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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 1794                      **Hearing Date:** June 11, 2024  
**Author:** McCarty  
**Version:** April 11, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Crimes: larceny*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 2356 (Rodriguez), Ch. 22, Stats. 2022

**Support:** Arcadia Police Officers' Association; Association of California Cities - Orange County (ACC-OC); Buena Park; City of; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California Downtown Association; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; California Retailers Association; Chief Probation Officers' of California (CPOC); Chino Hills; City of; City of Artesia; City of Concord; City of Cypress; City of Fountain Valley; City of Grand Terrace; City of Lakeport; City of Norwalk; City of Oakdale; City of Rancho Palos Verdes; City of San Luis Obispo; City of Stanton; City of Whittier; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Darrell Steinberg, Mayor of Sacramento; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Fullerton; City of; Hesperia; City of; Lafayette; City of; League of California Cities; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Mayor Todd Gloria, City of San Diego; Mission Viejo; City of; Murrieta Police Officers' Association; Newport Beach Police Association; Novato Police Officers Association; Oakley; City of; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville; Upland Police Officers Association

**Opposition:** California Public Defenders Association; Legal Services for Prisoners with Children; Pacific Juvenile Defender Center; San Francisco Public Defender; Uncommon Law; Vera Institute of Justice

**Assembly Floor Vote:** 69 - 0

## PURPOSE

***The purpose of this bill is to establish the CAL-Fast Pass Program, authorizing district attorney's offices to operate a program allowing retailers to submit details of alleged retail theft directly to the district attorney through an online portal and to clarify the standard for aggregating multiple thefts to charge grand theft.***

*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. (Pen. Code, § 487.)

*Existing law* states that petty theft is punishable by a fine not exceeding \$1,000, by imprisonment in the county jail not exceeding six months, or both. (Penal Code § 490.)

*Existing law* defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950 dollars. (Pen. Code, § 459.5, subd. (a).)

*Existing law* states that any act of shoplifting must be charged as such, and that a person charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)

*Existing law* punishes shoplifting as a misdemeanor, except where a person has a prior “super strike” or a registrable sex conviction, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)

*Existing law* provides that if the value of the money, labor, real property, or personal property taken exceeds \$950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

*This bill* includes takings from multiple places and victims to the aggregation provision above.

*This bill* provides that circumstantial evidence may be used to determine whether multiple takings are committed pursuant to one intention, general impulse and plan and specifies that the following types of evidence are relevant but not exclusive in making this determination:

- Whether the defendant took particular items of property;
- Whether the defendant took the property within a short time span or similar location; or,
- Whether the defendant employed a single method to take the property.

*This bill* establishes the CAL-Fast Pass Program to allow retailers to submit details of alleged shoplifting, organized retail theft, or grand theft directly to the county district attorney through an online portal on the district attorney’s internet website.

*This bill* provides that these submissions may be used to determine whether further investigation is necessary and whether to file charges.

*This bill* specifies that counties that establish a CAL-Fast Pass program may apply for funding under the Organized Retail Theft Prevention Grant Program and the Organized Retail Theft Vertical Prosecution Grant Program, administered by the Board of State and Community Corrections (BSCC).

*This bill* requires each county that operates a Fast Pass program shall establish criteria on the types of cases they may investigate which shall include, but not be limited to, cases that meet any of the following criteria:

- A \$500 minimum value of stolen property;
- The defendant was acting in concert with others or committing repeated thefts;
- The theft was a felony offense;
- The case involves threats of violence;
- There is video evidence of the theft; or,
- There is a positive identification of the suspect.

*This bill* requires a county that establishes a Fast Pass program to conduct an annual evaluation of the program's impact and effectiveness in their county. The evaluation shall include, but not be limited to, evaluating the program's impact on overall retail theft countywide, if any, and its effectiveness with respect to theft reports investigated by the county district attorney's office.

*This bill* authorizes counties to contract with an independent entity, including, but not limited to, the Regents of the University of California, for the purposes of conducting the evaluation and preparing the report.

*This bill* requires counties establishing a Fast Pass program to submit an annual report to the Assembly and Senate Public Safety Committees and BSCC on December 31 each year, starting on December 31, 2026. The report shall include, but not be limited to, all of the following:

- The number of theft reports from retailers to the county district attorney's office;
- The number of theft reports investigated by the county district attorney's office;
- The number of criminal charges filed by the county district attorney's office in response to the theft reports;
- The conviction rates and jail or prison time sentenced by the judge or jury in response to the theft reports; and,
- The report based on the annual evaluation.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Retail theft poses a significant threat to California's economy and the vitality of its small businesses, resulting in a staggering loss of \$1.319 billion for the state. AB 1794 is a crucial step towards protecting businesses, ensuring consumer safety, and bolstering the economy. By consolidating theft crimes across different locations and victims, as well as establishing the CAL Fast Pass program, this bill will streamline efforts to combat retail theft, fostering greater expediency and transparency to both business owners and shoppers.

This bill has robust bipartisan backing and it is an integral component of the broader Assembly retail theft package.

## 2. CAL-Fast Pass

In March, Yolo County District Attorney Jeff Reisig unveiled a new program called “Fast Pass” to target retail that speeds up shoplifting investigations by allowing stores to communicate directly with prosecutors. The program eliminates a report of shoplifting to police, who would then submit investigative reports to the district attorney's office to determine whether to file charges. Instead, retailers submit the details of an alleged shoplifting directly to the district attorney's office online to determine if further investigation is necessary and what criminal charges to file.

According to the Yolo County District Attorney:

Because of factors outside of the control of police and sheriffs, including high priority call volume, limited staffing, some police responses can be delayed or simply impractical . . . Fast Pass becomes a force multiplier for retailers and the police by directly expediting the facts of non-emergency incidents to the ultimate decision maker, the DA, for charging consideration and allocation of investigative assets.

*(Yolo DA unveils ‘first of its kind in the nation’ program targeting retail theft offenders, Sac Bee (Mar. 5, 2024) <https://www.sacbee.com/news/local/crime/article286286850.html> [as of May 30, 2024].) Since the launch of FastPass last fall, the DA's office has filed criminal cases against 49 suspects, including dozens of felony cases, with total losses exceeding \$100,000. These 49 individuals combined have over 134 previous theft convictions, and 93% of all the offenders have previous arrests including theft, burglary, robbery, violent assaults, and family violence. First time offenders are not generally part of the FastPass program. (Id.)*

This bill would establish the CAL-Fast Pass program in state law, authorizing county district attorneys’ offices to replicate the program. The bill would incentivize participation by making the offices eligible for specified organized retail theft grants administered by the BSCC. In order to determine the efficacy of the program, the bill would mandate specified reporting requirements.

## 3. Aggregation of Multiple Thefts

Multiple acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (See *People v. Bailey* (1961) 55

Cal.2d 514, 518-519.) In the context of petty theft versus grand theft, when charges of theft are aggregated, the value of the contents stolen can also be aggregated so instead of being charged with multiple misdemeanor offenses (where the value of each item stolen is less than \$950) the defendant may be charged with a single felony when the value of the items stolen can be added together to breach the \$950 threshold.

The defendant in *Bailey* made a single fraudulent misrepresentation about her household income that caused her to receive a stream of welfare payments. (*Id.* at pp. 515–516.) While each individual payment fell below the felony threshold, the aggregated total constituted grand theft. (*Id.* at p. 518.) The California Supreme Court concluded that the payments could be aggregated because “the evidence established that there was only one intention, one general impulse, and one plan.” (*Id.* at p. 519; see also CALCRIM No. 1802 [Theft: As Part of Overall Plan].)

The California Supreme Court addressed the *Bailey* rule in *People v. Whitmer* (2014) 59 Cal.4th 733. In *Whitmer*, the defendant arranged for the fraudulent sale of 20 motorcycles, motorized dirt bikes, all-terrain vehicles, and similar recreational vehicles. The defendant was convicted of multiple thefts. (*Id.* at pp. 735-736.) The defendant appealed, arguing that under *Bailey* he should have been convicted of a single theft. The Supreme Court distinguished the facts in *Whitmer* from what occurred in *Bailey*, and found that multiple theft convictions were appropriate because each count of theft was based on a separate and distinct fraudulent act. (*Whitmer, supra.* at p. 740.) The court in *Whitmer* pointed out that *Bailey* concerned a single fraudulent act followed by a series of payments. In a concurring opinion. Justice Liu distinguished acts committed with a common scheme from acts committed as part of a single impulse. (*Whitmer, supra.* at p. 748, concur. opn. J. Liu.) Justice Liu went on to state that “. . . , separate and distinct takings do not fall under *Bailey's* aggregation rule simply because, as here, they were all done the same way. But neither does the mere fact that multiple takings are separate and distinct entail a finding of multiple thefts in every case. If the takings were committed pursuant to a single intention, impulse, and plan, then under *Bailey* they amount to only one theft.”

In 2022, the Legislature codified the aggregation rule from *Bailey* in subdivision (e) of Penal Code section 487. (AB 2356 (Rodriguez), Ch. 22, Stats. 2022.)

This bill clarifies the aggregation rule by including takings from multiple places and victims. The bill also provides that circumstantial evidence may be used to determine whether multiple takings are committed pursuant to one intention, general impulse and plan and specifies that the following types of evidence are relevant but not exclusive in making this determination: (1) whether the defendant took particular items of property; (2) whether the defendant took the property within a short time span or similar location; or, (3) whether the defendant employed a single method to take the property.

#### **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 California Retailers Association:

There has been demonstrated remarkable effectiveness in curbing retail theft and protecting businesses, employees, and consumers through streamlining the process for reporting and prosecuting retail theft incidents. These types of programs empower retailers to take swift and decisive action against perpetrators while providing law enforcement with the necessary tools to apprehend and deter repeat offenders.

Expanding the reach of these types of programs statewide presents a unique opportunity to replicate its success and establish a unified framework for combating retail theft across California. By standardizing procedures and protocols, this legislation could facilitate collaboration between local jurisdictions, enhance information sharing, and enable more efficient enforcement of laws aimed at deterring theft and safeguarding our communities while also providing much needed data and evaluation on the effectiveness with respect to theft reports being investigated by the county district attorney's offices.

This bill also provides much needed clarification for the ability to aggregated to the \$950 felony threshold for retail theft by allowing circumstantial evidence to be utilized in determining whether multiple takings are committed pursuant to one intention, general impulse, and plan, particularly in cases involving theft. This approach acknowledges that direct evidence may be lacking or insufficient, and thus, circumstantial evidence becomes crucial in establishing the defendant's intent and pattern of behavior.

## **7. Argument in Opposition**

According to Vera Institute of Justice:

California's current theft laws are in fact already harsher than those in many other states. For example, in South Carolina and Texas, states not known for being "soft on crime," theft cannot be charged as a felony unless the amount of loss is at least \$2,000 or \$2,500 respectively. AB 1794 would allow for DAs to press felony charges by aggregating separate instances of retail theft that occurred on different occasions and by broadly expanding the types of circumstantial evidence that can be considered in aggregating separate instances.

AB 1794 also takes the unusual approach of allowing retailers to seek criminal prosecutions by filing requests for retail theft prosecutions directly with DAs. This would give special treatment to retailers that no one else in the criminal legal system—including victims of serious violence and sexual harm—receives. In bypassing law enforcement investigation and processing, DAs would receive retail theft allegations without the checks and balances that other allegations—even those involving physical harm—receive, and may result in DAs prioritizing retail theft claims before other issues because of the special attention these unvetted claims will require. A DA's office has finite resources and must prioritize and triage prosecutorial resources in order to safeguard public safety, justice, and accountability. This bill will inevitably draw DA resources away from cases that have greater impact on public safety.

When we blame the wrong problems, we miss the right solutions. As sensational claims about organized retail theft have been debunked and data shows that retail theft is not rising statewide, responses must be tailored to the facts. The legislature should respond to concerns from the community and local businesses with evidence-backed solutions that do not risk deprioritizing other public safety matters.

Increasing penalties for non-violent offenses like retail theft will do little to make our communities safer. Study after study has shown that neither lengthening sentences nor increasing charges and punishments based on a second or third offense meaningfully deters crime.<sup>6</sup> And unlike the community-based programs funded by Proposition 47, which have reduced recidivism, sending people to jail and prison makes them more likely to reoffend, while costing taxpayers dearly amid a budget deficit. Finally, evidence indicates that AB 1794 is likely to worsen racial disparities in California's criminal system by sending more Black and Latinx people to prison.

-- END --