



“Prosecuting Internal Cases in a Challenging Environment”

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Prosecuting internal cases in today's environment requires objective, irrefutable evidence presented in a simplified and easy-to-understand format.

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- ▶ **Since 2000, 40 states have raised their felony thresholds, including nine states that have done it twice.**
 - ▶ **This is leading to an increase in ORC activity for all retailers.**
 - ▶ **The National Retail Federation (NRF) National Retail Security Survey found that the total shrink topped \$50B in the United States for the first time since 2018.**

The Perfect Storm System Overload!!

- ▶ Decriminalization was already in place pre-COVID19.
- ▶ The pandemic changed shopping habits opening new and creative ways to steal: omni-channel, triangulation schemes, in-store/curbside pick-up, ORC groups, vendor thefts, and cargo thefts.....
- ▶ Economic pressures have increased the number of larcenies in a hyperactive theft environment. This, combined with reduced employees (AP/LP, retail staff, management, and turnover), makes pursuing each internal case even more challenging.
- ▶ Downsizing of law enforcement, court personnel shortages, and back logs in the judicial system.
- ▶ Some courts are closed, and District Attorneys are openly sharing they won't prosecute for non-violent offenses creating greater recidivism rates.
- ▶ Prosecutors are overwhelmed with caseloads leading to decriminalization for many crimes, specifically non-violent crimes ("larcenies").
- ▶ No Bail, No Jail.



Courtesy of AUROR-Bob Haskins 2020

Internal Case Criminal Prosecution

- ▶ What is your company policy for criminal referrals?
- ▶ What does your company consider as the “Predication Level”?
- ▶ What is the threshold level? Do you require the allegation(s) to be substantiated before you interview the subject?
- ▶ If in a union environment, consider your company’s protocol.
- ▶ Follow company policy consistently to avoid selective prosecution. The previous precedent is a good best practice.
- ▶ Follow directions from your HR, legal, and/or labor department or supervisor. What is prosecution based on?
- ▶ Document any decision not to prosecute. (i.e., the case was reviewed by your legal team, and the decision was made not to pursue prosecution, or the case was declined by Prosecutor/DA).



Internal Case Criminal Prosecution

- ▶ Consider using a previously prosecuted/similar case as your precedent benchmark.
- ▶ If it's policy to prosecute and law enforcement declines, ask to file a report and get a case number.
- ▶ What if the DA or LEA states you failed to read Miranda?
- ▶ Be prepared to be told no to prosecution. Certain jurisdictions have other options (i.e., AG, Federal, State, Local).



Internal Case Criminal Prosecution

“Investigator Considerations”

- Does obtaining a restitution agreement/promissory note affect criminal charges? (Entering into a civil agreement.)
- Be careful not to be considered an agent of law enforcement based on pre-LEA contact or consultation.
- Does the recovery of evidence preclude prosecution? (“You got your property back.”)
- Does the prosecutor demand to file at the cost of goods vs. retail or replacement value?
- How will a prior conviction or pending charge affect the process?
- What time of day are you referring the case to law enforcement?



Internal Theft Criminal Prosecution

“Case Preparation/Review”

- ▶ Pre-preparation is key in major or complex cases (i.e., embezzlement, refund fraud, credit card fraud, theft by deception, etc.) Consult with LE (detective) to know what evidence is required.
- ▶ Regardless, most LEAs require the case to be initiated by calling 911.
- ▶ Do I file now or later?
- ▶ The responding patrol officer for complex cases may need guidance on how the crime was committed.
- ▶ Have all paperwork ready. If you can't file it successfully that day, consider filing when all evidence is prepared.
- ▶ What are the DA's requirements/expectations?
- ▶ Follow LE's directions on arrests. Avoid “perp walk” to make a statement.
- ▶ Confidentially; need to know basis.



Common Prosecution Rejections from LE and/or Prosecution Team

Internal Cases

- ▶ No video footage.
- ▶ Low priority case & viewed as a victimless crime.
- ▶ Companies have insurance or write losses off at year-end.
- ▶ Written statement; no physical evidence.
- ▶ Non-specific statement; no details of admission.
- ▶ The normal length of the interview.
- ▶ No evidence to prove the actual amount stolen.
- ▶ Inventory results do not back up admitted loss.
- ▶ A written statement, in many cases, is often not enough.
- ▶ The subject's confession is made after being Mirandized by LE.

Possible Solutions

- ▶ Physical stolen property returned noted in the statement to support admission.
- ▶ Inventory system reports reflecting SKU differences of the fraudulently returned products.
- ▶ Inventory losses/evidence corroborate confession.
- ▶ Witness statements.
- ▶ CCTV in key locations.
- ▶ Consider audio/video recording and witness testimony.
- ▶ Proof of password-protected POS login credentials.
- ▶ Key control, in/egress access records of the subject committing the crime.
- ▶ Payroll records.

Actual Internal Case Example

Case Background


- Nine-year manager confessed to \$9,500 in refund fraud and merchandise theft that occurred over a six-month period.
- Medium volume retail location & only management have access to safe and alarms.
- Credit card refund case initiated via EBR system.
- A high percentage of refunds included subject and multiple employees.
- All employees can process refunds.
- 95% of original purchases were via credit card with cash given back.
- No POS restrictions on issuing different tenders from the original. No restriction on issuing more back than the original amount.
- Credit card refunds only require a first & last name.
- The location has no CCTV system.
- The case was referred to law LE after employee termination.

2/13/23
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on 2/13/23, I admitted to completing fraudulent returns and pocketing cash. I would do this to ease the level of financial burden I was under at times. I completed about 24 fraudulent refunds. This started in August of this past year. After losing my mom and dealing with a terrible living situation, I felt so deeply cornered, I wasn't sure what else to do. I am incredibly sorry to have defrauded the company in this way. I know myself to be a good person. This was an extreme lapse of judgement. From the refund sheet Jeff gave me, I have identified 10 refunds I know that I did fraudulently. They are:

Date	Amount	Name
12/27/22	\$290.35	Rachel Perrin
12/12/22	\$107.60	Kelly Mitchell
11/25/22	\$266.92	(Machi Maland)
10/17/22	\$89.35	Sarah Bennett
9/17/22	\$357.59	Hollie Bumba
9/16/22	\$4.70	Vanessa



What evidence do you think could play an important role in prosecuting this case?

What available evidence do you think could help prosecute this case?

ANSWERS:

- ▶ Covert camera.
- ▶ Signed confession statement (voluntary & witnessed by third party).
- ▶ Audio/video recorded statement.
- ▶ Witness statement.
- ▶ Various EBR reports show tender mismatch, similar customer names (variations), and percent of refunds to sales.
- ▶ Comparison of volume to “like” locations & comparison to comp #'s over several years span.
- ▶ Mid-year of year-end inventory results.
- ▶ Cycle counts of specific products refunded.

What available evidence do you think could help prosecute this case?

ANSWERS Continued

- Cash overages or shortages.
- Payroll reporting compared to employee schedules.
- TLOxp or other verification of customer name & address information.
- Financial or social media reports may show the subject with excessive lifestyle habits or spending patterns, including employee purchases.
- Controlled access & alarm reports.
- Return of the stolen product.
- Excel or EBR print out of transactions (identified & acknowledged by the subject during the interview).

Evidence Used in this Case

- ▶ Signed confession statement (voluntary & witnessed).
- ▶ Witness statement/eyewitness testimony.
- ▶ Witness statements on best practices and following company policy.
- ▶ Various EBR reports showed tender mismatch, similar customer information & percent of refunds to sales.
- ▶ Comparison of volume to “like” location, comparison to comp #'s over several years.
- ▶ Year-end inventory results.
- ▶ Cycle inventory counts of specific products refunded.
- ▶ Payroll report compared to employee schedules.
- ▶ TLOxp/other verification of customer names & addresses.
- ▶ Return of the stolen product.
- ▶ Excel or EBR printout of transactions (identified & acknowledged by the subject during the interview).



“Top 5” Key Takeaway to a Successful Criminal Referral

1. Within the scope of company policy.
2. Irrefutable evidence.
3. Proof your company is the victim of financial loss.
4. Clear knowledge of the case & can articulate the facts.
5. Perseverance.