

CONCURRENCE IN SENATE AMENDMENTS

AB 1065 (Jones-Sawyer, et al.)

As Amended August 7, 2018

Majority vote

ASSEMBLY: 77-0 (May 31, 2017) SENATE: 39-0 (August 20, 2018)

COMMITTEE VOTE: 6-0 (August 23, 2018) RECOMMENDATION: concur
(Pub. S.)Original Committee Reference: **PUB. S.**

SUMMARY: Creates the crime of organized retail theft. Expands jurisdiction to prosecute cases of theft or receipt of stolen merchandise. Requires California Highway Patrol (CHP) to convene a regional property task force. Authorizes a grant program, upon appropriation by the Legislature, to create demonstration projects to reduce recidivism to high-risk misdemeanor probationers. Establishes a sunset date of January 1, 2021, for the provisions of this bill.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Make it a felony or misdemeanor to commit "organized retail theft."
- 2) Define "organized retail theft" as any of the following conduct:
 - a) Acts 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 or return the merchandise for value;
 - b) Acts in concert with two or more persons to receive, purchase, or possess merchandise from a merchant's premises or online marketplace, knowing or believing it to have been stolen;
 - c) Acts as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplace as part of an organized plan to commit theft; or
 - d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to act in concert to steal or receive merchandise from a merchant's premises or online marketplace, or other specified theft crimes.
- 3) Punish a violation of "organized retail theft" as follows:
 - a) If violations of acting in concert, or as an agent, to steal or receive merchandise are committed on three or more separate occasions within a 1 year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 1 year period exceeds \$950, the offense is punishable as a realigned felony with a maximum of three years in the county jail, or as a misdemeanor with a maximum of one year in the county jail;

- b) Any other violation for the conduct described above that does not meet the dollar and separate occasion threshold are punishable as a misdemeanor with a maximum of one year in the county jail.
 - c) A violation of recruiting, coordinating, directing, or financing acts of organized retail theft is punishable as a realigned felony with a maximum of three years in the county jail, or as a misdemeanor with a maximum of one year in the county jail.
- 4) Specify 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:
 - a) 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;
 - b) 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; and
 - c) 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.
 - 5) State that in a prosecution for organized retail theft, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft.
 - 6) Expand the jurisdiction for charging theft and receiving stolen property to include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating or aiding in the commission of those offenses.
 - 7) Specify that if multiple offenses of theft or receiving stolen property, 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 jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses.
 - 8) Allow a person to be taken in to custody on a misdemeanor arrest when there are failures to appear in court on previous misdemeanor citations that have not been resolved for the person.
 - 9) Specify that an arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified, when deciding whether to make a custodial arrest for a misdemeanor offense.
 - 10) Allow a person to be taken in to custody on a misdemeanor arrest if the person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous six months.

- 11) Allow a person to be taken into custody on a misdemeanor arrest if there is probable cause to believe that the person arrested is guilty of committing organized retail theft.
- 12) Allow a court to issue a bench warrant when a defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges three or more times in the previous six months.
- 13) Require the CHP to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the CHP as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary.
- 14) Allow the prosecuting attorney's office or county probation department to create a diversion or deferred entry of judgment program for persons who commit repeat theft offenses.
- 15) Define "repeat theft offenses" as "being cited or convicted for misdemeanor or felony theft from a store or from a vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction."
- 16) State that in determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:
 - a) Any prefiling investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement;
 - b) If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity;
 - c) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or deferred entry of judgment program;
 - d) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program; and
 - e) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.
- 17) Require notice of specified information regarding diversion be provided to or forwarded by mail to the person alleged to have committed the offense.
- 18) Specify that the prosecuting attorney may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:
 - a) Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney; and

- b) Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by the program.
- 19) State that upon appropriation by the Legislature, the Board of State and Community Corrections (BSCC) shall award funding for a grant program to four or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.
- 20) Require the demonstration projects to use risk assessments at sentencing when a misdemeanor conviction results in a term of probation to identify high-risk misdemeanants and to place these misdemeanants on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral or treatment needs to achieve rehabilitation and successful completion of probation.
- 21) State that the formal probation program may include incentives such as shortening probation terms as probationers complete the individually tailored program or probation requirements.
- 22) Require the demonstration projects to evaluate the probation completion and recidivism rates for project participants.
- 23) Require BSCC to determine criteria for awarding the grants on a competitive basis that shall take into consideration the ability of a county to conduct a formal misdemeanor probation project for high-risk misdemeanor probationers.
- 24) State that BSCC shall develop reporting requirements for each county receiving a grant to report to the board the results of the demonstration project.
- 25) Require BSCC to prepare a report that compiles the information it receives from each county receiving a grant be completed and distributed to the Legislature and county criminal justice officials two years after an appropriation by the Legislature.
- 26) Establish a sunset date of January 1, 2021, for the provisions of this bill.

EXISTING LAW:

- 1) Makes the theft of money, labor, or property, punishable as a misdemeanor whenever the value of the property taken does not exceed \$950.
- 2) Requires shoplifting, defined as entering a commercial establishment with the intent to commit larceny, and where the property taken does not exceed \$950, to be punished as a misdemeanor.
- 3) Requires the act of shoplifting be charged as shoplifting and prohibits a person who is charged with shoplifting to be charged with burglary or theft of the same property.
- 4) Requires generally that a person who is arrested for a misdemeanor be released upon his or her promise to appear in court at a later specified date, unless one of specified reasons exists for non-release, including a reasonable likelihood that the offense or offenses will continue or resume, or that the safety of persons or property would be imminently endangered by release of the arrested person.

AS PASSED BY THE ASSEMBLY, this bill shortened the dispensation period for the payment that a prisoner receives upon release from custody from within 60 to within 45 days.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) State prison: Unknown, potential increase in incarceration costs for new commitments to state prison for persons found guilty of committing organized retail theft. The proposed 2018-19 per capita cost to house a person in a state prison is \$80,729 annually, with an annual marginal rate per inmate of between \$10,000 and \$12,000. The average contract-prison rate cost per inmate is over \$30,000 annually. The actual costs would depend on how many defendants are sentenced to prison for organized retail theft. (General Fund)
- 2) Court: Unknown, potentially-significant workload cost pressures to the court to adjudicate charges brought against defendants who commit the act proscribed by this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. (General Fund*)
- 3) Prosecution & incarceration: Unknown potential increase in non-reimbursable local enforcement and incarceration costs to prosecute and incarcerate those charged with and found guilty of organized retail theft. Costs would be offset, to a degree, by fee and assessment revenue. (Local funds)

*Trial Court Trust Fund

COMMENTS: According to the author, "Not only does AB 1065 create a new 'Organized Retail Theft' statute punishable with a wobbler, recent amendments create risk-based rehabilitation programs that will drive down recidivism and incarceration.

"Such programs are essential to ensure we don't incarcerate offenders who are effectively served by rehabilitation programs. The bill is now drafted to support the communities severely impacted by sophisticated organized retail theft by identifying those who have potential risk to re-offend and providing the appropriate supervision.

"AB 1065 is a holistic approach to organized retail theft by redirecting law enforcement resources toward eradicating these sophisticated theft rings and providing the appropriate rehabilitation to end the cycle."

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