
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1779 **Hearing Date:** June 11, 2024
Author: Irwin
Version: April 25, 2024
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Theft: jurisdiction*

HISTORY

Source: California District Attorneys Association
Orange County District Attorney's Office
Ventura County District Attorney's Office
San Diego County District Attorney's Office

Prior Legislation: AB 1613 (Irwin), Ch. 949, Stats. 2022
AB 331 (Jones-Sayer), Ch. 113, Stats 2021
SB 94 (Committee on Budget) Ch.25, Stats 2019
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Arcadia Police Officers' Association; Association of California Cities - Orange County (ACC-OC); Boma California; Burbank Police Officers' Association; California Business Properties Association; California Business Roundtable; California Chamber of Commerce; California Correctional Supervisors Organization, INC.; California Downtown Association; California Narcotic Officers' Association; California Problem Solvers Caucus; California Reserve Peace Officers Association; California Restaurant Association; California Retailers Association; California State Sheriffs' Association; Chief Probation Officers' of California (CPOC); City of Alameda; City of Artesia; City of Corona; City of Crescent City; City of Lakeport; City of Merced; City of Norwalk; City of Rancho Palos Verdes; City of Santa Clarita; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Darrell Steinberg, Mayor of Sacramento; Deputy Sheriffs' Association of Monterey County; Downtown Santa Monica Inc.; Fullerton Police Officers' Association; League of California Cities; Los Angeles County Business Federation (BIZ-FED); Los Angeles County Sheriff's Department; Mayor Todd Gloria, City of San Diego; Murrieta Police Officers' Association; Naiop of California; Newport Beach Police Association; Novato Police Officers Association; Orange County Business Council; Orange County Taxpayers Association; Palos Verdes Police Officers Association; Peace Officers Research Association of California (PORAC); Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Santa Clarita; City of; Southern California Leadership Council; Target Corporation; Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of

Danville; United Chamber Advocacy Network; Upland Police Officers Association; Valley Industry and Commerce Association (VICA)

Opposition: Communities United for Restorative Youth Justice (CURYJ); Ella Baker Center for Human Rights; Initiate Justice; Initiate Justice Action; LA Defensa; San Francisco Public Defender's Office

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to allow consolidation of specified theft charges, as well as associated offenses, occurring in different counties into a single trial if the district attorneys in all involved jurisdictions agree and expand jurisdiction for charging theft and receiving stolen property, as specified.

Existing law states that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. (Pen. Code, § 484, subd. (a).)

Existing law divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

Existing law defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified; other cases of theft are petty theft. (Pen. Code, §§ 487-488.)

Existing law punishes grand theft as an alternate felony-misdemeanor ("wobbler"). (Pen. Code, § 487.)

Existing law punishes petty theft as a misdemeanor. (Pen. Code, § 490.)

Existing law, until January 1, 2026, creates the crime of organized retail theft which is defined as:

- Acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value;
- Acting in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen;
- Acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft; or,
- Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).)

Existing law, until January, 1 2026, punishes organized theft as follows:

- If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds \$950, the offense is punishable as a wobbler;
- Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,
- A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable as a wobbler. (Pen. Code, § 490.4, subd. (b).)

Existing law states that every person who prohibits buying or receiving any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, and punishes the offense as an alternate felony-misdemeanor when the value of the property exceeds \$950, or as a misdemeanor when the value of the property is \$950 or less. (Pen. Code, § 496.)

Existing law provides that generally the territorial jurisdiction of a criminal offense is in any competent court in the county where the offense was committed. (Pen. Code, § 777.)

Existing law provides that when a criminal offense is committed partially in one county and partially in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, then jurisdiction is proper in either county. (Pen. Code, § 781.)

Existing law provides that when a criminal offense is committed on the boundary of two or more counties, or within 500 yards thereof, territorial jurisdiction is proper within either county. (Pen. Code, § 782.)

Existing law states that if property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory. (Pen. Code, § 786, subd. (a).)

Existing law states that the jurisdiction of a criminal action brought by the Attorney General (AG) for theft, organized retail theft or receiving stolen property shall also include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense or in abetting the parties concerned. (Pen. Code, § 786.5.)

Existing law specifies that if multiple offenses of theft, organized retail theft or receiving stolen property, either involving the same defendant or different defendants and the same merchandise, or involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all offenses. Jurisdiction also extends to all associated offenses connected together in their commission to the underlying offenses. (Pen. Code, § 786.5.)

Existing law states that an accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated, as provided. (Pen. Code, § 954.)

This bill expands the jurisdiction to prosecute theft, organized retail theft or receiving stolen property when brought by a district attorney to also include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense or in abetting the parties concerned.

This bill states that if multiple offenses of theft, organized retail theft or receiving stolen property either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses, subject to a hearing on consolidation of the matters in the jurisdiction of the proposed trial.

This bill provides that at the consolidation hearing, the prosecution shall present written evidence that all district attorneys in counties with jurisdiction over the offenses agree to the venue. Charged offenses from jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction.

This bill specifies that jurisdiction also extends to all associated offenses connected together in their commission to the underlying offenses of theft, organized retail theft, or receiving stolen property.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Across California, shoppers and retailers are frustrated with the impacts of organized retail theft. Whether they be the violent “smash-and-grabs” or the clearing of pharmacy shelves by organized groups, these crimes are plaguing our shopping centers and malls along major freeway corridors. The Legislature needs to give our law enforcement and prosecutors the tools to address these sophisticated retail theft rings, who are making it harder for consumers to find the products they need during these tough times and threaten their safety when shopping in local businesses. The efficiency and effectiveness of cross

jurisdictional charging that was key for prosecutors between 2019-2021 needs to be restored to secure justice and make sure our investments in addressing retail theft are spent wisely. The restoration of this tool to the Attorney General in 2022 was an important first step, but with more multi-county cases than the Department of Justice can effectively pursue, we must fully leverage our District Attorneys who have already been funded at the state level for this important work.

2. Jurisdiction for Criminal Offenses

Territorial jurisdiction for a criminal offense is generally proper in any competent court within the jurisdictional territory where it was committed. In other words, criminal charges must normally be brought in the county where the crime is alleged to have happened. Nonetheless, the Legislature has created a number of exceptions to this general rule. For example, felony sex offenses and human trafficking offenses that occur in multiple counties can be consolidated into a single trial, and then tried in a single county. (Pen. Code, § 784.7.) When the Legislature passes these kind of special jurisdictional rules they are construed liberally. (*Price v. Superior Court*, *supra*, 25 Cal.4th 1046, 1055.)

Recently enacted law expanded territorial jurisdiction for a criminal action brought by the AG for the crimes of theft, organized retail theft, or receipt of stolen property. (AB 1613 (Irwin), chapter 949, statutes of 2022.) It allows the prosecution of these offenses when brought by the AG to occur in any county where any stolen merchandise was recovered, or any instigating, procuring, promoting, or aiding in the commission of the offense occurred, even if the theft offense itself was committed in a distant county. It also expanded jurisdiction to any one of the counties in which a theft offense occurred against the same victim(s), and the merchandise was the same, or the theft was committed by the same defendant or defendants under a common plan or scheme. The expanded jurisdiction also applies any associated offenses connected together in their commission to the underlying offenses of theft, organized retail theft or receiving stolen property.

This bill would apply the expanded jurisdictional rules for crimes of theft, organized retail theft, or receipt of stolen property to criminal actions brought by district attorneys, but since each county has a different district attorney as opposed to one AG for the state, the bill requires the court to conduct a hearing on the issue of consolidation and for the prosecution to provide written evidence that all district attorneys in counties with jurisdiction over the offenses agree to the venue.

One of the theft-related offenses affected by this bill is organized retail theft which was created by AB 1065 (Jones-Sawyer) in 2018. AB 1065 also had expanded jurisdictional rules for theft offenses that was substantially similar to the language in this bill. AB 1065 had a sunset date of January 1, 2021 and was reenacted for 5 years by AB 331 (Jones-Sawyer) in 2021, but the jurisdictional provisions were intentionally excluded when the law was reenacted.

3. Consolidation of Cases from Different Jurisdictions

This bill would allow for prosecutions of theft, organized retail theft, and receiving stolen property, as well as any associated offenses connected together in their commission to the underlying theft-related offenses, to take place in counties other than the one where the offense occurred. This includes any county in which the stolen merchandise was received or recovered, any county where any act was done by the defendant in instigating, procuring, promoting, or

aiding in the commission of the theft offense or in abetting the parties. If multiple offenses of theft, receiving stolen property, or organized retail theft either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple counties then any of those counties are a proper jurisdiction. This would authorize multiple theft-related offenses to be consolidated into a single trial.

This bill requires the court to conduct a hearing on consolidation of the offenses, where the court may, in the interests of justice and for good cause shown, in its discretion may order that the different offenses or counts set forth in the accusatory pleading be tried separately. This bill requires at the hearing, the prosecution to present written evidence at the hearing that all district attorneys in counties with jurisdiction over the offenses agree to the venue. Any charged offenses from jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction.

The benefits of consolidation include judicial economy and convenience to victims and witnesses who may have to testify in multiple trials. The drawbacks can include the potential prejudicial impact on the defendant because jurors may feel compelled to convict based on the number of instances or victims, rather than the strength of the prosecution's case. Convenience to some victims and witnesses may also come at the cost of inconvenience to others who live outside of the jurisdiction where the trial is held, which could include law enforcement officers from different counties that investigated each crime. So while consolidation may avoid multiple short trials, the single consolidated trial would likely be much longer. Additionally, not all of those individual cases may have gone to trial due to weakness in evidence or lack prosecutorial resources, but when all of the cases are consolidated into one trial, there is a chance that a charge with weak evidence can still result in a conviction because it is strengthened by the aggregate evidence in the other charges leading to a different outcome than would have occurred if the charge was tried separately.

4. Renewed Efforts to Combat Property Crimes

“The Homelessness, Drug Addition, and Theft Reduction Act” is a new initiative that would make specific changes to laws enacted by Proposition 47, also known as the Safe Neighborhoods and Schools Act which was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. (See Legislative Analyst's Office analysis of Proposition 47 (See <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf> [as of June 3, 2024].)

Specifically, the new initiative would reenact felony sentencing for petty theft with two prior thefts, allow multiple petty thefts to be aggregated to meet the \$950 threshold without a showing that the acts were connected, and create new enhancements depending on the amount of property stolen or damaged. The initiative would also increase penalties for certain drug crimes, mandate treatment for certain offenders, and require courts to warn people convicted of drug distribution that they may be charged with murder in the future if someone dies after taking an illegal drug provided by that person.

([https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_\(2024\)](https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_(2024)) [as of June 3, 2024].) The initiative is supported by various law enforcement, public officials, district attorneys, small businesses and retail corporations. (*Id.*) To qualify for the November 2024 ballot, the law requires 546,651 valid

signatures by June 27, 2024; as of January 25, 2024, the campaign had notified the Secretary of State that 25% of the required signatures had been collected. (*Id.*) The initiative is currently pending signature verification. (<https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-and-referenda-pending-signature-verification> [as of June 3, 2024].)

On January 9, 2024, Governor Newsom called for legislation to crack down on large scale property crimes committed by organized groups who profit from resale of stolen goods. (<https://www.gov.ca.gov/2024/01/09/property-crime-framework/> [as of June 3, 2024].) The proposals include: 1) creating new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property; 2) clarifying existing arrest authority so that police can arrest suspects of retail theft, even if they didn't witness the crime in progress; 3) clarifying that theft amounts may be aggregated to reach the grand theft threshold; 4) creating new penalties for professional auto burglary, increasing penalties for the possession of items stolen from a vehicle with intent to resell, regardless of whether the vehicle was locked; 5) eliminating the sunset date for the organized retail crime statute; and 6) increasing penalties for large-scale resellers of stolen goods.

Both houses of the Legislature have announced legislative packages that include parts of the Governor's proposals. (See <https://www.latimes.com/california/story/2024-02-26/senate-leaders-respond-to-states-fentanyl-crisis-and-organized-retail-theft-problem-with-new-legislation> [as of June 3, 2024] and <https://www.latimes.com/california/story/2024-02-15/democratic-lawmakers-introduce-legislation-to-target-organized-retail-theft-online-resellers#:~:text=If%20passed%2C%20the%20bill%20would,if%20there%20were%20separate%20victims> [as of June 3, 2024].)

5. Amendments to be Taken in Appropriations Committee

This bill will be amended to contain an urgency clause, allowing the bill's provisions to take effect immediately upon approval of the Governor. Additionally, the bill will be amended to contain an inoperability clause stating that its provisions will become inoperative if the proposed initiative measure titled, "The Homelessness, Drug Addition, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024.

6. Argument in Support

According to San Diego County District Attorney, a cosponsor of this bill:

The original version of P.C. 786.5, passed in 2018, addressed the problem and plainly stated that Organized Retail Thefts committed in multiple jurisdictions could be prosecuted together in one prosecution. District Attorneys' Offices are typically very busy and welcome legislation that improves efficiency. However, the law had a sunset date 2 years after enactment.

Since then, Organized Retail Thefts had only escalated. The National Retail Federation reported our nation's retailers lost approximately \$72 billion in product in 2022 to Organized Retail Theft. Los Angeles and San Francisco were the two hardest hit cities in the nation.

In 2022, Penal Code section 786.5 was re-introduced with identical language to its previous version where the jurisdiction applied to all prosecutors. However, the following language “brought by the Attorney General” was eventually added. This was the only change from the original version. The explanation given: “The efficiency and effectiveness of cross jurisdictional charging needs to be restored to the Attorney General to make sure our investments in the Department of Justice to address retail theft are spent wisely.”

The quote is in reference to Governor Newsom’s commitment to provide \$18 million to the Attorney General over 3 years to create a dedicated team of investigators and prosecutors to focus on ORT rings that cross jurisdictional lines. While \$18 million is a substantial sum, it is not nearly enough to prosecute all ORT crime in our state.

Currently, the Attorney General has only a handful of lawyers prosecuting these crimes statewide. California has nearly 39 million people in 58 counties. There are approximately 164,000 retail stores in California. To be effective with its limited resources, the Attorney General’s Office is currently prosecuting cases with only the highest dollar losses. The rest are left to local police agencies and local prosecutor.

7. Argument in Opposition

According to Ella Baker Center for Human Rights:

Under existing law, a prosecutor has jurisdiction over any offense allegedly occurring in their county. (See, e.g., Pen. Code § 786.) AB 1779 proposes to allow prosecutors in counties where offenses did not occur to bring charges for offenses allegedly committed in other counties. It would do so even if the prosecutor in the county in which the offense allegedly occurred has already determined that charges are not appropriate, are not in the interest of justice or where the change of venue would harm the interests of victims, witnesses, and defendants. Giving local prosecutors the final say over charging decisions makes sense, both because a local prosecutor can consistently determine what charges (if any) are appropriate, and because forcing victims, witnesses, and defendants to travel out of county can threaten their employment and ability to care for their families.

The ability of one elected DA’s office to stack offenses provides undue power to force unjust plea agreements, even when the evidence is weak in one or more of the cases. The District Attorneys are elected county-wide to reflect the priorities of their constituents and their communities. There is no justification for disregarding the will of one county’s voters, based on the biases or policies of another.

Further, there is no evidence that aggressive charging and long periods of incarceration in any way deters retail theft. It will be very costly for California taxpayers, and financially devastating to low income families to have a loved one incarcerated for many years because of overly zealous stacking of charges based on alleged actions across jurisdictional lines.

As currently written, AB 1779 would allow a prosecutor with almost no connection to an alleged offense to charge a person with a crime, even when the prosecutor who has original jurisdiction over that offense has determined that it would be unjust or inadvisable to charge it in the first place, or to allow it to be charged elsewhere. In the bill there are no thresholds for charging across jurisdictional lines, no sunset, and no evaluation of the policy's effectiveness. As written, it will result in prosecutorial overreach, and given the long history of charging practices in California, fall most heavily on families of low or no income (mostly Black and Latinx).

-- END --