

SUBJECT: Creation of the offense of organized retail theft

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway
0 nays
4 absent — Hodge, Moreno, Pierson, Talton

WITNESSES: For — Calvin Erves, Albertsons LLC; Tommy Hudspeth, Irving Police Dept.; Karl Langhorst, Tom Thumb Food Markets; (*Registered, but did not testify*: Doug DuBois, Texas Petroleum Marketers and Convenience Store Assoc.; Jay Howard, Wal-Mart Stores; Nathan Latsha, Stage Stores; Brad Shields, Texas Retailers Assoc.; Charlie Tyner, Kroger Co.)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Assn.)

DIGEST: CSHB 3584 would add Penal Code, sec. 31.16, to create the crime of organized retail theft, which a person would commit by intentionally conducting, promoting, or facilitating an activity in which the person received, possessed, concealed, stored, bartered, sold, or disposed of at least \$1,500 worth of:

- stolen retail merchandise; or
- merchandise explicitly represented to the person as being stolen retail merchandise.

Retail merchandise would mean one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment.

The punishment for organized retail theft would depend on the value of the merchandise involved as follows:

- a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the total value of the merchandise involved was at least \$1,500 but less than \$20,000;
- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the total value of the merchandise involved was at least \$20,000 but less than \$100,000.
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the total value of the merchandise involved was at least \$100,000 but less than \$200,000; or
- a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the total value of the merchandise involved was \$200,000 or more.

The punishment would be increased to the next penalty category if it was shown that the defendant organized, supervised, financed, or managed one or more persons engaged in receiving, possessing, concealing, storing, bartering, selling, or disposing of stolen retail merchandise or merchandise explicitly represented to the person as being stolen retail merchandise.

The bill would amend Code of Criminal Procedure, art. 13.08 to allow the crime of organized retail theft to be prosecuted in any county in which the underlying theft could be prosecuted as a separate offense.

The bill would take effect on September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 3584 would combat the growth of organized retail theft, in which groups of shoplifters and fences form multi-state crime rings that cost retailers millions of dollars a year in stolen goods. The bill would weaken these organized rings by targeting the fences who hold the syndicates together. If the public could effectively prosecute and incarcerate these key players, then shoplifters would have difficulty selling stolen merchandise and would be discouraged from shoplifting in the future.

Current theft laws are inadequate because they penalize individual transfers of stolen merchandise. Fences convicted today are out on the street and active again in a few years because of the relatively small value of individual transactions. CSHB 3584's penalty ladder would allow the value of transactions to be aggregated and thus ensure that fences served sentences long enough to permanently shut down their businesses and cause organized crime rings to collapse. In addition, the penalty

enhancement for fences who oversaw other fences would serve as yet another blow to the organizational efforts of these criminals.

**OPPONENTS
SAY:**

CSHB 3584 proposes to create a new crime that simply would enhance penalties for actions that already are criminal under the existing theft, conspiracy, and accomplice statutes. Texas cannot afford to enhance criminal penalties and create new crimes because this would lead to more offenders serving longer sentences in prisons that already are full and understaffed.