
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 982 **Hearing Date:** March 12, 2024
Author: Wahab and Niello
Version: March 5, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: organized theft*

HISTORY

Source: Author

Prior Legislation: AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021
AB 94 (Comm. on Budget and Fiscal Rev.), Ch. 25, Stats. 2019
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Arcadia Police Officers' Association; Burbank Police Officers' Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Murrieta Police Officers' Association; Newport Beach Police Association; Novato Police Officers Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: Vera Institute of Justice

PURPOSE

The purpose of this bill is to remove the sunset date on the provision of law that criminalizes organized retail theft, thereby making the operation of the law permanent.

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, 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 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).)

This bill removes the sunset date of January 1, 2026 making the organized retail theft crime law permanent.

COMMENTS

1. Need for This Bill

According to the author of this bill:

While we must always create pathways for restorative justice and rehabilitation, we must also hold people accountable as they violate the rights of others. With the rise of retail theft and robberies in our communities, we must provide prosecutors the necessary tools to address the lawlessness that is threatening our quality of life.

2. Organized Retail Theft Law: Response to Proposition 47 (2014)

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. However, 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.)

Because Proposition 47 reduced the number of crimes that can be punished as felonies, it reduced the number of people that could be sentenced to state prison. Proposition 47 requires that the estimated annual savings to the state resulting from Proposition 47's sentencing changes be spent on mental health and substance use services, truancy and dropout prevention, and victim

services. According to the Legislative Analyst's Office, last year, the estimated state savings was about \$113 million. (<https://lao.ca.gov/ballot/2023/230474.pdf> [as of Mar. 1, 2024].)

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 Mar. 1, 2024].)

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

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 to assist local efforts to combat organized property crimes. That law contained a sunset date of January 1, 2021. Since the passage of the organized retail theft law, the sunset has been extended several times. (See AB 94 (Committee on Budget and Fiscal Rev.), Ch. 25, Stats. 2019 and AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021.)

The current sunset date is January 1, 2026. This bill removes the sunset date making the operation of the crime of organized retail theft permanent.

3. 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. 1, 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. 1, 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. 1, 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. 1, 2024].)

4. Argument in Support

According to the Riverside Sheriffs' Association:

Despite the likelihood of underreported retail theft, especially low-value theft, data shows a 29% jump in reported retail theft from 2019 to 2022. Aside from big retailers, many small businesses are suffering the consequences of organized retail theft, and often times, do not have the same resources to protect themselves. Further, when retailers are affected by these crimes, they typically make up those losses by raising prices, reducing hours or closing their stores, ultimately impacting other consumers.

SB 982 will ensure "organized theft" remains a crime to give prosecutors and law enforcement the effective tools they need to combat organized theft. This bill also has bi-partisan co-authors from the Senate and the Assembly.

5. Argument in Opposition

According to Vera Institute of Justice:

Every Californian deserves to live in a safe, livable community, where families and residents can go about their day-to-day lives without concern for their wellbeing. And as retail theft has become a high-profile issue, with drug stores and chains shuttering or locking up everyday items, the legislature has a right to be concerned. However, while retailers claim that retail theft is a massive and urgent crisis, experts and journalists have repeatedly noted that false and inflated claims are driving an exaggerated sense of panic, while retailers are struggling with other issues more responsible for financial challenges. In particular, many concerns around "organized retail crime" have been driven by the National Retail Federation's now-redacted claim that it was responsible for half of all inventory losses in 2021, which was based on incorrect data.

Further, California's current theft laws are in fact already harsher than those in many other states. For example, in South Carolina and Texas, states not known for being "soft on crime," theft cannot be charged as a felony unless the amount

of loss is at least \$2,000 or \$2,500 respectively. SB 982 would make our current theft laws even harsher by making permanent the definition of organized retail theft established by AB 331, which in turn allows for felony charges for coordinated retail theft—or retail theft on multiple occasions. When we blame the wrong problems, we miss the right solutions. While sensational claims about organized retail theft have been debunked and data shows that retail theft is not rising statewide, the legislature should respond to concerns from the community and local businesses with evidence-backed solutions.

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