
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1613 **Hearing Date:** June 21, 2022
Author: Irwin
Version: May 23, 2022
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Theft: jurisdiction*

HISTORY

Source: Author

Prior Legislation: SB 304 (Hill) Chapter 206, Statutes of 2019
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018
AB 368 (Muratsuchi), Ch. 379, Stats. 2017
SB 939 (Block), Ch. 246, Stats. 2014
AB 2252 (Cohn), Ch. 194, Stats. 2002
AB 2734 (Pacheco), Ch. 302, Stats. 1998

Support: Arcadia Peace Officers Association; Association for Los Angeles Deputy Sheriffs; Burbank Peace Officers Association; California Business Roundtable; California Narcotic Officers' Association; California Retailers Association; California State Sheriffs' Association; California Statewide Law Enforcement Association; City of Thousand Oaks; Claremont Peace Officers Association; Corona Peace Officers Association; County of Ventura; Culver City Peace Officers Association; Fullerton Peace Officers Association; Inglewood Peace Officers Association; LA School Peace Officers Association; League of California Cities; Newport Beach Peace Officers Association; Palos Verdes Peace Officers Association; Peace Officers Research Association of California; Placer County Deputy Sheriffs Association; Professional Peace Officers Association; Riverside Sheriffs' Association; Riverside Peace Officers Association; Santa Ana Peace Officers Association; Upland Peace Officers Association; Ventura County District Attorney's Office

Opposition: Initiate Justice; San Francisco Public Defender's Office

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to expand the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to the underlying theft offenses.

Existing law provides that generally the territorial jurisdiction of a criminal offense is in any competent court in the county where the offense was committed. (Pen. Code, § 777.)

Existing law provides that when a criminal offense is committed partially in one county and partially in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, then jurisdiction is proper in either county. (Pen. Code, § 781.)

Existing law provides that when a criminal offense is committed on the boundary of two or more counties, or within 500 yards thereof, territorial jurisdiction is proper within either county. (Pen. Code, § 782.)

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

Existing law punishes petty theft as a misdemeanor. (Pen. Code, § 490.)

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 the jurisdiction of a criminal action brought by the Attorney General for theft, organized retail theft, and receipt of stolen property includes the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was received, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense.

This bill provides that when multiple offenses of theft, organized retail theft, or receipt of stolen property that all involve the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper venue for all of the offenses.

This bill extends jurisdiction to all associated offenses connected together in their commission to the underlying theft offenses when prosecuted by the Attorney General.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Prior to the sunset of PC 786.5, prosecutors were able to charge defendants with various instances of Organized Retail Theft and other related offenses in one charging document, in one superior court, regardless of which jurisdiction those offenses occurred in, as long as one of the related offenses occurred in the jurisdiction. This not only greatly enhanced judicial and prosecutorial efficiency, it dispensed with the need for a defendant to stand trial in multiple counties in sequential trials for their alleged criminal activities. It also provided the trier of fact a more complete picture of the criminal conduct that was being alleged by the prosecution, with all known instances of organized retail theft and related offenses being presented, rather than just a portion of the overall scheme.

The rise of retail theft rings, which specialize in the theft of commercial goods from dozens of stores along freeway corridors and the subsequent reselling of those goods in other counties and online, underscored the limitations of any one law enforcement agency or prosecutorial agency limited by jurisdictional lines from bringing these criminal rings to justice. With the reenactment of the crime of

Organized Retail Theft, but not the PC 786.5 jurisdictional provision, the Attorney General and District Attorneys may only charge a defendant with some instances of organized retail theft and related crimes even if other instances of theft in another jurisdiction are known. The trial and subsequent sentence if convicted is commensurately limited in scope. Even the Attorney General, with his ability to charge criminal cases in superior courts¹, cannot charge defendants in one jurisdiction with related offenses that occurred in another jurisdiction without PC 786.5.

Current DOJ cases that have been recently filed have relied upon jurisdiction being proper in the county where a theft ring has consolidated and stored stolen goods in a warehouse. This approach falls apart however when a theft ring stores stolen goods in various warehouses across multiple counties. It also constrains the DOJ to potentially not file in a county where the majority of thefts occurred. By not providing the flexibility PC 786.5 previously gave and AB 1613 would restore, DOJ is prevented from filing in a more efficient and appropriate county within the network of an Organized Retail Theft ring.

Two recent cases in Ventura County illustrate the constraints of the absence of PC 786.5. In January two brothers were charged and pled guilty to multiple counts of grand theft in Ventura County. At the same time, the brothers were also being investigated in connection with 19 thefts across San Bernardino, Los Angeles, San Diego, and Riverside counties. A different pair of brothers were arrested earlier in January and charged with multiple counts of grand theft, they are suspects in thefts at 7 different department stores across Southern California, with only 2 in Ventura County.²

2. Jurisdiction for Criminal Offenses

Territorial jurisdiction for a criminal offense is generally proper in any competent court within the jurisdictional territory where it was committed. In other words, criminal charges must normally be brought in the county where the crime is alleged to have happened. Nonetheless, the Legislature has created a number of exceptions to this general rule. For example, felony sex offenses and human trafficking offenses that occur in multiple counties can be consolidated into a single trial, and then tried in a single county. (Pen. Code, § 784.7.) When the Legislature passes these kind of special jurisdictional rules they are construed liberally. (*Price v. Superior Court*, *supra*, 25 Cal.4th 1046, 1055.)

This bill would expand the territorial jurisdiction for a criminal action brought by the Attorney General for the crimes of theft, organized retail theft, or receipt of stolen property. It would allow the prosecution to occur in any county where any stolen merchandise was recovered, or any instigating, procuring, promoting, or aiding in the commission of the offense occurred, even if the theft offense itself was committed in a distant county. It would also expand jurisdiction to any one of the counties in which a theft offense occurred against the same victim(s), and the

¹ Cal. Const., art. V, § 13 "... Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney."

² "Guilty pleas in perfume thefts as Ventura County authorities take action on retail crime" *Pacific Coast Business Times*, Brooke Holland.

merchandise was the same, or the theft was committed by a common plan or scheme. This bill would also apply the expanded jurisdiction to any associated offenses connected together in their commission to the underlying theft offenses.

One of the theft-related offenses affected by this bill is organized retail theft which was created by AB 1065 (Jones-Sawyer) in 2018. AB 1054 also had expanded jurisdictional rules for theft offenses. AB 1065 had a sunset date of January 1, 2021 and was reenacted for 5 years by AB 331 (Jones-Sawyer) in 2021, but the jurisdictional provisions were intentionally excluded when the law was reenacted.

3. Consolidation of Cases from Different Jurisdictions

This bill would allow for prosecutions of specified theft offenses to take place in counties other than the one where the theft occurred. This includes any county in which the stolen merchandise was received or recovered, any county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the theft offense or in abetting the parties. If multiple offenses of theft, receiving stolen property, or organized retail theft either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple counties then any of those counties are a proper jurisdiction. This would authorize multiple theft offenses to be consolidated into a single trial.

The benefits of consolidation include judicial economy and convenience to victims and witnesses who may have to testify in multiple trials, however there are drawbacks. This includes the potential prejudicial impact on the defendant because jurors may feel compelled to convict based on the number of victims rather than the strength of the prosecution's case. Convenience to some victims and witnesses may also come at the cost of inconvenience to others who live outside of the jurisdiction where the trial is held, which could include law enforcement officers from different counties that investigated each crime. So while consolidation may avoid multiple short trials, the single consolidated trial would likely be much longer. Additionally, not all of those individual cases may have gone to trial due to weakness in evidence or lack prosecutorial resources, but when all of the cases are consolidated into one trial, there is a chance that a charge with weak evidence can still result in a conviction because it is strengthened by the aggregate evidence in the other charges leading to a different outcome than would have occurred if the charge was tried separately.

4. Attorney General's Expanded Role in Combatting Organized Retail Theft

In December of 2021, Governor Newsom announced a proposal to combat organized retail theft. Part of the plan includes \$18 million to support the creation of a dedicated investigative team within the state Attorney General's office focusing on retail theft that crosses jurisdictional lines. (<https://www.gov.ca.gov/2021/12/17/governor-newsom-unveils-public-safety-plan-to-aggressively-fight-and-prevent-crime-in-california/> [as of June 13, 2022].)

Additionally, the Governor's 2022-2023 proposed budget would allocate "\$6 million annually through 2024-25 and \$500,000 ongoing for the Department of Justice (DOJ) to support regional task forces combating organized retail theft and to prosecute retail theft cases that span multiple jurisdictions. Resources will support investigations, legal prosecutions, and data analytics for coordinated efforts against retail theft." (See 2022-23 Budget Summary, at p. 188, <https://www.ebudget.ca.gov/2022-23/pdf/BudgetSummary/FullBudgetSummary.pdf>.)

Consistent with these efforts, this bill would specifically authorize the Attorney General's office to prosecute theft crimes where a part of the crime takes place in multiple jurisdictions.

5. Argument in Support

According to the California State Sheriffs' Association:

AB 1065 (Chapter 803, Statutes of 2018) created the new crime of "Organized Retail Theft," created a CHP task force to address retail theft and gave prosecutors a tool to file retail theft crimes committed across multiple counties under one filing in one county superior court. However, in the passage of AB 331 (Chapter 113, Statutes 2021), Penal Code 786.5 was omitted. The crime of organized retail theft and the task force were still in place, but without Penal Code 786.5, district attorneys can only charge a defendant with some instances of organized retail theft and related crimes under a single filing even if other instances of theft in another jurisdiction are known.

AB 1613 will allow the Attorney General to charge retail theft crimes committed across multiple counties under one filing in one county superior court and reduce organized retail theft statewide. For these reasons, CSSA is pleased to support AB 1613.

6. Argument in Opposition

According to the San Francisco Public Defender's Office:

AB 1613 proposes to allow the Attorney General to bring charges in counties where alleged offenses did not occur. It would do so even if the prosecutor in the county in which the offense allegedly occurred has already determined that charges are not appropriate, are not in the interest of justice or where the change of venue would harm the interests of victims, witnesses, and defendants.

This legislation is bad public policy because it runs counter to clear evidence that criminalizing shoplifting and poverty is a proven failure. Tough-on-crime policies and mass incarceration have been a failed experiment by any available metric - and instead of moving away from this failure, legislation like AB 1613 (Irwin) continues to double down on our over-reliance on police and prisons. This measure is a zero-sum game as it relates to social and economic advancement.

The collateral consequences of a criminal conviction, whether for shoplifting or any crime, are never minor, three and in many cases, only further limit legitimate avenues to social and economic mobility. If we want to provide real solutions to fight shoplifting, then we need to ensure that the fifth largest economy in the world works for everyone in our state.

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