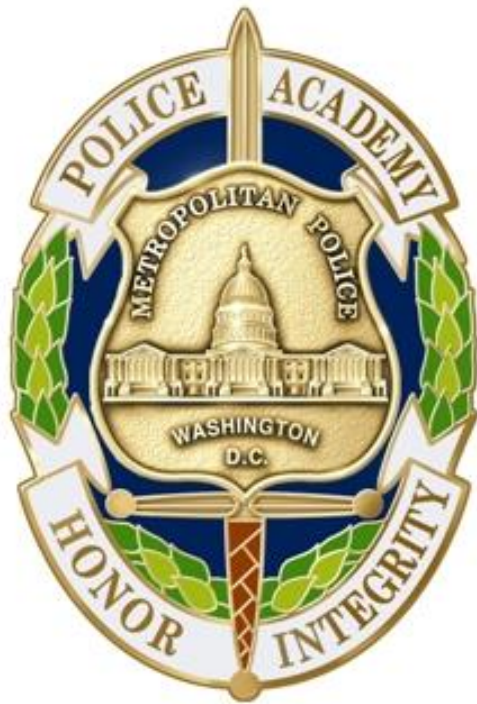


# Metropolitan Police Academy



## 7.2 Theft Offenses

## Introduction

Patrol officers report and investigate theft offenses on a regular basis. While doing so, officers must be able to classify the offenses appropriately. This lesson provides definitions of terms related to theft offenses and reviews the elements of each distinct offense. It is crucial that officers understand the terms and the subtle differences between them in order to accurately classify offenses while in the field.

Theft offenses, fraud offenses, and related property crimes have a serious impact on the community and should be thoroughly investigated by police officers in each unique case. Trends and patterns will often be detected in these offenses which patrol officers can use to investigate and deter using aggregation and repeat offender statutes taught in this lesson.

### 7.2.1 Define terms related to Theft, Fraud, and Forgery offenses in the DC Code

The following terms are used and defined in the DC Code when describing theft offenses. It is important for recruit officers to understand these terms and how they are used in order to comprehend the offenses taught in this lesson.

#### Aggregation

Aggregation is a tool used by patrol officers and detectives to determine the classification of a theft offense as a misdemeanor or felony based on the value of property or amounts received pursuant to a single scheme or systematic course of conduct.

For example, a suspect enters the locker room of a health and fitness club and breaks into numerous lockers. From the ten (10) lockers entered, he steals a total of \$600 in US Currency and \$800 worth of jewelry. He is observed by gym employees who call 911. He is later stopped by police officers while leaving the gym. In this case, although he committed ten (10) misdemeanor thefts with ten (10) different victims, using aggregation he may be charged with a felony theft offense as the thefts were all part of a single course of criminal conduct and the total value of the stolen property is in excess of \$1,000.

#### Appropriate

Appropriate means to take or make use of something without the authority or right to do so. For example using the previous scenario, when the suspect opened the lockers and took possession of the jewelry and currency from them without the right to do so, he was appropriating those items.

#### Deprive

Deprive means “to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value.” Deprive also means to “dispose of the property, or use or deal with the property so as to make it unlikely that the owner will recover it.”

#### Prima Facie Evidence

As noted earlier, *Prima Facie* means *at first look* and *Prima Facie Evidence* means evidence which creates a rebuttable presumption that the evidence is true. For example, ordering food from a restaurant typically involves seeing a menu with prices on it and riding in a taxi cab involves seeing a fare chart or meter. In both situations, the circumstances indicate and create a presumption that the service received requires a

payment in return. This basic understanding that the service is not free combined with a lack of payment after receiving the service is Prima Facie Evidence of Theft of Service.

### **Property**

Property means *anything of value*. It “includes, but is not limited to: [r]eal property including things growing on, affixed to, or found on land; [t]angible and intangible personal property; [s]ervices; [c]redit; [d]ebt; and [a] government issued license, permit, or benefit.”

### **Property of Another**

Property of another consists of “any property in which a government or a person other than the accused has an interest which the accused is not privileged to interfere with or infringe upon without consent, regardless of whether the accused also has an interest in that property.” For example using the earlier scenario, the US currency and items of jewelry taken by the suspect were all Property of Another.

### **Services**

Theft cases may involve the taking of services rather than merchandise or personal property that is appropriated. Theft involving services is often a refusal to pay for something voluntarily provided and received. Eating at a restaurant and then refusing to pay and refusing to pay a taxi cab fare after receiving a ride to one’s destination are both examples of services provided and received, after which a theft occurs when the suspect refuses to pay.

The types of services at issue are:

- “Labor, whether professional or nonprofessional;
- The use of vehicles or equipment;
- Transportations, telecommunications, energy, water, sanitation, or other public utility services, whether provided by a private or governmental entity;
- The supplying of food, beverage, lodging, or other accommodation in hotels, restaurants, or elsewhere;
- Admission to exhibitions or places of entertainment; and
- Educational and hospital services, accommodations, and other related services.”

### **Stolen Property**

Stolen property includes any property that has been obtained by conduct previously known as embezzlement. .

### **Tangible vs. Intangible**

Tangible property is the most common type of property encountered by police officers. It refers to physical property which can be held or touched. In contrast, intangible property refers to concepts, thoughts, electronically stored information, patents, copyrights, etc. Intangible property lacks a physical presence and cannot be perceived by a person’s sense of touch.

## **7.2.2 Classify the elements of Theft offenses**

### **Theft in the First Degree (referred to as Theft I) - § 22-3211**

Theft I occurs when:

- A person “wrongfully obtains or uses the property of another;

- With the specific intent
  - “To deprive the other of a right to the property or a benefit of the property;”
  - or “To appropriate the property to his or her own use or to the use of a third person.”
- And “the value of the property obtained or used is **\$1,000 or more.**”

Theft I is a felony punishable by a period of imprisonment not more than ten (10) years and/or a fine.

In the context of these elements, the phrase *wrongfully obtains or uses* means:

- “taking or exercising control over property;”
- or “making an unauthorized use, disposition, or transfer of an interest in or possession of property;”
- “or obtaining property by trick, false pretense, false token, tampering, or deception.”

For example, Joe wanders around the bicycle storage racks near a bus stop in DuPont Circle and finds a red Specialized touring bicycle locked to the rack. Joe cuts the cable lock, separating the bike from the rack, and rides off on the bicycle leaving the lock on the ground. The owner later returns and reports the bicycle stolen. The complainant provides documentation of ownership and value with a recent receipt showing that he purchased the bicycle for \$2,200. Joe has committed Theft I because the property which he wrongfully appropriated is worth more than \$1,000.

**Theft in the Second Degree (known as Theft II) - § 22-3211:**

The elements of Theft II are identical to those of Theft I. The main factor distinguishing the two offenses is the value of the item or property appropriated. With Theft II, the property obtained or used must have a value **less than \$1,000.**

Theft II is a misdemeanor punishable by imprisonment for a period of no more than 180 days and/or a fine.

For example, Joe enters a restaurant and orders a meal from a waitress. Joe eats the meal and receives a check from the waitress for \$35. Joe gets up and leaves the restaurant without paying the check. Once outside, Joe enters a taxi cab and requests to be dropped off at Union Station. Once there, Joe exits the cab and refuses to pay the \$13 cab fare. In both of these cases, Joe could be charged with Theft II because he failed to pay for services received and the value of each of those services was less than \$1,000.

**Felony Theft - § 22-3212 (c)**

Felony theft is an offense charged in cases involving repeat offenders. According to the DC Code, subjects arrested for Theft I or Theft II who have two (2) or more prior convictions for theft can be charged with Felony Theft regardless of the value of the property appropriated in the current case. This includes convictions in other jurisdictions for theft or similar statutes such as Larceny.

Felony Theft is punishable by a period of imprisonment of not less than one (1) year and not more than fifteen (15) years in prison and/or a fine.

**NOTE:** The prior convictions must be documented in the Arrest/Prosecution Report. Prior arrests may be verified through Mark43, Justis, or other database systems.

For example:

*The defendant has been convicted of Theft in two prior cases. (05/01/2011 DC Superior Court Docket # 2011CMD001002 Theft II) and (09/02/2012 DC Superior Court Docket # 2012CMD285934 Theft I). Pursuant to D.C. Code, the defendant has been charged with Felony Theft.*

#### **Notes on Theft:**

- Theft of a vehicle requires a notification to Teletype so that the registration information can be entered into WALES as a stolen vehicle.
- Theft of property from within an automobile is classified as “Theft I from Auto: or “Theft II from Auto” depending on the value of the property taken.
- In cases involving theft of property from an automobile, officers trained to process crime scenes should be notified when:
  1. The case is closed with an arrest.
  2. The case involves a known suspect.
  3. The value of the property stolen exceeds \$5,000.
  4. The property stolen includes sensitive materials or weapons.
  5. The theft is from a government vehicle.
  6. The case is part of a larger scheme or serial type of offense pattern.
  7. When ordered to do so by an MPD official
- If the stolen property is owned by a government agency, that fact should be indicated in the offense report.
- Theft involving the US Mail (not UPS, FedEx etc.) requires a notification through the dispatcher or CIC to a US Postal Inspector.
- Electronic devices and other items of property that can be tracked (e.g., cell phones, iPads, etc.) must be thoroughly documented before tracking can be used. Officers must obtain a complete description of the item, including its serial number, make, model, carrier, and any other unique identifiers.

For example, when Joe is stopped by MPD at Union Station, MPD Officers conduct an investigation into the theft of services which occurred at the restaurant and after his cab ride. The taxi driver is still on the scene and has identified Joe as the offender. Joe is subsequently arrested. A check reveals that Joe has previously been convicted of Theft II twice and Theft I once. As a result, the arresting officer charges Joe with Felony Theft, calls for an officer who is trained to process crime scenes, and documents the previous cases in his Arrest/Prosecution Report.

#### **Receiving Stolen Property (RSP) - § 22-3232**

This offense occurs when a person:

- “buys, receives, possesses, or obtains control of stolen property,
- knowing or having reason to believe that the property was stolen”

The property involved in the offense does not actually have to have been stolen to constitute Receiving Stolen Property, so long as the accused “engages in conduct which would constitute the crime” and believes he or she did so.

RSP can be a felony or misdemeanor. Like Theft, the determining factor is the value of the stolen property: the felony offense is for property worth \$1,000 or more, and the misdemeanor is for property of any value under \$1,000.

Felony Receiving Stolen Property is punishable by a period of imprisonment for not more than seven (7) years and/or a fine.

Misdemeanor Receiving Stolen Property is punishable by a period of imprisonment not more than 180 days and/or a fine.

For example, while on patrol, you observe Mr. Smith walking northbound on the sidewalk. You have interacted with Mr. Smith before and know he has a history of committing property crimes in the area. When Mr. Smith sees you, he drops a cardboard Amazon package to the ground, turns around, and immediately walks southbound, away from you. Moments later you observe that the package is addressed to Martha Saunders. You then stop Mr. Smith due to his suspicious behavior. A partner responds to Martha Saunders's address and confirms that she reported an Amazon package stolen from her porch earlier that day and that it contains a bath towel worth \$55. Although Mr. Smith may or may not have committed the package theft, he can be charged with misdemeanor Receiving Stolen Property as he had reason to believe that the package was stolen and it had a value less than \$1,000.

### **Shoplifting - § 22-3213**

Shoplifting most commonly occurs when:

- “with intent to appropriate without complete payment any property of another that is offered for sale” that person:
  - “knowingly conceals or takes possession of such property;”
  - or “knowingly removes or alters the price tag, serial number, or other identification mark imprinted on or attached to such property;”
  - “or knowingly transfers any such property from the container in which it is displayed or packaged to any other display container or sales package.”

Shoplifting is a misdemeanor offense punishable by a period of imprisonment for not more than ninety (90) days or a fine of no more than \$300.

### **Offered for Sale**

Shoplifting is specific to merchandise and other items of property for sale to the public.

### **Intent**

The criminal act must be done with the intent to commit a theft.

### **Attempt**

There is no attempt to commit shoplifting.

**For Example,** John is shopping in an electronics store. John has a basket containing a few random items of merchandise in it. While browsing, John views a portable Bluetooth speaker system, and removes the security device which sounds an alarm if removed from the store. John leaves the security device on the shelf and puts the speaker system in his waistband. He then covers it with his jacket. At this time, although John is still shopping, and has not left the store with any merchandise, John has committed

shoplifting. He has shown intent to appropriate the item without payment, has removed the security device, and concealed the item in his waistband.

If John successfully makes it out of the store without paying for the merchandise, a theft has occurred.

However, it is not necessary for John to have left the store to be theft. Officers must be able to articulate the totality of circumstances of John's behavior while in the store. Officers should take note of the layout of the store when considering the charge. Big stores like Target, Walmart, and groceries stores may have a layout of customer service, Starbucks, etc., in front of the store, past all "points of sale."

Officers must be able to articulate the totality of circumstances of John's behavior. Officers should take note of the layout of the store when considering the charge. Big stores like Target, Walmart, and grocery stores may have a customer service desk, Starbucks, etc., located in the front of the store and past all "points of sale" (cash registers). The key is where the offender is at the time he or she is stopped.

### **7.2.3 Define the terms related to and the offense of Forgery in the DC Code**

In describing Forgery, the following terms are used and defined by DC Code. It is important for officers to have a thorough understanding of these terms and how they are used to prove the elements of fraud offenses.

#### **Written Instrument**

A written instrument is a legal document that defines rights, duties, entitlements, or liabilities. The DC Code states that written instruments include, but are not limited to, any:

- "Security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit...;"
- or "Stamp, legal tender, or other obligation of any domestic or foreign governmental entity;"
- or "Stock certificate, money order, money order blank, traveler's check, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, transferable share, investment contract, voting trust certificate, certification of interest in any tangible or intangible property, any certificate or receipt for or warrant or right to subscribe to or purchase any of the foregoing items;"
- or "Commercial paper or document, or any other commercial instrument containing written or printed matter or the equivalent;"
- or "Other instrument commonly known as a security or so defined by an Act of Congress or a provision of the District of Columbia Official Code."

#### **Forged Written Instrument**

Any written instrument that purports to be genuine but which is not because it:

- "Has been falsely made, altered, signed, or endorsed;"
- or "Contains a false addition or insertion;"
- or "Is a combination of parts of 2 or more genuine written instruments."

For example, a personal check is a document which instructs a bank to provide payment upon its presentation to the person whose name is on the check when endorsed. Checks are therefore considered to be written instruments. Forging a check by changing or altering the value to be paid out or forging a signature for the endorsement would thus make the check a forged written instrument under the Fraud statute. Such a document is illegal to pass as authentic and legitimate.

### **Uttering**

Utter means “to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, or certify” a forged written instrument.

### **Forgery - § 22-3241**

Forgery always involves a written instrument. It occurs when a person:

- makes,
- or draws,
- or utters

a forged written instrument with intent to defraud or injure another.

Falsely making or altering a written instrument makes the document a forged written instrument. The offense of Forgery has been committed at that point as long as the offender had the intent to defraud or injure another when he or she made or altered the forged written instrument.

Uttering is the act of using a forged written instrument as though it is real, authentic, and legitimate, regardless of who made it. It also requires the offender have the intent to defraud or injure another at the time.

Both the act of making a forged written instrument and the act of uttering it constitute the crime of Forgery.

Forgery is a felony that is punishable by a term of imprisonment **of up to ten (10) years and/or a fine** when the written instrument purports to be a stamp, legal tender, bond, check, stock certificate, public record, written instrument of a public office or government, payroll check, deed, will, contract, commercial instrument, codicil, or any written instrument having a value of \$10,000 or more.

Forgery is a felony that is punishable by a term of imprisonment **of up to five (5) years and/or a fine** when the written instrument purports to be a token, fare card, prescription, or any instrument having a value of \$1,000 or more.

In any other case of forgery not meeting the criteria already described, Forgery is a felony that is punishable by a term of imprisonment shall be **not more than three (3) years and/or a fine**.

Notes on Forgery:

- The intent to defraud or injure another by Forgery does not have to be directed at any specific or known person. Rather, all that is required is that the offender has the intent to defraud someone (anyone).
- “Injure another” refers to monetary injury, not physical injury.
- The government need not prove that the whole written instrument was falsified or altered, only that it contains some material misrepresentation of fact.



- The offender and victim may be located in different jurisdictions.

For example, Joe has been mowing lawns and doing housework around the neighborhood. Ms. Jones gives Joe a check for \$65 for cleaning her porch and mowing the lawn. She makes the check out to Joe. Joe alters the check in such a way that it now appears to be made out for \$650 and he attempts to cash the check at a local bank. Employees suspect that the written instrument has been altered and call MPD. Ms. Smith is contacted and reports that she made the check out to Joe for \$65, not \$650. At this time, Joe has both made a forged a written instrument and uttered a forged written instrument so can be charged with Forgery.

## 7.2.4 Classify the elements of offenses relating to Fraud

### Jurisdiction

Unlike other crimes in which the offender and victim must be in close physical proximity at the time the crime is committed, fraud offenses, like Forgery, often involve an offender and a complainant who are located in various jurisdictions. Fraud offenses may be committed on networks, apps, and the internet, none of which have a physical presence in any particular jurisdiction. For instance, banking and shopping is frequently conducted in an online environment and this availability has led to an increase in crimes committed through electronic devices.

Fraud offenses shall be deemed to have occurred in the District of Columbia, regardless of whether the offender is physically present in the District of Columbia, if:

- The person to whom a credit card was issued or in whose name the credit card was issued is a resident of or located in the District of Columbia;
- The person who was defrauded is a resident of or located in the District of Columbia at the time of the fraud;
- The loss occurred in the District of Columbia; or
- Any part of the offense takes place in the District of Columbia.

It is important to ask questions while on the scene of a fraud investigation to determine whether the offense occurred in the District of Columbia in any of the manners described above.

MPD has a Financial and Cyber Crimes section which can be contacted when you investigate these types of offenses. The section can be reached through the dispatcher, CIC, or by phone: (202) 727-4159.

### **Fraud in the First Degree (known as Fraud I) - § 22-3221**

Fraud I occurs when any person:

- “engages in a scheme or systematic course of conduct
- with intent to defraud or to obtain property of another
- by means of a false or fraudulent pretense, representation, or promise
- and thereby obtains property of another or causes another to lose property.”

Fraud I can be a felony or misdemeanor offense. Like other offenses described in this lesson, the determining factor is the value of the stolen property. The felony offense involves property worth \$1,000 or more, and the misdemeanor involves property of any value under \$1,000.

Felony Fraud I is punishable by a period of imprisonment for not more than ten (10) years and/or a fine.

Misdemeanor Fraud I is punishable by a period of imprisonment of not more than 180 days and/or a fine.

For example, Joe has been posing as a professional painter and offering to paint homes in the neighborhood. Numerous homeowners have agreed to hire Joe to paint their homes. Joe says the cost is \$1,000. He requests a \$500 deposit and the remainder upon completion. Joe receives and cashes fifteen (15) deposits but never paints any of the homes. Months later, homeowners begin filing reports about Joe who has not returned. Several months later, Joe is back in the neighborhood offering to paint homes again. When confronted, Joe denies receiving payment and refuses to complete the work. Joe has committed Fraud I.

### **Fraud II - § 22-3221**

Fraud II occurs when any person:

- “engages in a scheme or systematic course of conduct
- with the intent to defraud or to obtain property of another
- by means of a false or fraudulent pretense, representation, or promise.”

Fraud II can also be a felony or misdemeanor offense and the determining factor is the value of the property involved in the offense. The felony offense involves property worth \$1,000 or more, and the misdemeanor offense is for property of any value under \$1,000.

Felony Fraud II is punishable by a period of imprisonment of not more than three (3) years and/or a fine.

Misdemeanor Fraud II is punishable by a period of imprisonment of not more than 180 days and/or a fine.

## **7.2.5 Complete an Event Report and Arrest/Prosecution Report for the offenses encountered in this instructional unit**

- Felony Theft
- Forgery
- Fraud I
- Fraud II
- Receiving Stolen Property
- Shoplifting
- Theft I
- Theft II

### **Summary**

You learned in this lesson about theft, forgery and fraud offenses, the latter of which have evolved and increased in frequency due to technological advances. Your understanding of all these offenses and their elements will enable you to better detect, deter, and enforce these offenses. The scenarios you have

worked through and discussed are similar to those you will encounter as a patrol officer. All of these offenses affect community members and businesses, and with this training you can be effective in your ability to perform patrol duties.

## REFERENCES

GO 302.01	Calls for Service	02/16/2022
GO 201.26	Duties, Responsibilities, and Conduct of Members of the Department	04/05/2011
GO 401.01	Field Reporting System	07/19/2012