

- SUBJECT:** Increasing and revising penalties for organized retail theft
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Gallego, Aliseda, Burkett, Carter, Y. Davis, Rodriguez, Zedler
0 nays
2 absent — Hartnett, Christian
- WITNESSES:** For — Mike Battles, Stage Stores, Inc.; Anthony Sheppard, CVS/Caremark; David Williams, Hobby Lobby Corporation (*Registered, but did not testify*); Stephanie Gibson, Texas Retailers Association; Brad Shields, Texas Federation of Drug Stores; John Chancellor, Texas Police Chiefs Association; Lon Craft, Texas Municipal Police Association; Randy Erben, The Home Depot; Karen Reagan, Walgreen Co.; Jessica Sloman, Houston Police Department)

Against — None
- BACKGROUND:** Under Penal Code, sec. 31.16, a person commits the offense of organized retail theft 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 means 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 depends on the value of the merchandise, 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 is increased to the next penalty category if it was shown that the defendant organized, supervised, financed, or managed one or more persons engaged in organized retail theft.

The punishment under this offense also is increased to the next penalty category if the defendant intentionally, knowingly, or recklessly caused an alarm to sound with the intent to distract from the offense.

DIGEST:

CSHB 2482 would remove the minimum threshold value of \$1500 for the offense of organized retail theft and create a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the total value of the merchandise involved was less than \$50 and a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the total value of the merchandise involved was at least \$50 but less than \$500. The rest of the value ladder would be modified as follows:

- a state-jail felony if the total value of the merchandise involved was at least \$500 but less than \$1,500;
- a third-degree felony if the total value of the merchandise involved was at least \$1,500 but less than \$20,000;
- a second-degree felony if the total value of the merchandise involved was at least \$20,000 but less than \$100,000; or
- a first-degree felony if the total value of the merchandise involved was \$100,000 or more.

The punishment would be increased to the next penalty category under the general theft offense in Penal Code, sec. 31.03 or under the organized retail theft offense in Penal Code, sec. 31.16 if it was shown that the defendant intentionally, knowingly, or recklessly:

- caused a fire exit alarm to sound or otherwise become activated;
- deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or
- used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

The bill would use the definition of “fire exit alarm” from the Health and Safety Code and would repeal current law on sounding an alarm with the intent to distract. It also would move the definitions of “retail merchandise,” “retail theft detector,” and “shielding or deactivation instrument” to sec. 31.01 of the Penal Code, where other general definitions for the theft chapter are located.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2482 would strengthen the tools used to combat organized retail theft, which costs retailers in Texas about \$2.2 billion every year and costs the state about \$138 million a year in sales tax revenue. Creating misdemeanor charges for organized retail theft under \$500 and lowering the value ladder on all felony charges would provide the stiffer penalties that are warranted for this crime. Prosecutors currently do not use the organized retail theft statute frequently because the penalties are the same as for general theft.

The con artists who commit this crime are very aware of the current \$1,500 threshold for organized retail theft and adroitly stay just beneath it, knowing that if they get caught they will get the equivalent of a traffic ticket and can keep stealing. These criminals consider this a low-risk and high-reward crime; they often steal \$10,000 to \$20,000 worth of merchandise in a single day. Making the penalties steeper would deter them from committing this serious crime.

Along the same lines, enhancing penalties when a criminal uses a booster bag, which is a bag lined with aluminum foil to block the signal from the theft protection tag, would be an effective and necessary deterrent. Criminals regularly roll up merchandise, such as jewelry, in a booster bag and walk out in less than 4 minutes with thousands of dollars worth of merchandise. Current law includes an offense for possessing a booster bag or deactivation device, but the penalty is just a flat class A misdemeanor. Using these devices also should result in an enhanced penalty, depending

on the value of the boosted or deactivated merchandise stolen, which CSHB 2482 would do.

CSHB 2482 also would clean up language in the law regarding an enhanced penalty for using a fire exit. Current law enhances the penalty if the defendant intended to set off the alarm as a distraction from committing the offense, but in reality, criminals use the fire exit to leave quickly with the merchandise. CSHB 2482 would make it clear that the enhanced penalty applied under the general theft statute or the organized retail theft statute if the criminal sets off or deactivates the fire alarm in the commission of the crime.

Prosecutors would be able to tell the difference between wayward juveniles and the hardened and dangerous organized criminals that use organized retail theft to enrich their criminal enterprises. Depending on the case, prosecutors could charge under the general theft statute or the organized retail theft statute with higher penalties.

OPPONENTS
SAY:

CSHB 2482 should not remove the minimum threshold of \$1,500 for the offense of organized retail theft. The bill would make every low-level shoplifting theft at least a class B misdemeanor, which could result in jail time. Under the general theft statute, stealing something worth less than \$50 currently is a class C misdemeanor (maximum fine of \$500). Some thefts are just petty thefts and should be punished as such, which was why the \$1,500 minimum threshold for the offense of organized retail theft was created in the first place.

While many groups related to organized retail theft are connected to gangs or other nefarious criminals, the lower threshold and enhanced penalties of CSHB 2482 could trap groups of wayward juveniles for organized retail theft, which would not be a just result. CSHB 2482 should not enhance the penalties for organized retail theft because enhancement would not be an effective deterrent and could be costly for the correctional system.

NOTES:

The committee substitute would:

- eliminate a definition of “boost” that was included in the original bill under the organized retail theft statute;
- modify the penalties for organized retail theft of merchandise valued above \$1,500, whereas the original bill would not;

- establish class B and class A misdemeanors for organized retail theft for merchandise valued at different amounts than in the original bill; and
- add higher penalties for using the fire exit or using shielding or deactivation devices to both the organized retail theft and general theft statutes, whereas the original bill added them only to the organized retail theft statute.

The companion bill, SB 388 by Williams, was referred to the Senate Criminal Justice Committee on February 2.