additional action, if any, will be accomplished.

3. If you have any questions concerning this process, you may call the base legal office at (813) 828-4422 or seek the advice of a civilian attorney.

J.D. SMITH, General Manager
MacDill Air Force Base Exchange

1st Ind to General Manager, MacDill Exchange Office, _____, Demand for Payment of Damages
Subsequent to Apprehension for Shoplifting (date)

Suspected Shoplifter

MEMORANDUM FOR General Manager

MacDill Exchange Office

Bldg. 18, P.O. 6842

MacDill AFB, FL 33608-6842

I hereby acknowledge receipt of this memorandum on _____.

(Signature)

Attachment 2

SAMPLE PAYAIENT RECEIPT

(Enclose this with your payment and mail or deliver to the address below)

TO: General Manager

MacDill Exchange Office

Bldg. 18, P.O. Box 6842

MacDill AFB, FL 33608-6842

Attached is my payment of \$200.00 or _____P____(three times the amount of actual damages), whichever is greater, as damages from the shoplifting incident which occurred at the MacDill Exchange on _____.

Name of person making payment: _____

Address: _____

City, State, Zip: _____

Phone: _____

FLORIDA STATUTES SECTION 772.11: CPM REMEDY FOR THEFT

Any person who proves by clear and convincing evidence that he has been injured in any fashion by reason of any violation of the provisions of §§812.012-812.037 [shoplifting] has a cause of action for three-fold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200.00, and reasonable attorney fees and court costs in the trial and appellate courts. Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200.00 or the treble damage amount of the person liable for damages under this section. If the person to whom a written demand is made complies with such demand within 30 days after receipt of the demand, that person shall be given a written release from further civil liability for the specific act of theft by the person making the written demand. Any person who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his parents or legal guardian and who is liable for damages under this section.

Received payment on _____ by _____.

(Date)

(Sign and print name)

You are hereby released from further civil liability for the shoplifting incident which occurred at the Mac-Dill Air Force Base Exchange on _____.

(Date of incident)

(Sign and print name)

(Date)