
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 331 **Hearing Date:** June 22, 2021
Author: Jones-Sawyer
Version: March 16, 2021
Urgency: Yes **Fiscal:** Yes
Consultant: SC

Subject: *Organized theft*

HISTORY

Source: California Retailers Association

Prior Legislation: AB 94 (Comm. on Budget and Fiscal Rev.), Ch. 25, Stats. 2019
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Alameda County District Attorney's Office; California Business Properties Association; California Chamber of Commerce; California District Attorneys Association of California; California Downtown Association; California Peace Officers Association; California Police Chiefs Association; El Dorado County Chamber of Commerce; El Dorado Hills Chamber of Commerce; Elk Grove Chamber of Commerce; Folsom Chamber of Commerce; Home Depot; Internet Association; Peace Officers Research Association of California; Rancho Cordova Chamber of Commerce; Roseville Area Chamber of Commerce; Technet; United Chamber Advocacy Network; Yuba Sutter Chamber of Commerce

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to extend the sunset date on provisions of law that criminalizes organized retail theft and provisions of law that requires California Highway Patrol to convene a task force on property crimes.

Existing law, until July 1, 2021, 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 July 1, 2021, 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 July 1, 2021, 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 July 1, 2021, clarifies that in a prosecution for organized retail theft, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft. (Pen. Code, § 490.4, subd. (d).)

Existing law, until July 1, 2021, 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, until July 1, 2021, requires the Department of the California Highway Patrol (CHP) to coordinate with the Department of Justice (DOJ) to convene a regional property crimes task force to identify geographic areas experiencing increased levels of property crimes and assist local law enforcement with resources, such as personnel and equipment. (Pen. Code, § 13899.)

Existing law, until July 1, 2021, states that the task force shall provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of CHP in consultation with task force members. (Pen. Code, § 13899.)

This bill extends the operation of the above provisions until January 1, 2026.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In 2018, the Legislature passed AB 1065 (Jones-Sawyer) which created the crime of organized retail theft, as well as established the CHP property crimes task force. Unfortunately, this law will sunset on July 1, 2021.

Organized retail crime is defined as theft/fraudulent activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain, often through subsequent online or offline sales. These operations typically involve a criminal enterprise that organizes multiple theft rings at a number of retail stores and employs a fencing operation to sell the illegally-obtained goods for financial gain.

While organized retail crime can also involve the recruitment of others to steal on another's behalf, existing law was crafted to enable law enforcement to target the leaders of these operations as opposed to the individuals recruited to steal who may have been coerced into participating. Since being adopted in 2019, this law has been effective in busting large retail theft rings and recovering millions of dollars in lost revenues, dating as recent as February 2021.

In December 2020, the National Retail Federation (NRF) released their most recent Organized Retail Crime study and found that organized retail theft continues to be a problem with losses averaging \$719,548 per every \$1 billion in sales over the past year. This is the fifth year in a row since 2015 that losses resulted in over \$700,000. Furthermore, among the top 10 cities affected by organized retail crime, three are in California with Los Angeles ranked first followed by San Francisco and Sacramento at fifth and tenth, respectively.

AB 331 extends the sunset date for the existing crime of organized retail theft and the CHP property crimes task force until January 1, 2026, and continues to equip businesses and law enforcement with this necessary tool.

2. Sunset Provision and Urgency Clause

AB 1065 (Jones-Sawyer) which established organized retail theft as a crime was initially passed in 2018, and included a two-year sunset provision of January 1, 2021. The sunset was extended to July 1, 2021 in a budget bill last year. This bill includes an urgency

clause in order to allow the bill to take effect immediately, so that this bill can be passed prior to the expiration of the sunset date. This bill contains a four-year sunset date to January 1, 2026.

3. Organized Retail Theft: Proposition 47 (2014) and Proposition 20 (2020)

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

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

After the passage of Proposition 47, opponents of the measure argued that because shoplifting had to be charged as a misdemeanor unless the amount stolen exceeds \$950, repeat offenders and those who work in concert with others in an organized retail theft ring were not being appropriately punished. (*Grocery stores are pushing California to be tougher on crime*, LA Times <<https://www.latimes.com/business/story/2020-09-16/california-grocery-industry-supports-tougher-crime-laws>> [as of June 16, 2021].)

In 2018, a coalition of law enforcement and victims' advocate groups started gathering signatures to put a new initiative on the ballot that would undo some of the changes made by Proposition 47. That measure, Proposition 20, would have allowed thefts of property worth \$250 or more to be punished as felonies and would have created the crime of serial theft and organized retail theft. Also in 2018, the Legislature passed AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018, which created the crime of organized retail theft and allowed the crime to be punished as a wobbler, along with several other provisions related to the prosecution of the new crime and the creation of the CHP property crimes task force.

Proposition 20 qualified to be placed on the ballot for the November 2020 general election and was ultimately rejected by California voters.

4. CHP Task Force

According to information provided by CHP, between January 2019 and February 2021, the property crimes task force conducted a total of 170 investigations and recovered assets valued to be at \$1,888,026. In February of this year, a CHP property theft task force investigation led to the arrest of three Bay Area men suspects of a retail theft operation out of Reno and more than \$150,000 was recovered in stolen merchandise. (*3 Organized Retail Theft Suspects Arrested, \$150,000 in Merchandise Seized*, NBC Bay Area (Feb. 14, 2014) < <https://www.nbcbayarea.com/news/local/3-organized-retail-theft-suspects-arrested-150000-in-merchandise-seized/2467810/>> [as of June 16, 2021].)

This bill extends the sunset date of the CHP property crimes task force to January 1, 2026.

5. Argument in Support

According to the California Retailers Association, the sponsor of this bill:

[Organized retail crime] ORC is defined as theft or fraudulent activity conducted with the intent to convert illegally obtained merchandise, cargo, cash, or cash equivalent into financial gain, often through subsequent online or offline sales. Organized retail crime typically involves a criminal enterprise that organizes multiple theft rings at a number of retail stores and employs a fencing operation to sell the illegally obtained goods for financial gain. According to a recent survey by the National Retail Federation (NRF), organized retail crime (ORC) is a \$30 billion problem nationwide and rising. That survey also identified Los Angeles, San Francisco, and Sacramento among the top ten metropolitan areas for ORC in the country.

ORC is also harming our communities as these networks recruit minors, homeless persons, and others to steal from retail stores. The organized retail theft statute enables law enforcement to target the leadership of these enterprises with severe criminal sanctions. For instance, in the recent breakup of a major ORC ring in the Bay Area that had recruited numerous individuals, five ringleaders were charged under §490.4. That investigation also netted nearly \$10 million in assets recovered onsite and disrupted an estimated \$50 million operation. Combined with effective enforcement, this law is a vital tool in combating ORC and must be extended.

Investigating and prosecuting ORC is a complex undertaking, involving investigations that can be many months in length and can involve multiple jurisdictions. The [Organized Retail Crime Task Force] ORCTF is a dedicated entity with the resources to conduct these investigations, educate other law enforcement agencies on how to address ORC, and establish relationships with retailers and asset protection professionals. As a statewide task force, the ORCTF is uniquely positioned to coordinate and oversee investigations involving local law enforcement agencies across multiple cities or countries, or to assist in local investigations where needed. California will not stem the tide on ROC without

this kind of dedicated state-level commitment. This measure sends the message that ORC will not be tolerated in California.

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