SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	AB 2943	**Hearing Date:**	June 11, 2024
Author:	Zbur		
Version:	June 5, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Crimes: shoplifting***

HISTORY

Source: Author

Prior Legislation: AB 2294 (Jones-Sawyer), Ch. 856, Stats. 2022
AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021
AB 1950 (Kamlager), Ch. 328, Stats. 2020
AB 2356 (Rodriguez), Ch. 22, Stats. 2022
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Association of California Cities - Orange County (ACC-OC); Beverly Hills Chamber of Commerce; Boma California; Buena Park, City of; CalChamber; California Association of Highway Patrolmen; California Business Properties Association; California Business Roundtable; California Contract Cities Association; California Downtown Association; California Grocers Association; California Police Chiefs Association; California Restaurant Association; California Retailers Association; Chino Hills, City of; City of Alameda; City of Corona; City of Crescent City; City of Fullerton; City of Hesperia; City of Lafayette; City of Merced; City of Mission Viejo; City of Oakland Mayor Sheng Thao; City of Oakley; City of Palo Alto; City of Pico Rivera; City of Rancho Palos Verdes; City of Redwood City; City of Rolling Hills Estates; City of San Jose; City of Santa Clarita; City of Tracy; City of Tustin; City of Whittier; Darrell Steinberg, Mayor of Sacramento; Downtown Santa Monica; Los Angeles County Business Federation (BIZ-FED); Los Angeles County Democratic Party; Mayor Todd Gloria, City of San Diego; Naiop of California; Orange County Business Council; Orange County Taxpayers Association; Peace Officers Research Association of California (PORAC); South Bay Association of Chambers of Commerce; Southern California Leadership Council; Southwest California Legislative Council; United Chamber Advocacy Network; Valley Industry and Commerce Association (VICA)

Opposition: California Public Defenders Association (unless amended to address immigration penalties); Californians United for a Responsible Budget; Immigrant Legal Resource Center; San Francisco Public Defender; Vera Institute of Justice

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to create the new crime of unlawful deprivation of a retail business opportunity and make various changes to provisions of law on arrest authority, aggregation, and probation terms for theft-related offenses.

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

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 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 clarifies that distinct but related acts for purposes of aggregation for grand theft includes acts committed against multiple victims or in counties other than the county of the current offense.

This bill provides that evidence that distinct acts are motivated by one intention, one general impulse, and one plan may include, but is not limited to, evidence that the acts involve the same defendant or defendants, are substantially similar in nature, or occur within a 90-day period.

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, 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.)

This bill states that any person who possesses property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, whether or not the person committed the act of shoplifting, theft, or burglary, is guilty of the unlawful deprivation of a retail business opportunity when both of the following apply:

- The property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value; and,

- The value of the possessed property exceeds $950.

This bill provides that the value of the property possessed may be considered in aggregate with either of the following:

- Any other such property possessed by the person with such intent within the prior two years; or,

- Any property possessed by another person acting in concert with the first person to sell, exchange, or return the merchandise for value, when such property was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, regardless of the identity of the person committing the act of shoplifting, theft, or burglary.

This bill states that for the purpose of determining in any proceeding whether the defendant has the intent to sell, exchange, or return the merchandise for value, the trier of fact may consider any competent evidence, including but not limited to, the following:

- Whether the defendant has in the prior two years sold, exchanged, or returned for value merchandise acquired through shoplifting, theft, or burglary from a retail business, or through any related offense, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act, as provided by subdivision (b) of Section 1101 of the Evidence Code; and,

- The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

This bill makes the criminal deprivation of a retail business opportunity punishable by imprisonment in the county jail for up to one year or as a county jail-eligible felony.

Existing law provides that an arrest is taking a person into custody in a case and manner authorized by law, and authorizes peace officers and private persons to make arrests. (Pen. Code, § 834.)

Existing law authorizes a peace officer to arrest a person without a warrant in the following circumstances:

- The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence;

- The person arrested has committed a felony, although not in the officer's presence; or,

- The office has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836.)

This bill provides that a peace officer may, without a warrant, arrest a person for misdemeanor shoplifting when the violation was not committed in the officer's presence if all of the following conditions are met:

- The officer has probable cause to believe the person committed the violation;

- The arrest is made without undue delay after the violation; and,
- Any of the following takes place:
    - The officer obtains a sworn statement from a person who witnessed the person to be arrested committing the alleged violation;
    - The officer observes video footage that shows the person to be arrested committed the alleged violation;
    - The person to be arrested possesses a quantity of goods inconsistent with personal use and the goods bear security devices affixed by a retailer that would customarily be removed upon purchase; or,
    - The person confesses to the alleged violation to the arresting officer.

Existing law, until January 1, 2026, authorizes a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses, as specified.

This bill extends the sunset date on the provision of law that authorizes cities and counties to establish diversion and deferred entry of judgment programs for theft and repeat theft crimes until January 1, 2031.

Existing law states that when a person is arrested for a misdemeanor and does not demand to be taken before a magistrate, that person shall be released with a written notice to appear in court unless specified reasons for nonrelease are present. (Pen. Code, § 853.6, subd. (a)(1) & (i).)

Existing law, until January 1, 2026, provide when the person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months, or when there is probable cause to believe that the person arrested is guilty of committing organized retail theft as additional reasons for nonrelease. (Pen. Code, § 853.6, subd. (i)(11)-(12).)

This bill extends the sunset date on the provision of law that authorizes non-release for arrests relating to repeat thefts and organized retail theft until January 1, 2031.

Existing law authorizes the court, on a misdemeanor offense, to suspend the imposition or execution of the sentence and make and enforce the terms of probation for a period not to exceed one year. However, the one-year probation limit shall not apply to any offense that includes specific probation lengths within its provisions. (Pen. Code, § 1203a.)

Existing law sets limits period of probation for a felony to no longer than two years, except as specified. (Pen. Code, § 1203.1, subds. (a) & (l).)

Existing law authorizes the court to impose and require any or all reasonable conditions of probation as it may determine are fitting and proper to the end that justice may be done, that amends may be done to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. (Pen. Code, § 1203.1, subd. (j).)

This bill states that notwithstanding the general one-year limit of prohibition for a misdemeanor, the court may suspend the imposition or execution of the sentence and make and enforce terms of probation not to exceed two years for a violation of shoplifting or petty theft.

This bill provides that if a court imposes a term of probation that exceeds the statutory maximum of one year, the court, as a condition of probation, shall consider referring the defendant to a collaborative court or rehabilitation program that is relevant to the underlying factor or factors that led to the commission of the offense.

This bill specifies that if the defendant who is referred to a rehabilitative program is under 25 years of age, the court shall, to the extent such a program is available, refer the defendant to a program modeled on healing-centered, restorative, trauma-informed, and positive youth development approaches and that is provided in collaboration with community-based organizations.

This bill states that if the court finds that referral to a collaborative court or rehabilitation program is not an appropriate condition of probation, the court must state the reasons for its findings on the record.

This bill states that upon successful completion of the rehabilitation program, as determined by the program provider, or successful participation in the collaborative court, as determined by the collaborative court, the court shall discharge the defendant from probation.

This bill states that participation in a collaborative court or rehabilitation program by the defendant shall not exceed two years except with the consent of the defendant.

Existing law makes every person who maintains or commits any public nuisance or who willfully omits to person any legal duty relating to the removal of a public nuisance guilty of a misdemeanor. (Pen. Code, § 372.)

This bill prohibits local law enforcement or a local jurisdiction from bringing or threatening a nuisance action against a business, or impose fines upon a business, solely for the act of reporting a retail crime, unless the report is knowingly false.

COMMENTS

1. Need for This Bill

According to the author of this bill:

> The California Retail Theft Reduction Act demonstrates that the California Assembly has listened and that we are serious about addressing the problem of retail crime that is plaguing our communities. We have advanced a comprehensive set of proposals that we believe will have a meaningful impact on stopping the growing threat of retail crime. The proposals in the bill are intended to advance balanced, effective, and meaningful solutions that address the problem and preserve criminal justice reforms that have been effective at keeping our communities safe. Each element of the California Retail Theft Reduction Act can

be enacted by the Legislature and signed into law by the Governor without voter approval.

2. Creation of New Crime of Unlawful Deprivation of Business Opportunity

Existing law punishes theft in a variety of ways. Theft itself is generally classified into two categories: either grand theft, meaning the value of the property exceeds $950 unless a lower threshold is otherwise specified, or petty theft which refers to all other types of theft that do not meet the $950 threshold. (Pen. Code, § 487.) Petty theft is punishable as a misdemeanor; grand theft is generally punishable as either a felony or misdemeanor. (Pen. Code, § 489.) Burglary generally involves entry into a location to commit larceny or other felony. This crime is punishable as either a felony or misdemeanor depending on the circumstances. (Pen. Code, § 459.) Shoplifting is the crime of specifically entering a commercial establishment with intent to commit larceny during regular business hours where the value take does not exceed $950. This crime is generally a misdemeanor. (Pen. Code, § 459.5.) Buying or receiving stolen property knowing the property to be stolen is also a separate offense. The punishment can be either or misdemeanor or felony based on the value of the property. (Pen. Code, § 496.)

Separately, the crime of "organized retail theft" includes shoplifting schemes undertaken by two or more persons who have organized themselves to commit shoplifting for financial gain. (Pen. Code, § 490.4.) The punishment ranges from one year in the county jail (misdemeanor) to 16 months, or two, or three years in the county jail (felony), depending on the specific circumstances.

This bill creates a new crime, "criminal deprivation of a retail business opportunity," punishable as either a misdemeanor, by imprisonment in the county jail for up to one year, or as a felony, punishable by imprisonment in the county jail for a term of 16 months, two years, or three years. The conduct that this bill punishes is similar to receiving stolen property in that a person is guilty of the offense if they possess property that was stolen from a retail business, whether or not the person stole property. The bill specifies that the property possessed must exceed $950, cannot be for personal use and the person must have the intent to sell, exchange or return the merchandise for value or the intent to act in concert with one or more persons to sell, exchange or return the merchandise for value.

In determining whether the property is valued over $950, this bill provides that, the property can be considered in the aggregate with any other property possessed by the person with the intent to sell or return for value in the prior two years, or any property possessed by another person acting in concert with the defendant to sell, exchange or return the merchandise for value. It is unclear whether the prior conduct applies to arrests, charges or convictions for those prior acts to be aggregated. The aggregation allowed under the provisions of this bill is also notably different than the existing aggregation provisions for grant theft of property exceeding $950 which requires all of the separate acts to be acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

For the purpose of determining whether the defendant has the intent to "sell, exchange, or return the merchandise for value," this bill provides that the trier of fact may consider any competent evidence, including, but not limited to, evidence that the defendant committed similar acts in the prior two years, if relevant to demonstrate a fact other than the defendant's disposition to commit

the act, and whether the property is the type that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

Because possession of stolen property may already be prosecuted under Penal Code section 496, it is unclear whether the new crime would result in more prosecutions, especially considering that the new offense requires a showing that the person had intent to sell, exchange or return the stolen merchandise for value. Additionally, courts have held that a defendant cannot be convicted of the separate crimes for theft of property and receiving the property. (*People v. Jaramillo* (1976) 16 C.3d 752, 757.) It is unclear if a prosecutor would attempt to charge and convict and individual of the original theft and the new crime created by this bill.

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].) In *People v. Columbia Research Corp.* (1980) 103 Cal.App.3d Supp. 33, the court approved aggregation where the defendant was charged with grand theft based on a series of petty thefts that occurred over a 10-month period, pursuant to a single plan and intent, and involved different victims.

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 stating that distinct but related acts includes acts committed against multiple victims or in counties other than the county of the current offense. This bill additionally provides that evidence that distinct acts are motivated by one intention, one general impulse, and one plan may include evidence that the acts involve the same defendant or defendants, are substantially similar in nature, or occur within a 90-day period.

4. Misdemeanor Arrest Authority

The United States Constitution guarantees the right against arrests made without probable cause. (U.S. Const., 4th Amend.) Generally, existing law allows peace officers to make a warrantless arrest in limited circumstances: (1) the crime was committed in the officer's presence; (2) the person arrested has committed a felony, although not in the officer's presence; or (3) the officer has probable cause to believe a person has committed a felony, even if it turns out not to be true. (Pen. Code, § 836, subd. (a).) Exceptions under the statute also include violations of domestic violence protective or restraining order; an assault or battery of a significant other, as specified; or carry a concealed firearm within an airport. (Pen. Code, § 836, subds. (c)-(e).)

This bill would create another exception to the arrest warrant requirement for crimes not committed in the officer's presence. This bill provides that a peace officer can make a warrantless arrest if the officer has probable cause to believe that the person shoplifted. Probable cause to make an arrest shall be based on any of the following: a sworn statement obtained by the officer from a person who witnessed the person commit the violation; the officer observes video footage that shows the person to be arrested committing the violation; the person to be arrested possesses a quantity of goods inconsistent with personal use and the goods bear security devices affixed by a retailer that would customarily be removed upon purchase; or the person to be arrested confesses to the alleged violation to the arresting officer.

While a confession may be the basis for probable cause that the person making the confession committed the crime, the statement alone is not sufficient to convict an individual of a crime. (CALCRIM No. 359.) The nature of confessions also raises reliability issues because they can be coerced or turn to be false. Depending on the circumstances surrounding a confession, the statement may be found inadmissible in court and undermine prosecutions relying on the statement. In order to evaluate the circumstances surrounding the confession, an electronic recording of the encounter may help bolster reliability of the statement.

Generally, a person arrested by a peace office for a misdemeanor must be cited and released, except in limited circumstances. (Pen. Code, § 853.6, subd. (i).) For example, an officer is not required to release a person arrest for a misdemeanor if there is reason to believe that the person would not appear at the time and place specified on the notice to appear. (Pen. Code, § 853.6, subd. (i)(9).) There is also an exception to the release requirement when there is a reasonable likelihood that the person would resume committing offenses, or where there person has outstanding warrants. (Pen. Code, § 853.6, subd. (i)(4) & (6).)

Relevant to this bill, a peace officer is not required to release the person if the person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months. (Pen. Code, § 853.6, subd. (i)(11).) Likewise, a peace officer is not required to release a

person if they have probable cause to believe the person is guilty of organized retail theft. (Pen. Code, § 853.6, subd. (i)(12).) The provisions allowing non-release of persons arrested for theft and organized retail theft are set to sunset of January 1, 2026. (Pen. Code, § 853.6.) This bill extends the sunset date to January 1, 2031.

5. Increased Term of Probation for Shoplifting and Petty Theft

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." Formal probation is under the direction and supervision of a probation officer. Under informal probation, a defendant is not supervised by a probation officer but instead reports to the court. In general, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court must evaluate the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

Under prior law, the court was authorized to impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years, when a defendant is convicted of a felony. (Pen. Code, § 1203.1.) In misdemeanor cases, the court was authorized to impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.)

In 2020, AB 1950 (Kamlager, Chapter 328) was enacted. It reduced the maximum length of probation for both misdemeanor and felony cases (in most cases). For felonies, the term of probation was reduced from five years—where the punishment did not exceed five years—to two years. (Pen. Code, § 1203.1.) For misdemeanors the term of probation was reduced from three years to one year. (Pen. Code, § 1203a.) In both types of cases, there was an exception made if a specific probation length was already dictated in statute for a particular offense. (*Ibid*.)

This bill increases the maximum term of probation on misdemeanor offenses of shoplifting and petty theft from the presumptive one year to a maximum of two years.

6. 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) [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].)

7. 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.

8. Arguments in Support

According to California Retailers Association:

> This bill has many crucial elements to help law enforcement and protect our businesses, including: creating a new crime targeting "serial" retail thieves, specifying that the value of thefts from different victims can be aggregated to reach the threshold for grand theft, expanding the use of diversion and

rehabilitative programs like drug court through increased supervision for shoplifting and petty theft, expanding tools for police to arrest for shoplifting based on a witness's sworn statement or video footage of the crime, and extending the ability of police to keep repeat offenders and those committing organized retail theft in custody.

The creation of the "serial" retail thief's criminal statute is crucial to holding repeat offenders accountable. This crime would come with a penalty of up to three years for possession of stolen property with intent to resell. Acknowledging the difficulty of proving intent to sell in court, the author specifies that evidence of intent can include repeated conduct or possession of a quantity of goods inconsistent with personal use. Additionally, this bill does not require proof that a defendant acted with another person and applies to the secondary sellers (fences). We believe these changes are adequate for charging repeat offenders and are a sufficient deterrent.

In an effort to give law enforcement the necessary and critical tools to combat retail, this bill allows for officers to arrest shoplifters, as defined in P.C. §459.5, based on the probable cause of video footage showing the offender committing the crime or based on a sworn statement of a witness. Additionally, retailers would be incentivized to observe/report retail theft activity and provide officers with sworn statements that can be used to apprehend repeat offenders.

9. Arguments in Opposition

According to Californians United for a Responsible Budget:

While retailers claim that retail theft is a massive and urgent crisis, experts and journalists have repeatedly noted that false and inflated claims are driving an exaggerated sense of panic, and retailers are struggling with other issues more responsible for financial challenges. In particular, many concerns around "organized retail crime" have been driven by the National Retail Federation's now-redacted claim that it was responsible for half of all inventory losses in 2021, which was based on incorrect data.

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 2943 would make our current theft laws even harsher by redefining shoplifting to classify certain repeated instances of theft surpassing $950 as a felony, and by creating a new felony for possession of stolen goods. AB 2943 will not make our communities safer by allowing law enforcement officers to more easily arrest and detain people with past shoplifting charges or those suspected of organized retail theft. Years of research shows that pretrial detention decreases community safety in the long run—a landmark study of more than 1.5 million cases found that any amount of time in jail beyond 23 hours makes a person more likely to be arrested again in the future. This is because even a short period in jail

can result in someone losing their job, their housing, or custody of their children. When someone is not a threat to public safety or a flight risk, evidence tells us that the safest option is to allow them to await trial within the community, which is less costly and does not contribute to increased recidivism (also costly because incarceration is expensive).

-- END –