

November 2024



Glenn Hegar
Texas Comptroller of Public Accounts

A Study on Organized Retail Theft in Texas

Texas Organized Retail Theft Task Force



November 25, 2024

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dade Phelan, Speaker of the House of Representatives
The Honorable Pete Flores, Chair, Senate Committee on Criminal Justice
The Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

Gentlemen:

On behalf of the members of the Texas Organized Retail Theft (ORT) Task Force, I am pleased to submit this report as required by the Texas Government Code, Section 403.0302. This analysis reflects the findings of the Task Force and includes recommendations developed from numerous meetings, interviews and site visits with experts and stakeholders.

The coordinated efforts of those committing organized retail thefts across multiple jurisdictions warrant an equally coordinated effort between law enforcement, prosecutors, retailers and online marketplaces. This task force sought to coordinate a response among stakeholders in combating ORT.

These thefts pose a major societal issue for all Texans, and I would like to thank the members of the Task Force and the other project participants for their time and contributions in helping to fight against ORT perpetrators.

Sincerely,



Glenn Hegar
Texas Comptroller of Public Accounts

cc: Texas Organized Retail Theft Task Force members:
Joyce Beebe, Rice University (Baker Institute)
Adam Colby, Texas Financial Crimes Intelligence Center
Christian Hardman, eBay
Faith Kohler, Amazon
Art Lazo, 7-Eleven
Adam Mendoza, Target
Carly Richter, Texas Comptroller of Public Accounts (Criminal Investigation Division)
Tiana Sanford, Montgomery County District Attorney's Office
Darrell S. Taylor, H-E-B
Chris Walden, Amazon
Corey Yates, JCPenney



Executive Summary

Organized Retail Theft (ORT), the large-scale theft and reselling of merchandise, is a growing problem, according to Texas retailers. In 2023, the Texas Legislature created a special task force led by Texas Comptroller of Public Accounts Glenn Hegar to analyze and develop strategies for combatting ORT.

The ORT Task Force, which includes law enforcement, retailers and policy experts, conducted research, listened to expert testimony and conducted site visits as part of its study. The following report represents the findings of the Task Force and offers recommendations for further action.

Summary of Findings and Recommendations

As the Task Force listened to expert testimony and Comptroller staff visited retailer sites, ORT Task Force members noted three recurrent themes: a lack of ORT data, a need for coordination among ORT stakeholders and a need for consistency in the application of ORT laws.

Finding 1

Statewide data relating specifically to ORT are not collected in Texas, which makes it difficult to quantify the extent and cost of ORT, pinpoint where crimes are happening and dedicate sufficient resources to combat ORT. Retailers are reluctant to share certain proprietary data with their competitors.

Recommendations

- Develop a statewide repository to collect ORT data that can be aggregated and analyzed.
- Work with retailers to categorize and mask their confidential data in a manner that doesn't expose proprietary information while still allowing analysts to estimate the cost of ORT and detect trends.
- If ORT trends indicate a need, consider creating an organization to combat ORT modeled after or housed under the Texas Financial Crimes Intelligence Center.

Finding 2

Thefts conducted by perpetrators who target multiple types of merchandise or who operate in more than one law enforcement jurisdiction may be difficult to identify as ORT. Improved transparency, interaction and communication among all stakeholders—retailers, law enforcement and prosecutors—have yielded positive results in some cities.

Recommendations

- Continue support for the Texas Department of Public Safety's Organized Retail Theft Prevention Unit and consider increasing the total number of FTEs for the unit.

- Identify an existing state agency to serve as both an information clearinghouse and a facilitator to help local law enforcement departments develop and improve ORT coordination, cooperation and knowledge sharing with other jurisdictions so that potential links to related cases may be identified and shared.
- San Antonio's Businesses Against Theft Network (BAT-NET) program could serve as a model for other cities to improve communication, transparency and collaboration among stakeholders.
- Establish a store walk-through program. Retailers can launch a store walk-through program inviting law enforcement agencies and prosecutors' offices to get a better understanding of the ORT issue. This can also help foster a stronger relationship between retailers and law enforcement.
- Incorporate training on ORT in new officer training classes and as part of a continuing education class for law enforcement.
 - One-hour presentation to new academy classes.
 - Quarterly and annual meeting/certification by Texas Organized Retail Crime Association (TXORCA) or similar association.

Finding 3

Prosecuting ORT can be time and resource intensive, and prosecutors sometimes apply ORT charges inconsistently (e.g., charging an ORT crime as simple theft, which may take less time and be easier to prove). Prosecutors find the requirement to prove intentionality in ORT cases to be an obstacle in the pursuit of charges under the ORT statute.

Other state laws may inadvertently make it difficult for ORT crimes to be prosecuted. Retailers, for example, are required by law to wait 10 days before reporting the theft of certain rental items. Although normally this provision likely would be in a consumer's best interest, it is a barrier when the retailer becomes aware that the items are being resold before the retailer is allowed to report the theft.

Recommendation

- Form a committee of prosecutors to review the ORT statute's requirements, including proof of intentionality, and other statutes that are barriers to ORT prosecution, such as the waiting period on reporting stolen rental items. The committee should seek input from retailers and law enforcement during its review. The committee will present its suggestions to the ORT Task Force before the next legislative session.
- Develop training on ORT as a continuing education course, such as a one-hour presentation on the key steps for prosecuting an ORT case.

Products preparing to ship at an Amazon distribution facility in Pflugerville.



Comptroller Glenn Hegar tours an Academy Sports + Outdoors in Katy.

Report of the Texas Task Force on Organized Retail Theft

Introduction

Organized retail theft, also referred to as organized retail crime (ORC), is the coordinated theft of merchandise by individuals and groups for the purpose of reselling those goods.¹

Homeland Security Investigations (HSI) defines ORC as “the association of two or more persons engaged in illegally obtaining items of value from retail establishments, through theft and/or fraud, as part of a criminal enterprise.” In detailing ORC, the U.S. Department of Homeland Security (DHS) states plainly that “ORC is not shoplifting and that these crimes are not victimless.” HSI cites the growing number of thefts that turn violent, the financial burden to businesses and consumers and local communities that bear the cost of these crimes among the greatest concerns with ORT.²

While shoplifters typically act alone and steal items for their personal use, ORT usually involves a criminal network of thieves who steal large quantities of merchandise from multiple stores and use a fencing operation to sell the stolen goods for cash—often by using online marketplaces and other internet sites. The Association of Certified Anti-Money Laundering Specialists (ACAMS) connects the low-cost, high-reward ORT to criminal activities such as drug trafficking and human smuggling due to its appeal for criminals to conduct ORT activities to further fund other criminal activities.³

To establish strategies for addressing ORT in Texas and to determine the costs and extent of the problem, the 88th Texas Legislature in 2023 directed the Texas Comptroller of Public Accounts to appoint a task force to study and make recommendations regarding ORT ([Appendix 1](#)). This Task Force held quarterly meetings and numerous site visits during which they met and listened to Texas retailers, prosecutors,

law enforcement and other experts to learn how ORT affects them and to hear their suggestions on what the state can do to address the problem ([Appendix 2](#)).

ORT Roles

Generally, an ORT group may be broken down into the following roles:

Boosters: professional thieves who steal merchandise from retail stores or while goods are in transit and earn a fraction of the retail price from the fences to whom they sell these items.

Fences: “go-betweens” who purchase stolen merchandise and either resell it to other fences or to witting or unwitting consumers or businesses. There are low-level fences, who typically handle small volumes of stolen goods and resell to higher-level fences. Mid-level fences use their own fencing operations to resell stolen goods to the public or to higher-level fences. High-level fences typically operate legitimate businesses, like pawn shops, secondhand stores, convenience stores and salvage yards that can handle large volumes of stolen goods.

Cleaners: remove security equipment from stolen merchandise to give the appearance that the goods originated from the manufacturer.

Money Launderers: process illicit funds and transactions designed to “clean” the funds, so they appear to be associated with legal activities. Skilled money launderers conceal the identity of parties involved in a transaction as well as the source and destination of the funds.

Ringleaders: direct ORT activities, like the development of merchandise lists and target locations for boosters, booster payout amounts and resale pricing.

A highly sophisticated ORT group might employ persons in all these roles, whereas the management of a less sophisticated ORT group might end with a high-level fence.

Source: National Retail Federation and K2 Integrity

ORT Study Data Limitation

This Task Force heard testimony from numerous stakeholders who explained that ORT is a costly and growing problem in Texas. This is evident based on the investigation results of HSI's Operation Boiling Point, and the investigations conducted by and arrests made by the Texas Department of Public Safety's (DPS) newly created Organized Retail Theft Prevention Unit. However, data to identify and quantify ORT trends are not readily available. Furthermore, the data that are available come mainly from retailer organizations and are estimates based on a limited number of survey responses. Data from prosecutors' offices on the number of cases prosecuted under the ORT statute, Texas Penal Code Section 31.16, may be misleading as prosecutors are more likely to use other sections of the theft statute and organized crime statutes. This lack of available and reliable data hampered the Task Force's efforts to quantify the extent and cost of ORT in Texas. (It is important to note that some retailers may be reluctant to share ORT and other sales- or revenue-related data that constitutes proprietary information.)

Financial Impact

According to a 2021 analysis prepared for the Retail Industry Leaders Association (RILA) and the Buy Safe America Coalition (a national consumer protection group), using 2019 data, Texas retailers' losses from all retail crime (which includes ORT but also other offenses such as shoplifting and fraud) were an estimated \$3.9 billion—about 0.95 percent of the total sales in the state's five largest retail categories: pharmaceutical and health care products, clothing, alcohol and tobacco products, household goods, and office equipment and computers.⁴

The study, which was an econometric analysis based on a survey of large retailers and excluded automobile sales and online markets, found total 2019 U.S. retail crime losses (also referred to as “shrink”) to be \$68.9 billion, nearly 3.1 percent of the retail sales examined. Sixty-seven percent of the responders reported a moderate to “considerable” increase in ORT, and 80 percent predicted ORT would continue to grow.⁵

Another estimate, provided to the task force by the Texas Organized Retail Crime Association (TXORCA), estimated the annual cost of ORT in Texas was more than \$442 million in 2022. According to TXORCA, these losses resulted in more than \$21 million in lost state tax revenue and 4,700 Texas jobs.

The difference between the estimates above illustrates one of the fundamental problems faced by the Task Force when trying to quantify the impact of ORT on retailers and the state: consistent and reliable statistics are not readily available. Retail loss data are not collected or reported in a uniform manner, so the Task Force was able to ascertain neither the financial losses incurred by Texas retailers nor the amount of foregone state and local tax revenue. There also are no data enumerating the cases of ORT committed in Texas or the percentage of retail losses attributable to ORT.

Even at the national level, data specific to ORT are unavailable. Although the Federal Bureau of Justice Statistics is a large federal repository of criminal data, it does not collect or publish ORT-specific data.

Effect on Tax Revenue

In addition to the losses incurred by retailers from the theft of merchandise, the economic impact of ORT may result in a decrease in state and local tax revenue, increased consumer prices and lower wages for retail employees. The RILA/BSAC report, for example, estimated ORT in the U.S. had a total economic impact of \$125.7 billion in 2021 and was responsible for a reduction of up to 658,000 full-time equivalent jobs.⁶ ORT affects state and local tax revenue. The RILA/BSAC analysis estimated a decrease of nearly \$15 billion in tax and fee revenue because of ORT in the U.S.

While there is presently no comprehensive structure for reporting ORT data, the significance of sales tax revenue to the state of Texas cannot be ignored. Sales taxes are the state's largest single source of tax revenue, bringing in \$46.6 billion in fiscal 2023, according

to the 2023 State of Texas Annual Cash Report. The [State of Texas Annual Cash Report](#) shows revenue and expenditure details for all funds in the Texas Treasury.

Exhibit 1: Texas Sales Tax Collection, Fiscal Years 2019-2023

Fiscal Year	Sales Tax Revenue
2019	\$ 34,023,916,225
2020	\$ 34,099,115,139
2021	\$ 36,019,605,414
2022	\$ 42,971,903,533
2023	\$ 46,581,071,515

Source: Texas Comptroller of Public Accounts, *The State of Texas Annual Cash Report*

Texas imposes a 6.25 percent sales tax on retail sales, leases and rental of most goods and taxable services. Local taxing jurisdictions (cities, counties, special purpose districts and transit authorities) can also impose up to 2 percent sales and use tax for a maximum combined rate of 8.25 percent. The local portion of these taxes contributes to funding a variety of programs for crime control, economic development, road and street maintenance and emergency services, and the state portion of these taxes funds many functions of state government. Consequently, a loss in tax revenue, as a result of ORT, is effectively lost funding for public services for Texas residents, because taxes are only collected from purchasers and remitted to the state when sellers follow the tax laws. When a taxable item is stolen, no taxes are collected and remitted because no sale was made. When it comes to ORT,

when stolen items are sold, it is likely that in many cases, they are sold by or to individuals or businesses not adhering to tax laws.

ORT Burden on Retailers

The most glaring implication to retailers from ORT is lower net profit margins due to inventory shrink. Retail shrink refers to the difference between the amount of merchandise (or inventory) that the retail company owns on its books, and the results of a physical count of the merchandise. Causes of retail shrink include operational errors, internal issues and external losses.

- Operational errors can involve paperwork issues and other operational missteps. These incidents typically occur when processing a transaction, receiving merchandise, shipping merchandise or taking inventory.
- External losses can involve theft by customers, issues involving vendors or other incidents that pertain to those not working for the company.
- Internal losses are the result of incidents that involve store associates and other company employees.

“We lock one item up, and they just go on to the next products.”

Texas retailers, many of whom already struggle to optimize operations and maintain profitability, report that they have been forced to invest in expensive security measures, such as advanced loss prevention technology and hiring loss prevention staff because of ORT. Texans shopping in large retail stores may have noticed an increasingly strong security presence—guards, cameras, glass cases and locks placed around merchandise. These measures are expensive and place a financial strain on small retailers, in particular.

While these measures may help prevent thieves from stealing the products retailers are protecting, it is likely that thieves will simply change their target to merchandise located in a different area of the store where products are not locked up. As one Loss Prevention officer told the Task Force during a store walkthrough, “We lock one item up, and they just go on to the next products.”

Security camera surveillance sign at a Walmart in Midland.



Retailers advised the Task Force that the type of merchandise most often lost to ORT varies based on the sophistication of a theft ring—some thieves target specific high-dollar or high-demand items, while others may simply fill trash bags or carts full of random merchandise and walk out of the store. As one retailer explained, “Categories will move to whatever items have the most value.”

“I have been in retail for 30 years and I’ve never seen them as bold and brazen as they have been these past few years.”

Retailers have expressed that organized retail thefts have become more blatant in recent years, with perpetrators being more aggressive and bolder in carrying out retail thefts. A loss prevention staff interviewed by the Task Force stated, “I’ve been in retail for 30 years and I’ve never seen them as bold and brazen as they have been these past few years.”

Influence on Consumers

ORT can negatively impact consumer spending—and, thus, state tax revenue—due to price increases that retailers may be forced to make to remain profitable. ORT also may raise safety concerns among both retail employees and shoppers, which could ultimately result in reduced store hours and even store closures.

In addition to the financial burden imposed on businesses, consumers and local communities by rising prices related to ORT, the DHS reported concerns over the growing number of thefts that turn violent.⁷ ORT creates a potential safety risk for both employees and customers who may interact with or confront shoplifters.

Some retail products, such as over-the-counter medications, baby formula and beauty products, can pose a risk to the consumer if not handled, transported and stored properly. When ORT goods are resold, the buyer has no idea if the product has been opened, tampered with or exposed to unsafe temperatures.

Consumers may find certain theft deterrents used by retail stores—locked merchandise, security cameras, armed guards, etc.—to be inconvenient, invasive or even intimidating. Retailers must weigh the efficacy of these security measures against the desire to provide a positive shopping experience for their customers. While store security measures can be a strong theft deterrent, they can also scare away customers who may perceive them as an inconvenience or an indication of danger.

Prosecution of ORT

There are many Texas laws pertaining to theft, but Texas Penal Code, Section 31.16 specifically addresses ORT, which differs from simple theft when there is a coordinated action to steal goods from targeted retail establishments. According to the statute, an ORT offense occurs when a person “intentionally conducts, promotes or facilitates an activity in which the person receives, possesses, conceals, stores, barter[s], sell[s] or disposes of stolen retail merchandise.”⁸

Criminal charges for ORT range from a Class C misdemeanor to a first-degree felony, depending on the value of the merchandise stolen:

- Less than \$100 – Class C misdemeanor
- \$100-\$749 – Class B misdemeanor
- \$750-\$2,499 – Class A misdemeanor
- \$2,500-\$29,999 – State jail felony
- \$30,000-\$149,999 – Third degree felony
- \$150,000-\$299,999 – Second degree felony
- \$300,000 or more – First degree felony

Under certain circumstances, such as when the perpetrator holds a leadership position within the crime ring or when they activate or deactivate a fire exit alarm during the theft, the criminal charges increase to the next higher level.

ORT cases are prosecuted at the local or federal level, depending on the circumstances. Law enforcement entities generally submit ORT cases to the DA, but the DA decides whether to file charges. Retailers and law enforcement reported some reluctance among DAs to pursue ORT charges, often pursuing simple theft convictions instead. Charging ORT as simple theft, however, skews crime data and undermines efforts to address ORT comprehensively. Law enforcement

officers told the ORT Task Force that legislation may be needed to better enable prosecutors to charge perpetrators with ORT instead of simple theft.

At the local level, retailers generally partner with local law enforcement to apprehend ORT perpetrators. With many police departments facing staffing shortages, however, other crimes are often prioritized over retail theft. In meetings with the Task Force, some retailers expressed their frustration regarding delayed responses by law enforcement—or sometimes no response at all—when they called to report retail crimes. They were also dissatisfied with the speed at which some perpetrators were arrested and charged only to be released, whereupon they committed the crime again.

Retailers and DAs observed that suburban counties have been the most successful in remedying ORT. They attributed this to detectives in those counties being more able and eager to pursue ORT because they are not overwhelmed by the volume of higher-priority crimes that occur in highly populated counties.

Local, State and Federal Initiatives

ORT may involve several different stores and cross the jurisdiction of several cities, counties or even states, so collaborative efforts are needed to coordinate investigations and share information.

During ORT Task Force discussions, some participants noted that law enforcement entities, DAs and retailers sometimes have conflicting notions regarding what defines a crime as ORT. They recommended more collaboration among retailers, law enforcement, DAs and community members to help develop a more consistent understanding of ORT, which would facilitate investigations and prosecutions.

Business Against Theft Network

One such collaboration is Businesses Against Theft Network (BAT-NET), a business crime alert program created 27 years ago by the San Antonio Police Department to address shoplifting and internal theft. (The program has since been expanded to include all crimes related to businesses, including ORT.) The ORT Task Force's staff members attended a BAT-NET meeting in August 2024 during which law enforcement personnel and retailers exchanged information

related to ORT and listened to a presentation by criminal intelligence analysts about suspicious activities reports.⁹

BAT-NET operates out of the Southwest Texas Fusion Center, which is supported by the DHS and provides a central point of contact for receiving, analyzing, gathering and sharing threat information among local, state, federal and private sector partners. Although Fusion Centers are owned and operated by each state, DHS has created the National Network of Fusion Centers that serves as a high-level hub for the state and local Fusion Centers.

Texas ORT Prevention Unit

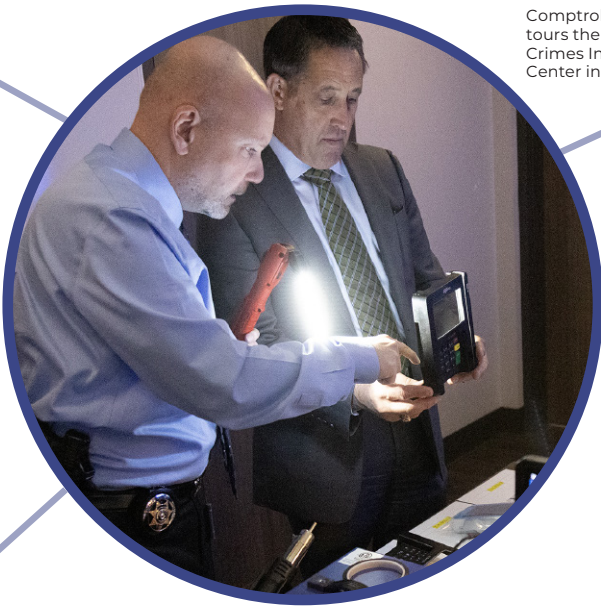
DPS' newly created Organized Retail Theft Prevention Unit is a group of seven law enforcement officers assigned to ORT from the DPS Criminal Investigations Division. These special agents are strategically placed in areas with the highest number of reports of ORT: three officers in Dallas, three in Houston and one in Austin.

The unit investigates ORT cases reported directly by retailers and collaborates with local law enforcement. The unit does not supersede local law enforcement but works with local agencies, particularly DAs, to ensure the best outcome possible for the investigation. Since its establishment in September 2023, the unit has conducted approximately 80 investigations and, since August 2024, has made 99 arrests.

Retailers speaking to the Task Force expressed their appreciation for the unit, saying it has improved partnerships among different law enforcement departments, particularly when cases involve theft in multiple jurisdictions.

A unit representative spoke to the Task Force and emphasized the importance of accurate ORT reporting and data collection and suggested that a statewide collection and centralization of ORT data could help track, prosecute and ultimately reduce ORT. Some crimes in Texas, such as the theft of catalytic converters, are required to be reported to the state, but there are no such reporting requirements for ORT, which hampers the state's ability to compile comprehensive data.

Comptroller Glenn Hegar
tours the Texas Financial
Crimes Intelligence
Center in Tyler.



The unit representative also recommended that retailers implement employee education programs on how to recognize the signs of organized theft. He also recommended a unified alliance among the state's judicial system, law enforcement and retail industry to foster better communication and coordination and ensure a more robust and effective response to ORT.

Federal Initiatives

Identifying and tracking ORT crime rings nationally is difficult because it requires police departments across a variety of jurisdictions—and a variety of state criminal statutes—to collaborate effectively to make arrests. The DHS's Homeland Security Investigation (HSI) unit has established a program named Operation Boiling Point to counteract ORT activities that target cargo and merchandise in the U.S.

HSI has the authority to investigate illegal border crossings of people, goods, money, technology and other contraband throughout the U.S. In 2021, HSI reported the initiation of 59 ORT investigations, more than three times the number from the year before. Their investigations resulted in 61 criminal arrests and the seizure of \$9.3 million in assets.¹⁰

Online marketplaces and social media give ORT resellers the anonymity needed to elude law enforcement while selling stolen merchandise on a large scale. The Integrity, Notification and Fairness for Online Retail Marketplaces (INFORM) Consumers Act was enacted

by Congress to provide transparency to online sales transactions.¹¹ The INFORM Consumers Act addresses the varying prosecution and felony thresholds across the states and applies to all online marketplaces. It uses a multi-faceted verification process and includes steep penalties for failure to comply.

The Federal Bureau of Investigation (FBI) partners with local law enforcement and retailers to identify ORT cases that have been initiated at the local level and raise them to the federal level if they meet the federal prosecution threshold.¹²

Marketplaces

A marketplace is a physical or electronic store, internet website, software application or catalog that marketplace sellers use to make sales. A marketplace provider is an entity that owns or operates a marketplace and processes sales or payments for marketplace sellers. Examples include Amazon, eBay, Walmart Marketplace and Etsy.

In Texas, a marketplace provider is required to collect, report and remit state and local sales tax on all sales made through a marketplace, meaning it is possible that providers have collected sales tax on stolen goods.

However, marketplace providers develop policies to monitor for and remove stolen goods from their platforms and provide tools for consumers to report suspicious activity. For instance:

- [Report Suspicious Activity – Amazon Customer Service](#)
- [What to do if you see a stolen item on Facebook Marketplace – Facebook Help Center](#)
- [Stolen property policy – eBay](#)
- [Report Marketplace Seller Activity – Walmart.com](#)

Additionally, as part of the new laws in California, their residents can report suspected stolen goods to the California Office of the Attorney General.

Transnational ORT

ORT knows no borders, and transnational criminal networks commit crimes globally, both physically and online. The International Criminal Police Organization (INTERPOL), an intergovernmental police force representing 196 member countries, focuses on crimes that cross international borders.¹³ INTERPOL provides a variety of expertise, information and services to its member countries to assist in stopping criminal activities, including ORT. INTERPOL helps coordinate information and resources from countries that may not have the resources or manpower on their own to track down and apprehend ORT perpetrators within their jurisdictions.

ORT Task Force Findings and Recommendations

ORT Task Force members noted three recurrent themes: a lack of ORT data, a need for coordination among ORT stakeholders and a need for consistency in the application of ORT and other theft-related laws. Below are the findings and recommendations of the Task Force.

Finding 1

Statewide data relating specifically to ORT are not collected in Texas, which makes it difficult to quantify the extent and cost of ORT, pinpoint where crimes are happening and dedicate sufficient resources to combat ORT. Retailers are reluctant to share certain proprietary data with their competitors.

Although the Task Force heard testimony and reviewed available evidence indicating that ORT is a growing problem in Texas—causing financial losses to retailers, higher prices and inconvenience to consumers, tax losses to governmental entities, and challenges for law enforcement and prosecutors—data to support the anecdotal evidence are not available for analysis. The Task Force, therefore, was unable to determine the scope and severity of ORT in Texas.

Recommendations

- Develop a statewide repository to collect ORT data that can be aggregated and analyzed.

- Work with retailers to categorize and mask their confidential data in such a way that doesn't expose proprietary information yet still allows analysts to estimate the cost of ORT and detect trends.
- If ORT trends indicate a need, consider creating an organization to combat ORT modeled after or housed under the Texas Financial Crimes Intelligence Center.

Finding 2

Thefts conducted by perpetrators who target multiple types of merchandise or who operate in more than one law enforcement jurisdiction are often difficult to identify as ORT. Although specialized units in some law enforcement departments across the state are well trained in identifying and investigating ORT, effective communication among retailers, law enforcement and prosecutors to define instances of ORT is necessary.

Making the connection that certain theft cases are different in scope and that the same individuals may be involved in thefts of several different retailers in different jurisdictions in the state is not initially clear and requires coordination and communication among stakeholders.

Recommendations

- Continue support for the DPS Organized Retail Theft Prevention Unit and consider increasing the total number of FTEs for the unit.
- Identify an existing DPS or other state agency unit to serve as both an information clearinghouse and a facilitator to help local law enforcement departments develop and improve ORT coordination, cooperation and knowledge sharing with other jurisdictions so that potential links to related cases may be identified and shared.
- San Antonio's BAT-NET program could serve as a model for other cities to improve communication, transparency and collaboration among stakeholders.
- Establish a store walk-through program. Retailers can launch a store walk-through program inviting law enforcement agencies and prosecutors' offices to get a better understanding of the ORT issue. This can also help foster a stronger relationship between retailers and law enforcement.

- Incorporate training on ORT in new officer training classes and as part of a continuing education class for law enforcement.
 - One-hour presentation to new academy classes.
 - Quarterly and annual meeting/certification by TXORCA or similar association.

Finding 3

Prosecuting ORT can be time and resource intensive, and prosecutors sometimes apply ORT charges inconsistently (e.g., charging an ORT crime as simple theft, which may take less time and be easier to prove). Prosecutors find the requirement to prove intentionality in ORT cases to be an obstacle in the pursuit of charges under the ORT statute.

Other state laws may inadvertently make it difficult for ORT crimes to be prosecuted. Retailers, for example, are required by law to wait 10 days before reporting the theft of certain rental items. Although normally this provision likely would be in a consumer's best interest, it is a barrier when the retailer becomes aware that the items are being resold before he is allowed to report the theft.

Recommendations

- Form a committee of prosecutors to review the ORT statute's requirements, including proof of intentionality and other statutes that are considered to be barriers to ORT prosecution, such as the waiting period on reporting stolen rental items. The committee should seek input from retailers and law enforcement during its review. The committee will present its suggestions to the ORT Task Force before the next legislative session.
- Develop training on ORT as a continuing education course, such as a one-hour presentation on the key steps for prosecuting an ORT case.

APPENDIX 1

Texas Government Code, Section 403.0302

Sec. 403.0302. ORGANIZED RETAIL THEFT TASK FORCE.

(a) In this section, “organized retail theft” means conduct constituting an offense under Section 31.16, Penal Code.

(b) The comptroller shall appoint a task force to study and make recommendations related to preventing organized retail theft in this state.

(c) The task force must include:

- (1) at least one representative from a retailer with a physical retail location;
- (2) at least one representative from an online retailer; and
- (3) representatives from local, state, and federal law enforcement agencies.

(d) The comptroller shall designate a member of the task force as the presiding officer.

(e) The task force shall meet at least quarterly at the call of the presiding officer. A task force meeting may be conducted virtually through the Internet.

(f) The task force shall conduct an ongoing study of organized retail theft in this state. In conducting the study the task force shall:

(1) review laws and regulations addressing organized retail theft in other jurisdictions, including international political and economic organizations;

(2) analyze:

- (A) the impact of organized retail theft on the collection of sales tax;
- (B) the long-term economic impacts of organized retail theft; and
- (C) the advantages and disadvantages of taking various actions to reduce organized retail theft; and

(3) make recommendations regarding:

(A) organized retail theft outreach and prevention programs, including coordination among stakeholders, including local, state, and federal law enforcement agencies; and

(B) training for law enforcement officers and prosecutors on effective strategies for combating organized retail theft.

(g) In conducting the study under Subsection (f), the members of the task force may:

(1) consult with any organization, governmental entity, or person the task force considers necessary; and

(2) collaborate and share information relating to an active criminal investigation with one another regardless of whether the information would otherwise be confidential and not subject to disclosure under Chapter 552.

(h) Not later than December 1 of each even-numbered year, the task force shall prepare and submit a report of the study conducted under Subsection (f) to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and each standing committee of the legislature with primary jurisdiction over criminal justice matters.

(i) The report submitted under Subsection (h):

(1) must include legislative and other recommendations to increase transparency, improve security, enhance consumer protections, prevent organized retail theft, and address the long-term economic impact of organized retail theft; and

(2) may be submitted electronically.

(j) Chapter 2110 does not apply to the duration of the task force or to the designation of the task force's presiding officer.

Added by Acts 2023, 88th Leg., R.S., Ch. 426 (H.B. 1826), Sec. 1, eff. September 1, 2023.

APPENDIX 2

Texas Organized Retail Theft Task Force

The Task Force, appointed by the Texas Comptroller, includes representatives from the retail industry—both physical stores and online marketplaces—as well as members of the law enforcement and criminal justice communities.

Task Force Members

- Glenn Hegar, Chair, Texas Comptroller of Public Accounts
- Joyce Beebe, Rice University (Baker Institute)
- Adam Colby, Texas Financial Crimes Intelligence Center
- Christian Hardman, eBay
- Art Lazo, 7-Eleven
- Adam Mendoza, Target
- Carly Richter, Texas Comptroller of Public Accounts (Criminal Investigation Division)
- Tiana Sanford, Montgomery County District Attorney's Office
- Darrell S. Taylor, H-E-B
- Chris Walden/Faith Kohler,* Amazon
- Corey Yates, JCPenney

**Chris Walden succeeded Faith Kohler on Feb. 14, 2024*

Quarterly Meetings

Following the initial kick-off meeting on Oct. 10, 2023, the Task Force held quarterly meetings in 2024.

- Jan. 16, 2024: Presentation by invited guest, Cory Lowe, Ph.D., Senior Research Scientist with the Loss Prevention Resource Center.
- April 16, 2024: Panel discussion led by Floyd T. Goodwin II, Chief of the Texas DPS Criminal Investigation Division.
- July 16, 2024: Panel discussion with district and county attorneys who discussed challenges faced by their offices and recommendations on how the state can combat ORT.
- Oct. 16, 2024: Discussion and approval of final report.

Site Visits

In addition to the quarterly meetings, Task Force members and/or Task Force staff conducted several site visits to retail and law enforcement locations around Texas.

- April 17, 2024: Retail store walk at Target, Austin
- May 16, 2024: Retail store walk at Home Depot, Austin
- June 19, 2024: Retail store walk at Walgreens, Houston
- Aug. 6, 2024: Meeting with multiple retailers, Austin
- Aug. 15, 2024: Meeting with San Antonio Police Department/Southwest Fusion Center Against Theft Network, San Antonio
- Sept. 12, 2024: Retail store walk at Walmart, Midland
- Sept. 18, 2024: Retail store walk at Academy Sports + Outdoors headquarters and distribution center, Katy
- Oct. 8, 2024: Texas Financial Crimes Intelligence Center, Tyler
- Oct. 28, 2024: Amazon distribution center, Pflugerville

APPENDIX 3

ORT Laws and Regulations in Other States

All states have criminal theft statutes; however, not all have a law that distinguishes between theft of property and organized retail theft or organized retail crimes. States that do not explicitly have an ORT law may have organized crime laws that are used, similar to the federal Racketeer Influenced and Corrupt Organizations Act, which law enforcement officials can pursue organized retail crime rings.

At the beginning of 2024, state lawmakers from 16 states introduced multiple pieces of legislation to increase the penalties for those individuals involved in ORT activities.¹⁴ For example, Oklahoma, in spring 2023, created the Oklahoma Organized Retail Crime Task Force to recommend and report to its legislature information on ORT and the pros and cons of instituting countermeasures to counter retail theft losses within its state's borders. Note that each state's statutes vary in terms of how it defines retail theft and the criminal activity surrounding it.

California recently passed a slew of bipartisan legislative bills to better combat ORT. The legislation is aimed at curtailing ORT in all its stages, from individuals shoplifting items in stores to the online marketplaces where stolen goods are resold by ORT rings. Some of the new laws increase the penalties of the convicted "middlemen" of the ORT operations: those who sell or exchange stolen goods for store credit or full refunds. Additionally, California has increased funding to local communities for more police officers and improved public safety.

In April 2024, the Florida legislature amended its law to stiffen penalties for those who commit ORT within the state by using social media to solicit five or more individuals to commit theft at a retail establishment.¹⁵ Florida has also increased the ability to charge those who steal from more than one retailer within 120 days with a felony rather than within the previous 30 days, expanding the time period for when thefts are committed.

The punishment of theft of retail property varies greatly between states depending on how a theft is classified. The states not listed below do not presently have legislation specifically targeting ORT, but they may utilize other sections of their respective penal codes to prosecute retail theft depending on the value of the stolen merchandise and the circumstance of the crime.

Organized Retail Theft State Requisites

Alabama

A person commits the crime of organized retail theft when the person, in association with one or more individuals, carry out a set of specific actions defined by the ORT statute. Alabama law also aggregates value of items stolen within prescribed lengths of time.

Arizona

ORT can be committed alone or in conjunction with another person to remove merchandise from a retail establishment. Arizona law does not include a prescribed set of actions defined by the ORT statute, nor does it aggregate value of stolen items within a specified time frame.

California

ORT law looks to target theft actors from the boosters to ringleaders, in concert with one or more actors. The legislation puts forth a specified definition for determining whether a person acted in concert with another and aggregates value of items stolen within prescribed lengths of time. However, this statute puts forth verbiage that permits prosecutors not to charge any other co-participant of ORT and is only in effect until January 2026 by its own provisions.

Connecticut

ORT is committed in conjunction with one or more individuals. Legislation aggregates value of theft within 180 days and makes a distinction to acts defining a person who is an accessory of ORT.

Delaware

ORT occurs when a series of organized retail crime thefts are committed by a person or group of individuals, with the intent to appropriate or to resell or reenter the merchandise into commerce. Legislation aggregates values into one charge but does not have a specified length of time.

Florida

ORT is committed by at least one individual, or in concert with one or more individuals who coordinate the activities of one or more individuals, in committing theft. This legislation aggregates value of stolen merchandise within prescribed lengths of time.

Georgia

Requires at least one individual to organize, plan, finance, direct, manage or supervise one or more individuals to appropriate stolen retail property from one or more retailers over a 180-day period with a value of at least \$25,000.

Illinois

Requires at least one individual, working in concert with at least one other individual, to knowingly commit retail theft from one or more retailers or recruits, organizes, supervises, finances or manages individuals to commit retail theft; criminal charge depends on value of stolen property.

Kentucky

Requires two or more individuals collaborating to promote or engage in any theft of retail property from a retail store with the purpose of reselling the stolen property.

Louisiana

Requires at least one individual to procure, receive or conceal stolen retail property with the intent to sell, deliver or distribute the stolen retail property on more than one occasion within a 180-day period; criminal charge depends on value of stolen property.

Maine

Requires at least one person committing thefts of two or more retail properties as either a principal or accomplice, in conduct by two or more individuals involving thefts from two or more retailers for the purpose of selling stolen retail property or fraudulently returning the stolen property for value.

Massachusetts

Requires a person acting in concert with two or more individuals, who steal, embezzle, or obtain by fraud or other illegal means, retail property with a value of at least \$2,500 to resell within a 180-day period.

Michigan

Requires at least one person who organizes, supervises, finances or manages another person in committing an organized retail crime; either the theft of retail property or knowingly purchasing/possessing stolen merchandise.

Minnesota

Requires a person to engage in a pattern of retail theft or direct another individual to commit an act of theft involving retail merchandise to sell or return the stolen retail property for value.

Mississippi

Requires a person to conduct, supervise or manage an organized theft or fraud enterprise of two or more individuals who engage in the transfer or sale of stolen merchandise or services or information that has pecuniary value that cause the loss to the victim.

Nevada

Requires three or more individuals who commit theft of retail property against more than one retailer in the state or against one merchant but in more than one location of a retail business of the merchant.

New Hampshire

Requires a person to conspire with others to engage in profit in a scheme or theft.

New Jersey

Requires a person to conspire with others or who organized, supervised, financed or managed another or others in order to profit from the transfer or sale of shoplifted merchandise.

New Mexico

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$2,500 from one or more retailers over the span of one year with the intent to sell, exchange or return the stolen property for value.

North Carolina

Requires a person to conspire with at least one or more individuals to commit theft of retail property with intent to sell that retail property for monetary or other gain, or requires only one individual who organized, supervised, financed or managed another or others in criminal activity over a 90-day period; criminal charge depends on value of stolen property.

Ohio

Theft of retail property with a value of at least \$1,000 or more from one or more retailers with the intent to sell, deliver or transfer that stolen property to a retail property fence.

Oregon

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$5,000 over a 90-day period.

Pennsylvania

A person commits organized retail theft if the person organizes, coordinates, controls, supervises, finances or manages any of the activities of an organized retail theft enterprise. Pennsylvania law does not include a prescribed set of actions defined by the ORT statute, nor does it aggregate value of stolen items withing a specified time frame.

South Dakota

Requires only one individual who organized, supervised, financed or managed another or others in criminal activity; criminal charge depends on value of stolen property.

Tennessee

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$1,000.

Texas

Requires only one individual who organized, supervised, financed or managed another or others in criminal activity; criminal charge depends on value of stolen property.

Virginia

Requires at least two individuals, one or more retailers, and a value of at least \$5,000 over a 90-day period.

Washington

Requires at least six individuals and a cumulative value of at least \$750 in stolen property.

Compiled from multiple sources by the Texas Comptroller of Public Accounts.

Endnotes

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- ² Homeland Security Investigations, “Operation Boiling Point,” <https://www.dhs.gov/hsi/insider/op-boiling-point> (Last visited August 30, 2024).
- ³ ACAMS, “Detecting and Reporting the Illicit Financial Flows Tied to Organized Theft Groups (OTG) and Organized Retail Crime (ORC),” <https://www.acams.org/en/media/document/29436> (Last visited August 30, 2024).
- ⁴ Buy Safe America, The impact of Organized Retail Crime & Product Theft in the United States, <https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft> (Last visited August 20, 2024).
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- ⁶ Buy Safe America, The impact of Organized Retail Crime & Product Theft in the United States, <https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft> (Last visited August 20, 2024).
- ⁷ Homeland Security Investigations, “Operation Boiling Point,” <https://www.dhs.gov/hsi/insider/op-boiling-point> (Last visited August 30, 2024).
- ⁸ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.31.htm#31.16>
- ⁹ U.S. Department of Homeland Security, “Fusion Center Locations and Contact Information,” <https://www.dhs.gov/fusion-center-locations-and-contact-information> (Last visited August 30, 2024).
- ¹⁰ U.S. Immigration and Customs Enforcement, “HSI launches Operation Boiling Point,” Oct. 17, 2022, [https://www.ice.gov/news/releases/hsi-launches-operation-boiling-point#:~:text=In%20fiscal%20year%20\(FY\)%202021,and%20%249%2C287%2C757%20in%20assets%20seized](https://www.ice.gov/news/releases/hsi-launches-operation-boiling-point#:~:text=In%20fiscal%20year%20(FY)%202021,and%20%249%2C287%2C757%20in%20assets%20seized) (Last visited August 30, 2024).
- ¹¹ Federal Trade Commission, “Informing Businesses about the INFORM Consumers Act,” <https://www.ftc.gov/business-guidance/resources/INFORMAct> (Last visited August 30, 2024).
- ¹² Federal Bureau of Investigation, “Organized Retail Theft,” <https://www.fbi.gov/investigate/organized-crime/organized-retail-theft> (Last visited August 30, 2024).
- ¹³ Interpol, “What is INTERPOL?,” <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL> (Last visited August 30, 2024).
- ¹⁴ International Council of Shopping Centers, <https://www.icsc.com/news-and-views/icsc-exchange/organized-retail-crime-remains-top-issue-for-state-lawmakers-in-2024> (Last visited May 15, 2024).
- ¹⁵ State of Florida, Committee substitute for H.B. 549 (Organized Retail Crime), (2024), <https://laws.flrules.org/2024/69>

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