
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1990 **Hearing Date:** June 25, 2024
Author: Wendy Carrillo
Version: April 16, 2024
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal procedure: arrests: shoplifting*

HISTORY

Source: Author

Prior Legislation: AB 335 (Alanis), held in Assem. Approps. Comm., 2023
AB 2294 (Jones-Sawyer), Ch. 856, Stats. 2022
SB 284 (Nguyen), failed Sen. Public Safety Comm., 2017

Support: California Contract Cities Association; California Correctional Supervisors Organization, INC.; California Grocers Association; City of Buena Park; City of Fullerton; City of Mission Viejo; City of Norwalk; City of Rancho Palos Verdes; City of Riverside; City of San Jose; City of Santa Clarita; City of Stockton; League of California Cities; Town of Apple Valley; 1 individual

Opposition: Alliance for Reparations, Reconciliation, and Truth; Black Equity Collective; California Black Power Network; California Immigrant Policy Center; California Public Defenders Association; California Reparations Task Force Members Dr. Cheryl Grills, Lisa Holder, and Don Tamaki; Californians United for A Responsible Budget; Catalyst California; Ella Baker Center for Human Rights; Equal Justice Society; Essie Justice Group; Grace Institute - End Child Poverty in CA; Indivisible CA Statestrong; Initiate Justice; Initiate Justice Action; Legal Services for Prisoner With Children; Livefree California; San Francisco Public Defender; Silicon Valley De-bug; Smart Justice California, a Project of Tides Advocacy; Vera Institute of Justice; Western Center on Law & Poverty

Assembly Floor Vote: 44 - 1

PURPOSE

The purpose of this bill is to authorize a warrantless arrest for shoplifting not committed in the presence a police officer and provide that the arrested person may not be cited and released.

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 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.)

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.)

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).)

This bill authorizes a peace officer, without a warrant, to arrest a person for a violation of shoplifting not committed in the officer's presence if the officer has probable cause to believe that the person to be arrested has committed shoplifting.

This bill requires probable cause to make an arrest to be based on a sworn statement obtained by the officer from a person who witnessed the person to be arrested committed the alleged violation.

Existing law, until January 1, 2026, provides 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 adds when there is probable cause to believe that the person arrested is guilty of committing shoplifting as a reason for nonrelease.

COMMENTS

1. Need for This Bill

According to the author of this bill:

As California grapples with an increase in retail theft, AB 1990 would authorize a peace officer to make a warrantless arrest for a misdemeanor shoplifting offense not committed in the officer's presence if the officer has probable cause to believe that person has committed shoplifting.

Retail theft continues to impact small and large businesses alike, our California economy, and the safety and wellbeing of our communities. Today, we stand at a pivotal moment to address a challenge that has been allowed for far too long.

2. Probable Cause

The Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures by the government. Subject to limited exceptions, a search or seizure is reasonable if it is supported by probable cause. Probable cause to arrest an individual exists "when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [that individual] had committed a crime." (See *U.S. v. Garza* (9th Cir. 1992) 980 F.2d 546, 550; *U.S. v. Gonzales* (9th Cir. 1984) 749 F.2d 1329, 1337.) Whether justification for an arrest exists is based on the totality of the circumstances known to law enforcement at the time of the arrest, search, or submitting of an affidavit for a warrant. (See e.g., *Illinois v. Gates*, supra, 462 U.S. at 238; *U.S. v. Buckner* (9th Cir. 1999) 179 F.3d 834, 837.)

This bill provides that a police officer needs probable cause to believe that a person has shoplifted to make a warrantless arrest when the crime was not committed in the officer's presence and specifies that probable cause to make an arrest shall be based on a sworn statement obtained by the officer from a person who witnessed the person to be arrested committing the alleged violation. This appears to be a hybrid of a citizen's arrest which is authorized when a person witnesses a crime in their presence (Pen. Code, § 837) and the "shopkeeper's privilege" which authorizes store owners and merchants to detain an individual suspected of shoplifting (Pen. Code, § 490.5, subd. (f)(1)).

3. Arrest Authority

Existing law generally requires that a peace officer obtain a warrant prior to making a misdemeanor arrest for an offense that did not occur in the officer's presence. Exceptions under the statute at issue in this bill 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. (Penal Code, Section 836, subs. (c)-(e).) Other exceptions include, among others, an assault on a firefighter or paramedic (Penal Code, Section 836.1), or driving under the

influence of alcohol when the person is involved in a crash. (Vehicle Code, Section 40300.5, subd. (a).)

This bill would add shoplifting to the list of crimes for which a warrantless arrest may be made when the crime was not committed in the officer's presence and states that probable cause to make an arrest shall be based on a sworn statement obtained by the officer from a person who witnessed the person to be arrested committing the alleged violation.

This bill would also provide that, unlike for other misdemeanors, a peace officer does not have to release a person for which there is probable cause to believe that the person arrested is guilty of shoplifting. Under existing law, a person arrested by a peace officer for a misdemeanor must be released, except in limited circumstances. (Penal Code, Section 853.6, subd. (i).) For example, existing law provides that an officer is not obligated to release a person arrested 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. (Penal 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 the person has outstanding warrants. (Penal Code, Section 853.6, subd. (i)(4) & (6).)

Moreover, a peace officer is not required to release a person if that person has been cited, arrested, or convicted for misdemeanor or felony theft offense from a store in the previous six months. (Penal Code, Section 853.6, subd. (i)(11).) Additionally, a peace officer does not have to cite and release an individual who the officer believes there is probable cause the person is guilty of organized retail theft. These two provisions are only in effect until January 1, 2026. (AB 2294 (Jones-Sawyer), Ch. 856, Stats. 2022.)

This bill would as a reason for nonrelease, when the officer has probable cause to believe the person is guilty of shoplifting. Unlike the above provision authorizing nonrelease for organized retail theft, this provision would be permanent and authorizes non-release on a straight misdemeanor offense not involving violence or dangerousness.

4. Shoplifting Data

According to the Public Policy Institute of California (PPIC), despite an increase in shoplifting rates between 2019 and 2022, “[b]eginning with a statewide overview of the last decade or so, shoplifting remains 8% below pre-pandemic levels, despite a 29% jump in 2022 from 2019.” (Magnus Lofstrom, Testimony: Crime Data on Retail Theft and Robberies in California (Jan. 2024) <https://www.ppic.org/blog/testimony-crime-data-on-retail-theft-and-robberies-in-california/> [as of June 17, 2024].)

Data from the California Department of Justice also reports a decrease in shoplifting incidents: From around 97,000 in 2014, when Proposition 47 was approved, to about 82,000 in 2022. (Lagos, *Prop 47’s impact on California’s Criminal Justice System*, KQED (Feb. 14, 2024) <https://www.kqed.org/news/11975692/prop-47s-impact-on-californias-criminal-justice-system> [as of June 17, 2024] citing DOJ’s Open Data Justice Portal.

5. Proposition 47 Reduced Racial Disparity in Arrests and Bookings

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. (Legislative Analyst's Office analysis of Proposition 47, <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf> .)

Various studies have been conducted on the impacts of Proposition 47 which includes its impact of decreasing racial disparities in arrests and bookings. Specifically, this decrease in disparity has been driven by trends in arrests for drug and property crimes. According to PPIC, "the gap in arrest rates between African Americans and whites for drug and property offenses (including felonies and misdemeanors) dropped by 24.4 percent after Prop 47, while the gap in booking rates narrowed by 32.6 percent. The decline in arrests and bookings for drug felonies is especially striking. For these offenses, the gap in the arrest and booking rates between African Americans and whites narrowed by about 55 percent. As a result, African American arrest and booking rates for drug felonies are now lower than the rates were for whites before Prop 47 passed." (<https://www.ppic.org/press-release/prop-47-has-reduced-racial-disparities-in-arrests-and-bookings-in-california-but-serious-inequities-remain/> (Jun. 23, 2020) [as of June 17, 2024].)

This bill would add shoplifting as an exception to the general rule requiring misdemeanants to be cited and released. Opponents of this bill raise concerns that the changes made by this bill will result in racial profiling and have a disparate impact on people who are poor for whom being booked into custody is more likely to result in loss of housing or employment.

6. Argument in Support

According to California Grocers Association:

Poll after poll shows that public safety is top of mind for Californians. According to the Public Policy Institute of California, crime data indicates that retailers have increasingly been the target of crime with retail theft incidents rising in the Bay Area, and trending up in Los Angeles and other urban areas. News outlets report "Los Angeles was the metro area most affected by organized retail crime in the country followed by San Francisco and Oakland. Because of retail theft, several businesses in California have closed down or relocated over the last few years.

Consequently, addressing organized retail crime has been a top priority in our State. Last year, California invested the largest amount in its history to combat organized retail crime, sending over \$267 million to 55 cities and counties from the Organized Retail Theft Grant Program to increase arrests and prosecutions.

However, within the grocery retail industry it is not just organized retail theft that plagues grocery stores. Grocery store operators are constantly combating lone

individuals that are continuously entering their stores and walking out with carts or bags full of unpaid items. Almost all our large, regional, and independently owned grocery store operators have individuals that come into their stores several times a week to steal merchandise. With AB 1990 on the books would be a deterrent to these frequent thieves if there was a possibility they could get arrested and charged with retail theft.

Currently, if and when law enforcement shows up to stores where an employee has detained a thief, the outcome for the thief is to be cited then released. To end this vicious cycle that doesn't hold thieves accountable, we need laws like AB 1990.

7. Argument in Opposition

According to Initiate Justice Actions:

Existing law provides procedures for the detention and arrest of shoplifters. Current law provides shopkeepers and their agents the power to detain individuals for shoplifting. Current law also gives shopkeepers and their agents the power to make citizen arrests and turn the arrestee over to the police. This applies equally to shoplifting witnessed through video surveillance and those witnessed in person. This procedure has been used for decades in shoplifting cases, and other misdemeanor offenses that do not occur in an officer's presence.

In addition, in the event that shoplifting is captured on video and the person is not immediately apprehended in the store, current law also provides the district attorney the ability to charge and prosecute the person based on the evidence captured in the video. If a police officer or a district attorney feels that it is appropriate to take the person into custody, they can also seek an arrest warrant.

This bill would allow an officer to take any person arrested for shoplifting into physical custody, regardless of whether any of the circumstances which currently provide a basis for physical arrest on a misdemeanor are present. As a general matter, persons arrested for a misdemeanor offense are issued a citation and allowed to remain out of custody to appear in court. This general rule recognizes two truths: (1) county jails are overcrowded and shoplifting offenses do not pose an immediate public safety risk, and (2) custodial arrest has a significant negative impact on the individual. It also reflects our deeply held value that people charged but not convicted of a crime should be presumed innocent and not subject to unnecessary detention. In fact, under existing law, there are only specified misdemeanors in which law enforcement may make a warrantless arrest for something that did not occur in their presence - domestic violence, violation of a restraining order, driving under the influence of alcohol when the person is involved in a crash, or carrying a concealed firearm at an airport. If AB 1990 were to pass, it would effectively treat petty shoplifting - a nonviolent offense - the same as these other more serious crimes. To put it bluntly, that is not in the interest of public safety.