
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3209 **Hearing Date:** June 11, 2024
Author: Berman
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: theft: retail theft restraining orders*

HISTORY

Source: Author

Prior Legislation: AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021
AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022
AB 2356 (Rodriguez), Chapter 22, Statutes of 2022
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Association of California Cities - Orange County (ACC-OC); California Builders Alliance; California Business Properties Assoc.; California Business Roundtable; CalChamber; California Downtown Association; California Retailers Association; California Restaurant Association; City of Agoura Hills; City of Artesia; City of Buena Park; City of Cypress; City of Fountain Valley; City of Fullerton; City of Grand Terrace; City of Lafayette; City of Lakeport; City of Oakdale; City of Paramount; City of Rancho Palos Verdes; City of Rohnert Park; City of Rolling Hills Estates; City of San Luis Obispo; City of Stanton; City of Mission Viejo; City of Whittier; Darrell Steinberg, Mayor of Sacramento; Downtown Santa Monica; El Dorado Chamber of Commerce; Elk Grove Chamber of Commerce; League of California Cities; Lincoln Area Chamber of Commerce; Los Angeles County Business Federation; Los Angeles County Democratic Party; Los Angeles County Sheriff's Department; Mayor Todd Gloria, City of San Diego; Orange County Business Council; Orange County Tax Payers Association; Ranch Cordova Chamber of Commerce; Rocklin Area Chamber of Commerce; Roseville Chamber of Commerce; Sacramento Regional Builders Exchange; Shingle Springs Cameron Park Chamber of Commerce; Southern California Leadership Council; United Chamber of Advocacy Network; Yuba-Sutter Chamber of Commerce

Opposition: ACLU California Action; San Francisco Public Defender; Vera Institute of Justice

Assembly Floor Vote: 68 - 1

PURPOSE

The purpose of this bill is to authorize a court, when sentencing a person for an offense involving theft of, vandalism of, or battery of an employee of a retail establishment, to issue a criminal protective order prohibiting the person from entering the retail establishment, as

specified, and to allow specified parties to file a petition for a restraining order against an individual who has been arrested twice, but not charged or convicted, with any of the crimes listed above at the same retail establishment.

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. Shoplifting shall be punished as a misdemeanor, except as specified. (Pen. Code, § 459.5.)

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 provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than \$400, the offense is a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, by a fine of \$1,000, or by both. If the amount of the damage is \$400 or more, the offense is a felony, punishable by imprisonment in a county jail not exceeding one year, by a fine of not more than \$10,000, or both. (Pen. Code, § 594 subd. (b).)

Existing law defines “battery” as any unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

Existing law states that simple battery is punishable by a fine of up to \$2,000, or by imprisonment in county jail not exceeding 6 months, or by both a fine and imprisonment. (Pen. Code, § 243, subd. (a).)

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, 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).)

Existing law provides that any intentional and knowing violation of a protective order is a misdemeanor crime punishable by up to one year in county jail, by a fine of up to \$1,000, or both. (Pen. Code, § 273.6.)

Existing law authorizes a court with jurisdiction over a criminal matter, upon good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably

likely to occur, to issue a criminal protective order during the pendency of criminal proceedings. (Pen. Code, § 136.2, subd. (a).)

Existing law states that a court shall consider issuing an order against a defendant who has been convicted of domestic violence, human trafficking, rape, statutory rape, pimping and pandering, gang activity, or any crime requiring sex offender registration. The order may be valid for up to ten years as determined by the court, restraining the defendant from any contact with a victim of the crime. (Pen. Code, § 136.2, subd. (i).)

This bill states that a court shall consider issuing an order restraining order against a defendant convicted of any of the following offenses from entering the premises of the retail establishment, that may be valid for up to two years, as determined by the court:

- Shoplifting;
- Any theft from a retail establishment;
- Organized retail theft;
- Vandalism of a retail establishment; or,
- Any assault or battery of an employee of a retail establishment while working at the retail establishment.

This bill specifies that the order shall prohibit the restrained person from entering the retail establishment, or being present on the grounds of, or any parking lot adjacent to, the retail establishment.

This bill provides that if the retail establishment is part of a chain or franchise, the court may include other retail establishments in that chain or franchise within a specified geographic range in the order.

This bill states that in determining whether to impose a restraining order under the provisions of this bill, the court shall consider whether the retail establishment is the only place that sells food, pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or otherwise creates undue hardship for the individual.

This bill authorizes a prosecuting attorney, city attorney, county counsel, or attorney representing a retail establishment may file a petition requesting a restraining order for an individual who has been arrested, including, but not limited to, the issuance of a citation in lieu of a custodial arrest, two or more times for any of the offenses listed in subdivision (b) within the same retail establishment.

This bill specifies that the court must hold a hearing to determine whether to issue the restraining order and that the respondent shall be personally served with notice of the hearing and shall be entitled to representation by court-appointed counsel.

This bill states that the petitioner shall bear the burden of proving, by a preponderance of the evidence, that the respondent, on two or more separate occasions, committed a qualifying offense within the retail establishment or on the grounds thereof.

This bill authorizes the court to issue an order restraining the respondent from entering the premises of the retail establishment for a period not to exceed two years if the court finds by a preponderance of the evidence that both of the following are true:

- The respondent, on two or more separate occasions, committed a qualifying theft, vandalism or assault or battery offense within the retail establishment or on the grounds thereof; and,
- There is a substantial likelihood that the individual will return to the retail establishment.

This bill states that the order shall prohibit the restrained person from entering the retail establishment, or being present on the grounds of, or any parking lot adjacent to and used to service the retail establishment.

This bill provides that if the retail establishment is part of a chain or franchise, the court may include other retail establishments in that chain or franchise within a specified geographic range in the order.

This bill specifies that a violation of an order issued pursuant to the provisions of this bill is punishable as a misdemeanor.

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 states that an officer arresting a person for a violation of an order pursuant to this bill's provisions is not required to cite and release the person.

This bill states, declarative of existing law, that a court may offer an individual charged with a violation of an order issued pursuant to the bill's provisions an opportunity to participate in a diversion program for which they are eligible.

COMMENTS

1. Need for This Bill

According to the author of this bill:

AB 3209 would authorize a court to impose a Retail Crime Restraining Order for a theft offense, vandalism within the store, or battery of an employee within the store. With the rise in retail theft and robbery in California, solutions needs to find the balance of strengthening enforcement while not perpetuating the underlying causes of retail theft, such as poverty. Addressing the issues of retail theft, vandalism, and assaults on employees are important to ensure safety in our

communities and businesses. This bill strikes a balance between providing a necessary enforcement tool to keep stores, customers, and workers safe and ensuring that the consequences fit the offense.

2. Background: Restraining Orders in Criminal Cases

As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code Section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this provision are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When criminal proceedings have concluded and the defendant has been convicted, the court has the authority to issue restraining orders as a condition of probation in cases where probation was granted. In some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact post-conviction orders lasting up to 10 years in cases involving a domestic violence-related offense, rape, statutory rape, pimping and pandering, stalking, gang activity, elder abuse, or any crime requiring sex offender registration. (Pen. Code, §§ 136.2, subd. (i)(1), 368, subd.(l) and 646.9, subd. (k).)

Relevant to this bill, existing law already authorizes the court to order, 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).)

Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended “to do some further act or achieve some additional consequence.” (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order.” (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

Violations of a protective order issued by a civil court for domestic violence, civil harassment, workplace violence, school violence, or elder abuse, may be punished as a misdemeanor unless otherwise specified. (Pen. Code, § 273.6.)

This bill provides that a court sentencing a defendant for a violation of shoplifting, theft from a retail establishment, organized retail theft, vandalism of a retail establishment, or assault or battery of an employee of a retail establishment while that person is working at the retail establishment shall consider issuing an order restraining the defendant from entering the premises of the retail establishment. This bill states that the order shall prohibit the restrained person from entering the retail establishment, or being present on the grounds of, or any parking lot adjacent to and used to service, the retail establishment. This bill authorizes a court to include other retail establishments in a chain or franchise within a specified geographic range in the order. This order may be valid for up to two years.

This bill specifies that in determining whether to impose a restraining order under the bill's provisions, the court shall consider whether the retail establishment is the only place that sells food, pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or otherwise creates undue hardship for the individual.

As discussed above, a court generally has discretion to issue a protective order or stay-away order when the defendant has been convicted of a crime as a reasonable condition of probation. This bill adds a new statute authorizing courts to issue a restraining order to protect a business from an individual convicted of various theft offenses, vandalism of a retail establishment, or assault or battery against an employee of a retail establishment and specifies the areas the defendant must be ordered to stay away from.

While it is possible that a stay-away order based on a conviction of one of the specified underlying crimes would be reasonable depending on the circumstances, specifying that the court shall consider issuing such an order which shall broadly cover inside the establishment, the grounds of, or any parking lot that services the retail establishment may cause an increase of these types of orders to be issued when the circumstances do not warrant it. Specifying that other retail establishments that were not the target of the original crime may also be protected under the order could lead to overly punitive restrictions without the necessary connection to the crime as well as potential misidentification of persons who were not the actual perpetrator by store employees who have never interacted with the restrained individual.

Additionally, specifying that the order may be valid for up to two years based on a misdemeanor offense seems at odds with the overall probation scheme in California that establishes a general one-year limit on probation, especially without some showing that the defendant is likely to commit another crime or otherwise cause harm at that retail establishment.

3. Creation of a New Type of Restraining Order

In addition to the post-conviction restraining order discussed in note 2, this bill creates a new type of restraining order called a retail crime restraining order which appears to be a hybrid of a criminal procedures applied to civil restraining orders.

Specifically, this bill authorizes a prosecuting attorney, city attorney, county counsel, or attorney representing a retail establishment to file a petition requesting a retail crime restraining order for an individual who has been arrested, including, but not limited to, the issuance of a citation in lieu of a custodial arrest, two or more times for shoplifting, organized retail theft, vandalism, or assault or battery against an employee within the same retail establishment. This bill requires the respondent to be personally served with notice of the hearing and entitles the respondent to court-appointed counsel.

The bill does not specify how old the prior arrests may be nor whether the petition would be filed in criminal court or civil court. Criminal restraining orders are generally requested by the prosecuting attorney of a pending criminal case and the purpose is to protect the victim or witnesses from intimidation or dissuasion during the criminal proceedings.

Normally in criminal courts, the district attorney is charged with filing criminal actions and when a defendant cannot afford counsel, a public defender will be appointed to the case. Private attorneys not representing defendants, county counsel, and in most instances city attorneys do

not have power to file criminal actions or petitions in criminal court. However, if the bill were to allow the new restraining order to be filed in civil court, even though its provisions are in the Penal Code, it is unclear who would be appointed to represent the respondent since there are no criminal charges and the public defender is supposed to be appointed at arraignment of criminal charges. Public defenders are not present in civil court as a general matter to accept appointment.

Additionally, authorizing a district attorney to petition for a civil restraining order raises concerns over mixing criminal matters with civil matters which generally have different rules and purposes. Some victims prefer to handle personal matters through civil court because they have less control over what happens in a criminal case and having a district attorney present during civil matters may create a chilling effect for those victims.

Two or more arrests for allegedly committing one of qualifying crimes within the same retail establishment regardless of how long ago the prior arrest/s occurred triggers the ability of the petitioner to file for a restraining order. A private attorney representing a retail establishment, nor county counsel and in most cases the city attorney, do not have the ability to bring criminal charges against an individual after an arrest and may find the restraining order created by this bill a useful tool. The district attorney, however, is in an entirely different position. The district attorney has sole discretion to file whatever criminal charges they deem to be appropriate thus it is unclear why the district attorney would need to file a petition for a restraining order instead of filing criminal charges especially against a person with multiple arrests at the same location.

A violation of the restraining order would be a misdemeanor and the burden of proof required to obtain the restraining order is lower than what is required for a criminal conviction (preponderance of the evidence versus beyond a reasonable doubt) so this bill may unintentionally incentivize the use of the restraining order without ever charging or convicting the individual for the alleged offenses. The bill's provisions state, albeit declarative of existing law, that an individual who violates a restraining order authorized by this bill may be given the opportunity to participate in a diversion program for which they are eligible. There are a variety of diversion programs currently available in existing law, including misdemeanor diversion and mental health diversion. If a person who has been arrested two times but the district attorney decides not to file criminal charges, perhaps due to the person's mental illness or other reason that a conviction for the underlying alleged crime may not be desirable, the person may nevertheless end up booked and held in jail rather than cited and released based on violating the restraining order.

Unlike the post-conviction restraining order created by this bill discussed in note 3, this new type of restraining order does not require a showing that the person restrained actually committed the alleged underlying crimes, only that they were arrested twice, but they will have their liberty substantially restricted in the same way as someone who has been convicted of those offenses.

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 and shall be repealed on January 1, 2025.

6. Arguments in Support

According to CalChamber:

This legislation would provide a new enforcement tool that will keep stores and workers safe from crime as rates of retail theft and robbery have risen in California. According to the Public Policy Institute of California (PPIC), in 2022 California saw a 28.7% increase in commercial shoplifting and a 15.7% increase in burglaries of items totaling more than \$950 between 2019 and 2022. Retail theft has become an increasingly prevalent problem across California, with detrimental effects on both local businesses and consumers. The significant losses incurred by retailers due to theft not only threaten their financial stability, but also jeopardize their ability to provide essential goods and services to the communities they serve. Moreover, the rise in organized retail crime has led to safety concerns for both employees and customers, further exacerbating the problem. The introduction of Retail Theft Restraining Orders (RTROs) presents a proactive and effective approach to combatting this growing issue. By enabling retailers to obtain civil restraining orders against habitual offenders, this legislation empowers businesses to protect themselves and deter potential thieves from engaging in criminal activities. Additionally, RTROs provide law enforcement with valuable tools to address repeat offenders, disrupt organized retail crime networks, and enhance public safety. Furthermore, the implementation of RTROs offers a balanced solution that upholds the rights of both retailers and individuals while holding accountable those who repeatedly engage in criminal behavior. By targeting habitual offenders and providing avenues for rehabilitation and support, this legislation not only addresses the symptoms of retail theft, but also tackles the underlying issues contributing to criminal behavior.

7. Arguments in Opposition

According to Vera Institute of Justice:

AB 3209 would create a harmful new process whereby attorneys representing retailers— not district attorneys nor individual victims—could seek a two-year “retail theft restraining order” for petty theft or vandalism. Such an order could be sought either at sentencing (after conviction), or merely if someone has been arrested (but not convicted) of such an offense twice. This would expand criminal consequences based on a lower standard of proof (preponderance of the evidence, rather than beyond a reasonable doubt) and eliminate key procedural protections in the case of restraining orders sought by attorney representing retailers. Weakening these key tenets of both state and federal law raises significant concerns.

....

Prosecutors and retail stores have historically combatted theft using theft or trespass charges. Those tools are still available, and they are more than sufficient for non-violent theft and vandalism offenses. For offenses involving violence against retail workers, the harmed employee still has all rights available to them

as a crime victim—but should not have more rights than any other victim in the community. This legislation elevates well-resourced retail chains above other victims needing protection, including both victims of violent crime and smaller retail stores without the means to hire counsel.

The restraining order would also apply to any store within a franchise or chain, which suggests that retail workers may be tasked with enforcing the restraining order based on photos of someone who may have visited another chain store within the past two years. A large majority of wrongful convictions stem from eyewitness misidentifications—and the problem only worsens by over 50 percent for cross racial identifications—raising the specter of racial profiling and dangerous consequences.

Further, by permitting law enforcement officers to arrest, as opposed to cite and release, those suspected of violating a restraining order, AB 3209 will not make our communities safer. 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.

Finally, AB 3209 may worsen racial disparities by expanding warrantless detentions by law enforcement officers. A long trail of evidence indicates that when law enforcement has expanded authority to detain individuals for low-level offenses, as for example in the case of low-level traffic stops, racial disparities may ensue. For sake of safety and justice, policing should follow procedures that ensure accountability, including requiring warrants for low-level offense.

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