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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 1416                      **Hearing Date:** April 9, 2024  
**Author:** Newman  
**Version:** March 20, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Sentencing enhancements: sale, exchange, or return of stolen property*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 1511 (Low), vetoed, 2018  
AB 1705 (Niello), Ch. 420, Stats 2007  
AB 916 (Canciamilla), held in Sen. Approps. Committee, 2005  
AB 293 (Cunneen), 1997 Ch. 551, Stats 1997

**Support:** California Retailers Association; League of California Cities

**Opposition:** San Francisco Public Defender

## PURPOSE

*The purpose of this bill is to create new sentencing enhancements of 1, 2, 3, or 4 years respectively for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds \$50,000, \$200,000, \$1,000,000, or \$3,000,000.*

*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 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* punishes shoplifting as a misdemeanor, except where a person has a prior “super strike” or a registrable sex conviction, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)

*Existing law* provides that, notwithstanding the punishment for petty theft, if a person is required to register as a sex offender, has a prior “super strike conviction,” or has a conviction for a specified theft-related offense against an elder or dependent adult, and also has been convicted of a specified theft-related offense for which he or she was imprisoned, and is subsequently convicted of petty theft, then the person is to receive an enhanced punishment of imprisonment in the county jail not to exceed one year, or in the state prison. (Pen. Code, § 666.)

*This bill* provides that when any person sells, exchanges, or returns for value, or attempts to sell, exchange, or return for value, property 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, the court shall impose an additional term as follows:

- If the value of the property exceeds \$50,000 the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of one year;
- If the value of the property exceeds \$200,000 the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of two years;
- If the value of the property exceeds \$1,000,000, the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of three years;
- If the value of the property exceeds \$3,000,000, the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of four years;
- For each property value of \$3,000,000, the court shall impose a term of one year in addition to the term specified above.

*This bill* states that when any person acts in concert with another to sell, exchange, or return for value, or attempts to sell, exchange, or return for value, property 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, the court shall impose the additional terms specified above.

*This bill* authorizes aggregation of multiple charges of sales, exchanges, or returns for value, or attempts to do the same so that the additional terms provided by this bill may be imposed if the aggregate value of the property involved exceeds the amounts specified and arises from a common scheme or plan. All pleadings under this section are subject to the rules of joinder and severance stated in existing provisions of law.

*This bill* states that the additional terms provided by this bill shall not be imposed unless the facts relating to the required amounts are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

*This bill* states that notwithstanding any other law, the court may impose an enhancement pursuant to the provisions of this bill and another section on a single count.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

SB 1416 is an important step in more effectively combating retail theft as part of the “Working Together for a Safer California” legislative package. When passed, it will impose progressively stronger penalties for crimes involving the sale, exchange, return, or attempted resale of items acquired through retail theft, depending on the aggregate value of those items. Organized retail theft is an expanding criminal trend in California, and law enforcement faces significant challenges in prosecuting the organizers of these crimes. SB 1416 will give law enforcement another important tool to effectively prosecute, as well as deter, those who would seek to coordinate and benefit from large-scale organized retail theft.

### 2. Background: Enhancements

Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person’s sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person’s sentence, or doubling a person’s sentence or even converting a determinate sentence into a life sentence.

A recent report on sentencing enhancements found that about 40% of individual prison admissions since 2015 have sentences lengthened by a sentence enhancement. Among the currently incarcerated, the prevalence of enhanced sentences is much higher, impacting the sentences of approximately 70% of people incarcerated as of 2022. Data shows that enhancements have been applied a total of 167,340 times to new prison admissions since 2015, and have been applied 197,274 times in the cases of those incarcerated as of July 2022. (Mia Bird et al., *Sentence Enhancements in California*, California Policy Lab (Mar. 2023) < <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>> [as of Mar. 27, 2024].)

According to the report, there are over 100 separate code sections in California law that can be used to enhance a person’s sentence and the most common enhancement is for a previous prison or jail sentence. (*Ibid.*) The report noted several recent legislative changes to enhancements that were enacted based on the recommendation of the Committee on the Revision of the Penal Code. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2020.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf) [as of Mar. 27, 2024].)

AB 333 made updates to the gang enhancements which narrowed the definition of gang involvement. SB 483 built on legislation repealing one- and three-year enhancements for prior convictions and applied the repeal to people who were incarcerated and had the enhancements as part of their sentences. Finally, SB 81

provided guidance to judges that allowed them discretion in whether to dismiss sentence enhancements, unless in the judge's perspective, not enhancing a sentence could endanger public safety (PC § 1385)

The enhancement reforms enacted by the legislature since 2018 have curtailed the frequency with which enhancements have been applied to prison terms. We observe this both in overall trends, as well as in analysis of specific reforms on specific enhancement categories. Figure 3 shows the number of admissions with enhancements (the blue line) for each month from the beginning of 2015 through the end of 2022 as well as the total number of enhancements (the orange line) imposed on these terms (each admission may include more than one enhancement). There is a clear drop in admissions with enhancements coinciding with the onset of the COVID-19 pandemic and the corresponding drop in admissions to CDCR. Given the unpredictable nature of the pandemic, and the rates at which people were released from prison to help slow the spread, it is difficult to tease apart which declines after 2020 are due to enhancement reforms or are pandemic related.

### 3. Repealed “Excessive Takings” Enhancement

Until the law sunset in 2018, California had an “excessive takings” enhancement that would apply to taking or damaging of property that exceeded specified value thresholds. (Former Penal Code Section 12022.6.) The law was enacted in 1977 and subsequently a sunset provision was included in the statute for the purpose of allowing the Legislature to consider the effects of inflation on the property value thresholds in the law. The sunset was extended several times through legislation until the law was allowed to sunset in 2018. The law as it read in 2017 required the court to apply an enhancement of 1, 2, 3, or 4 years respectively whenever any person was convicted of a felony involving taking or damaging property that exceeded losses of \$65,000, \$200,000, \$1,300,000 and \$3,200,000.

AB 1511 (Low), of the 2017-2018 legislative session, would have reauthorized the enhancement statute with higher value thresholds, starting at \$75,000 and going up to \$3.7 million in property loss, and would have made the statute permanent. The bill was vetoed. Then Governor Brown's veto message stated:

AB 1511 now seeks to re-enact this repealed enhancement, but omits any sunset provision similar to those that have been included with this statute since 1990. I see no reason to now permanently re-enact a repealed sentencing enhancement without corresponding evidence that it was effective in deterring crime. As I have said before, California has over 5,000 criminal provisions covering almost every conceivable form of human misbehavior. We can effectively manage our criminal justice system without 5,001.

This bill creates new enhancements that would apply to some of the same conduct that would have been covered by former Penal Code section 12022.6. This bill requires the court to apply specified additional terms of imprisonment when the value of property acquired through one or more acts of exceeds the following amounts: \$50,000, \$200,000, \$1 million, and \$3 million. The threshold value amounts contained in this bill are lower than the values contained in Penal Code section 12022.6 when the law was allowed to sunset. Specifically, that statute, which was last

adjusted for inflation in 2007 for the law to go into effect January 1, 2008, contained the following threshold amounts: \$65,000, \$200,000, \$1.3 million, and \$3.2 million.

The committee may wish to amend the bill to adjust the threshold amounts to account for inflation and may wish to add a sunset date for the Legislature to readjust the threshold amounts in the future. Using the U.S Department of Labor's Consumer Price Index calculator with a comparison date of January 1, 2008, the current threshold amounts in the bill would be adjusted as follows:

- \$50,000 in 2008 would be \$73,509.10 in 2024;
- \$200,000 in 2008 would be \$294,036.38 in 2024;
- \$1,000,000 in 2008 would be \$1,470,181.92 in 2024; and,
- \$3,000,000 in 2008 would be \$4,410,545.76 in 2024.

#### 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. Specifically, the 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 Mar. 27, 2024].) The initiative is supported by various law enforcement, public officials, district attorneys, 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.*)

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 Mar. 27, 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 Mar. 27, 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 \[as of Mar. 27, 2024\].\)](#)

## 5. Argument in Support

According to California Retailers Association:

Organized retail theft has plagued the retail industry in recent years. It has forced retailers to spend millions annually on security measures, such as guards, cameras, and store redesigns. Retail employees and customers are increasingly feeling unsafe, and the simple act of shopping has become burdensome for many. The unlawful acquisition and resale of stolen goods perpetuates a cycle of profitable criminal activity that undermines the integrity of the retail environment and erodes consumer trust. To combat this unfortunate reality, we need to enhance penalties for prolific offenders profiteering off stolen goods.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, on-line marketplaces, restaurants, convenience stores, supermarkets and grocery stores, retail pharmacies, and specialty retail such as auto, vision, jewelry, hardware, and home stores.

By imposing stricter penalties for individuals attempting to profit from stolen merchandise, SB 1416 serves as a deterrent against retail crime. It sends a clear message that such illicit activities will not be tolerated, thereby helping to protect businesses, consumers, and communities from the adverse effects of criminal behavior.

## 6. Arguments in Opposition

According to the San Francisco Public Defender:

While the stated intent of this bill is to penalize individuals responsible for large-scale retail theft, the “acting in concert” provision will more likely be used to increase prison sentences for people who might be affiliated with individuals that engages in theft but who are not personally responsible for the thefts (or at least for the thefts that are aggregated to meet those monetary thresholds). Therefore, this legislation has broad implications beyond targeting people engaged in “large scale” retail theft.

Furthermore, retail theft panic was spread by highly-publicized false statements by retailers that have since been retracted. The National Retail Federation (NRF) received heavy media attention when it blamed “organized retail theft” for nearly half of all inventory losses in 2021, but later retracted the high-profile assertion, admitting to using incorrect data and a general lack of data on the issue. Despite claims about the impact of retail theft on businesses, the California Retailers Association has acknowledged there is no comprehensive, reliable data on theft. A shopping center executive recently told lawmakers he asked 15 retailers for data on retail theft, and none could provide it. Indeed, corporations like Walgreens and Target have claimed to be closing stores because of retail theft,

only for it to be revealed that they kept nearby stores with higher incidents of crime open; struggled financially for other reasons; and, per the Walgreens finance chief, “cried too much” about merchandise loss.

Despite the false narratives around retail theft, Governor Newsom’s administration has already created an unprecedented \$267 million retail theft slush fund for state grants to local law enforcement to fight now-debunked “organized retail crime.” This funneling of limited state resources at law enforcement is completely unnecessary and wasteful.

Legislators cause irreparable harm to Californians when they base policies on false statements rather than championing and implementing evidence-based solutions that bring long-term stability and safety to both criminalized communities and retail store employees. Study after study demonstrates that harsher penalties—including for people with prior thefts—will not be effective at combating retail theft. What is effective is funding comprehensive clean slate services to open doors for housing, employment, job training, and education opportunities for people who have been impacted by the criminal legal system.

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