
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1802 **Hearing Date:** June 11, 2024
Author: Jones-Sawyer
Version: April 1, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: organized theft*

HISTORY

Source: Los Angeles District Attorney

Prior Legislation: AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021
AB 94 (Comm. on Budget and Fiscal Rev.), 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; Buena Park; City of; Burbank Police Officers' Association; California Association of Highway Patrolmen; California Business Properties Association; California Chamber of Commerce; California District Attorneys Association; California Downtown Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Chief Probation Officers' of California (CPOC); City of Agoura Hills; City of Artesia; City of Carlsbad; City of Crescent City; City of Cypress; City of Fontana; City of Fountain Valley; City of Grand Terrace; City of Lakeport; City of Merced; City of Norwalk; City of Paramount; City of Rancho Palos Verdes; City of Redwood; City of Rohnert Park; City of Rolling Hills Estates; City of San Luis Obispo; City of Santa Clarita; City of Stanton; City of Whittier; Corona Police Officers Association; Culver City Police Officers' Association; Darrell Steinberg, Mayor of Sacramento; Deputy Sheriffs' Association of Monterey County; Downtown Santa Monica; Fullerton Police Officers' Association; Fullerton; City of; League of California Cities; Los Angeles County Business Federation (BIZ-FED); Los Angeles County Democratic Party; Mayor Todd Gloria, City of San Diego; Mission Viejo; City of; 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; Technet-technology Network; United Chamber Advocacy Network; Upland Police Officers Association; Valley Industry and Commerce Association (VICA)

Opposition: California Attorneys for Criminal Justice; Vera Institute of Justice

Assembly Floor Vote:

72 - 0

PURPOSE

The purpose of this bill is to remove the sunset date on the provision of law that criminalizes organized retail theft, thereby making the operation of the law permanent, and extend the operation of the regional property crimes task force indefinitely.

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 retail theft as follows:

- If violations of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, 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 either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony;
- Any other violation of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, 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 another provision is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony. (Pen. Code, § 490.1, subd. (b).)

Existing law, until January 1, 2026, provides that for the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

- The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act;
- That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft; or,
- The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale. (Pen. Code, § 490.4, subd. (c).)

Existing law, until January 1, 2026, clarifies that in a prosecution for organized retail theft, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft. (Pen. Code, § 490.4, subd. (d).)

Existing law, until January 1, 2026, states that upon a conviction for organized retail theft, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed. (Pen. Code § 490.4, subd. (e).)

This bill removes the sunset date of January 1, 2026 making the organized retail theft crime law permanent.

Existing law until January 1, 2026, requires the Department of the California Highway Patrol (CHP) to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the CHP as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The task force shall provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of the California Highway Patrol in consultation with task force members. (Pen. Code, § 13899.)

This bill extends operation of the CHP task force indefinitely.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Retail theft has been growing concern in California and is an increasingly frequent topic of discussion in the Legislature. Last year, the Public Policy Institute of California reported a 5.8% increase in commercial burglary and a 9.1% increase in commercial robbery compared to the year prior. AB 1802 will maintain the ability of law enforcement to adequately respond to retail crime by eliminating the sunset on the crime of organized retail theft and the operation of

the CHP property crimes taskforce. In doing so, it will ensure law enforcement and businesses have permanent access to a vital tool needed to address this ongoing issue.

2. Organized Retail Theft Law: Response to Proposition 47 (2014)

Proposition 47, also known as the Safe Neighborhoods and Schools Act, 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. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft, shoplifting, receiving stolen property, writing bad checks, and check forgery valued at \$950 or less from alternate felony-misdemeanors to straight misdemeanors. Among the crimes reduced to misdemeanors by Proposition 47 "are certain second degree burglaries where the defendant enters a commercial establishment with the intent to steal. Such offense is now characterized as shoplifting as defined in new [Penal Code] section 459.5." (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) The measure limited the reduced penalties to offenders who do not have designated prior convictions for serious or violent felonies and who are not required to register as sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 <<http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>>.)

Prior to Proposition 47, most theft offenses had to meet the \$950 threshold in order to be charged as a felony. However, this threshold did not apply to certain offenses such as receiving stolen property, fraud and forgery which were punishable as either a felony or misdemeanor, also known as "wobblers." Also, in cases of retail theft, prosecutors had the option of charging a person with second degree burglary, which was punishable as a wobbler without having to reach the \$950 threshold. However, the provisions of Proposition 47 specifically required that the crime of "shoplifting" be punished as a misdemeanor. "Shoplifting" was defined by the initiative 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." (Pen. Code, § 459.5; Proposition 47, approved by California voters on Nov. 4, 2014.)

Because Proposition 47 reduced the number of crimes that can be punished as felonies, it reduced the number of people that could be sentenced to state prison. Proposition 47 requires that the estimated annual savings to the state resulting from Proposition 47's sentencing changes be

spent on mental health and substance use services, truancy and dropout prevention, and victim services. According to the Legislative Analyst's Office, last year, the estimated state savings was about \$113 million. (<https://lao.ca.gov/ballot/2023/230474.pdf> [as of June 3, 2024].)

After the passage of Proposition 47, opponents of the measure argued that because shoplifting had to be charged as a misdemeanor unless the amount stolen exceeds \$950, repeat offenders and those who work in concert with others in an organized retail theft ring were not being appropriately punished. (*Grocery stores are pushing California to be tougher on crime*, LA Times < <https://www.latimes.com/business/story/2020-09-16/california-grocery-industry-supports-tougher-crime-laws> > [as of June 3, 2024].)

In 2018, a coalition of law enforcement and victims' advocate groups started gathering signatures to put a new initiative on the ballot that would undo some of the changes made by Proposition 47. That measure, Proposition 20, would have allowed thefts of property worth \$250 or more to be punished as felonies and would have created the crime of serial theft and organized retail theft. Proposition 20 qualified to be placed on the ballot for the November 2020 general election and was ultimately rejected by California voters.

Also in 2018, the Legislature passed AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018, which created the crime of organized retail theft and allowed the crime to be punished as a wobbler, along with several other provisions related to the prosecution of the new crime and the creation of the CHP property crimes task force to assist local efforts to combat organized property crimes. That law contained a sunset date of January 1, 2021. Since the passage of the organized retail theft law, the sunset has been extended several times. (See AB 94 (Committee on Budget and Fiscal Rev.), Ch. 25, Stats. 2019 and AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021.)

The current sunset date on the crime of organized retail theft and the operation of the CHP task force is January 1, 2026. This bill removes the sunset date making the operation of the crime of organized retail theft and the CHP task force permanent.

3. CHP Task Force

The Regional Property Crimes Task Force was enacted by AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018. That bill required CHP, until July 1, 2021, to coordinate with Department of Justice (DOJ) to convene a regional property crimes task force to identify geographic areas experiencing increased levels of property crimes and assist local law enforcement with resources, such as personnel and equipment. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the operation of the regional property crimes task force until January 1, 2026.

According to CHP's website:

As reported by the National Retail Federation, organized retail theft accounts for nearly \$30 billion in economic loss per year. This loss is carried by retailers on several levels but is ultimately passed on to consumers through price inflation to offset economic loss. While the problem is most commonly associated with shoplifting, it extends well beyond into associated organized criminal activity. Commercial burglary, vehicle burglary, identity theft, credit card fraud, forgery, and fencing (selling or distribution of) stolen property are part of a bigger picture that finance ongoing criminal operations.

In response to AB 1065, the CHP, in consultation with the DOJ, developed a task force concept to work with allied agencies to combat organized retail theft. Three regional task forces, known as Organized Retail Crime Task Forces (ORCTF), were established by the CHP in three field Divisions with the greatest need for immediate action: Golden Gate Division (encompassing the greater Bay Area), Southern Division (encompassing the greater Los Angeles region), and Border Division (encompassing Orange and San Diego counties).

(See <https://www.chp.ca.gov/notify-chp/organized-retail-theft-program> [as of June 3, 2024].)

As of August 2023, since the inception of the ORCTF, there have been more than 1,850 investigations into retail crimes in California that have resulted in over 1,250 arrests. One key to the ORCTF's success is the partnership with retailers, local law enforcement, and district attorneys, to effectively disrupt organized retail theft rings and prosecute organized retail crimes. (<https://www.chp.ca.gov/PressReleases/Pages/CHP-RAMPS-UP-EFFORTS-TO-DISRUPT-RETAIL-THEFT-RINGS-STATEWIDE.aspx> [as of June 3, 2024].)

This bill extends the operation the CHP task force indefinitely.

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 the Los Angeles County District Attorney, the sponsor of this bill:

One of the most important tools we have to combat the problem of retail theft is California’s Organized Retail Theft statute, Penal Code Section 490.4. California’s Organized Retail Theft statute makes it a wobbler for an organized group of two or more persons to steal goods from a merchant with the intent to sell, exchange or return the goods for value.

Last year our Office filed over 500 cases using California’s Organized Retail Theft statute in both the criminal and juvenile courts. The majority of these cases involved multiple defendants. In addition to prosecuting these cases, our Office has also worked with the Los Angeles County regional organized task force to recover millions of dollars in stolen goods which have been returned to retailers by law enforcement. For example, \$188,000 in merchandise has been returned to Saks Fifth Avenue in Beverly Hills, \$250,000 in recovered goods has been given back to Kevin Jewelers, and hundreds of thousands of dollars has been returned to Target and CVS.

The number of criminal prosecutions for organized retail theft have increased significantly since 2020. In 2020, our Office filed 95 criminal cases charging a violation of Penal Code Section 490.4 (78 felony filings and 17 misdemeanor filings). Last year the number of Penal Code Section 490.4 filings increased to 541 (434 felony filings and 107 misdemeanor filings).

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It is imperative that law enforcement retains all of our existing tools in order to continue to combat the problem of organized retail theft in California.

7. Argument in Opposition

According to California Attorneys for Criminal Justice:

The crime of organized retail theft is of recent vintage: it first became law effective July 21, 2021. Existing laws relating to conspiracy already apply to the criminal conduct covered by AB 331. So this new crime was, when enacted, entirely unneeded. Prosecutors seeking to bring more serious charges against organized groups engaged in retail thefts have always been able to do so, without the necessity of AB 331. This is precisely why a sunset provision was originally included—to wait and see whether AB 331 was anything other than a duplicative. California law should not have both of these as options.

Nor is there any data suggesting that AB 331 has done anything to impact retail theft one way or another. As Assemblymember Bonta, who sits on the recently formed special committee to address retail theft recently told the Los Angeles Times, “inconsistent information” on the extent of retail thefts since the passage of AB 331 “makes it difficult to assess the issue.” (Anabel Sosa, California lawmakers want to curb retail theft, but says it’s not as easy as it sounds, L.A. Times, (Dec. 30, 2023). As noted in this article, when proponents of this bill claiming that there is a rising problem with retail theft were asked to provide data at a legislative hearing, they “came up emptyhanded.” (Id.) The National Retail Federation was, in fact, forced to retract the statistics it had earlier provided in support of the claim that organized retail theft was the central force behind shoplifting losses among retail businesses. (Mark Faithfull, National Retail Federation Retracts Stats Amid Theft War of Words, Forbes (Dec. 8, 2023).) And, as other media organizations have reported, retailers may be using claims of organized theft to cover up internal flaws causing their profits to drop. (See Gabrielle Funrouge, Retailers say organized theft is biting into profits, but internal issues may really be to blame, CNBC, August 10, 2023)

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