

California lawmakers seek tough balance in retail theft proposals

By Eric He

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Retail theft has entered the spotlight in California, and is expected to be a key focus for legislative leaders this session as the perception of stores feeling less safe creeps into the public sphere.

Commercial burglary and robberies [increased in California between](#) 2019 and 2022, especially in larger counties and urban areas — a trend that generally aligns with other big cities across the country. But data analyzed by the Public Policy Institute of California indicates rates in San Francisco and Los Angeles — which have been much maligned over retail theft concerns — stayed relatively flat throughout 2022.

Nevertheless, public outcry has prompted state leaders to prioritize retail theft, with Gov. [Gavin Newsom](#), Assembly Speaker [Robert Rivas](#) and Senate President Pro Tempore [Mike McGuire](#) all backing legislation — and around 30 bills expected to be introduced. One of the bigger proposals so far is [AB 2943](#), a sweeping bill authored by Rivas and Assemblymember [Rick Chavez Zbur](#) (D-Los Angeles) that would create a new crime category for retail thieves, give police more leeway in making arrests and increase the probation period for retail theft — while also directing courts to send defendants to rehabilitation programs.

The bill does not seek changes to [Proposition 47](#) — a 2014 ballot measure that raised the felony threshold for retail theft from \$400 to \$950. However, that law could still be altered through a ballot initiative or other legislation. Lawmakers have voiced a desire to avoid returning to the era of mass incarceration while taking a tougher stance on retail theft. At a February news briefing introducing the bill, Zbur said the legislation presents balanced, effective and meaningful solutions while “preserving criminal justice reforms that have been effective at keeping our communities safe.”

“With the introduction of this bill, we are demonstrating that the California Assembly has listened — and that we are serious about addressing the problem of retail crime that is plaguing our communities,” Zbur said.

WHAT’S IN THE BILL?

This Pro Bill Analysis is based on the [text of the bill](#) as introduced on Feb. 15.

The measure states that the Legislature intends to clamp down on the reselling of stolen items online by requiring stores to keep records of products (Sec. 1), as well as making stores report data related to thefts (Sec. 2).

The proposal would add to the definition of grand theft, to include thefts committed against multiple victims or in different counties, if the value of the property taken exceeds \$950 — the threshold over which the crime can be classified as a felony under Proposition 47 (Sec. 3).

It would further punish those seeking to sell stolen goods over \$950 with up to three years of jail for a felony violation, [per Section 1170 of the Penal Code](#), creating a new crime. The value of the items could be combined with other stolen property obtained in the last three years, or other stolen items that involve an accomplice who is also working to sell the goods, regardless of who actually stole them. In determining an “intent to sell” stolen items, one could include a defendant’s prior criminal history from the last three years and whether the items would not normally be purchased for personal use or consumption — based either on the item itself or the quantity stolen (Sec. 4).

The bill would offer more latitude to police, allowing officers to make shoplifting arrests if they did not witness the alleged crime — as long as the value of goods taken was under \$950 pursuant to [Section 459.5 of the Penal Code](#). Probable cause for an arrest could be demonstrated by a sworn statement from a witness or video footage of the incident (Sec. 5).

Next, the proposal would extend until 2031 an exemption for police to hold a person accused of [organized retail theft](#) — rather than issuing a citation, as is the case with most misdemeanors. The exemption is currently set to expire in 2026 (Secs. 6, 7).

The bill would allow courts to increase the length of the probation period for shoplifting or retail theft from one year to two years, adding a specific probation length for the crimes under [Section 1203a of the Penal Code](#). After one year, a court would refer the defendant to a collaborative court or a rehabilitation program unless it states reasons for declining to make a referral. The defendant would be let go after completing the program, and they would not be required to spend more time than their probation period in the program unless they consent (Sec. 8).

Lastly, the state could reimburse local jurisdictions for enforcement of the measure based on a determination by the Commission on State Mandates (Sec. 9).

WHO ARE THE POWER PLAYERS?

The proposal [mirrors the ideas](#) that Gov. [Gavin Newsom](#) presented in January when he sought legislative action on property crime. Assembly Speaker [Robert Rivas](#) — one of the primary authors of AB 2943 — has made addressing retail theft one of his priorities in his first full year leading the chamber, and Senate leader [Mike McGuire introduced a related bill package](#) in February.

Assemblymember [Rick Chavez Zbur](#) (D-Los Angeles) — the bill’s co-author — chairs the Assembly’s [Select Committee on Retail Theft](#), which has held two informational hearings so far on the issue. Another key lawmaker to watch is Assemblymember [Kevin McCarty](#) (D-Sacramento), who Rivas appointed as the new chair of the Assembly Public Safety Committee and who has [floated a proposal](#) to amend Proposition 47.

While groups have pushed lawmakers to act on retail theft, none have formally signaled support for this legislation. That said, representatives from the [California Retailers Association](#), [League of California Cities](#) and the [California Chamber of Commerce](#) told POLITICO they support many of the concepts in the bill and that it is the most comprehensive proposal so far. [Alexander Gammelgard](#), president of the [California Police Chiefs Association](#), also did not state a position but said in an email that the group is “grateful [for] the current attention the ongoing theft crisis has garnered by the Legislature, led by Speaker Robert Rivas.”

California Retailers Association President and CEO [Rachel Michelin](#) said her organization is taking the lead on weighing legislative proposals, stressing that this is the furthest she has gotten to accomplishing policy wins in this space.

“We’ve never had these conversations before,” Michelin said. “I feel like I’ve been by myself for four years talking about this, and people thought I was crazy. And now suddenly, everyone’s talking about it.”

These four groups are part of a broader coalition of business, local government and law enforcement organizations that [wrote a Jan. 29 letter](#) to Newsom and lawmakers urging “prevention, enforcement and supervision” as the three pillars around policy proposals. They specifically pointed to a greater need for incentives that “help people commit to treatment” to avoid relying on incarceration.

“The flexibility to take individualized approaches to address criminal behavior strikes a balance that is cost-effective and imperative to make reform work,” the letter stated. “Without all three pillars working in tandem, we fear that the significant problems we are facing will remain unaddressed.”

Opposition to the measure is expected to include groups that view additional penalties and the threat of incarceration as a return to tough-on-crime policies. [Sean McDonald](#) with the [Los Angeles County Public Defender’s Office](#) said at a [Feb. 9 hearing](#) of the Select Committee on Retail Theft that such proposals are not a deterrent to crime, imploring lawmakers to “not to go back to faulty reasoning and policies that led to mass incarceration.” He instead pointed to programs for those who commit shoplifting and other minor offenses as “instrumental in bringing them back into society and alleviating incarceration problems.”

“We have laws currently on the books specifically targeting organized retail theft, and those laws are sufficient,” McDonald said.

WHAT’S HAPPENED SO FAR?

AB2943 is one of [dozens of proposals](#) related to retail theft introduced this year in the Legislature, with more expected in the coming weeks. Lawmakers on Mar. 20 are expected to unveil [another bill](#) that would allow officers to make shoplifting arrests if they did not witness the offense, and remove a requirement that releases the person on citation. At least eight address Proposition 47, though some bills are not yet fleshed out, such as [AB 1794](#), McCarty's proposal.

McCarty — who this year took over as chair of the Assembly Public Safety committee from Assemblymember [Reggie Jones-Sawyer](#) (D-Los Angeles) — has said he would keep an open mind to proposals after prior efforts to roll back Proposition 47 in the Legislature stalled in that committee under Jones-Sawyer. At the Dec. 19 hearing of the Select Committee on Retail Theft, McCarty [asked questions](#) around what would happen if the law was amended to allow prosecutors to charge repeat petty theft offenders with a felony and said his legislation would apply “smart fixes” to Proposition 47.

Separately, a [ballot initiative](#) backed by the California District Attorneys Association would also target Proposition 47 by increasing penalties for repeat retail theft offenders and for possessing fentanyl. If the initiative qualifies for the November ballot, it [would elevate the issue](#) even further and could potentially hamstring lawmakers' ability to craft their own proposals.

WHAT'S NEXT?

The measure is currently awaiting a hearing in the Assembly Public Safety Committee. It will likely first undergo amendments because there is intent language concerning the reselling of stolen items online and requiring retailers to provide data on thefts.

However, businesses have been reluctant to release what could be proprietary information, potentially leading to an underreporting of retail theft statistics.

Michelin, the head of the retailers association, said that she is working with members on what they are comfortable with reporting.

“We as an industry have not done a great job in putting that data out there,” Michelin said. “So I think including accountability in the retail industry is important as well. We need to start really showing why this is such a problem.”

Rivas, at the introductory briefing for the bill, said that success would require a “high level of engagement from all stakeholders.” He sidestepped a question about whether he would support changes to Proposition 47, but cautioned against having a “knee jerk reaction” of blaming that measure. He added that he would rather see policy enacted through the Legislature than via a ballot initiative.

“We have made really important criminal justice reforms,” Rivas said. “We don't want to turn back the clock. We don't want to reset this wave of mass incarceration. That's why we're doing all of this work and engagement, because we need to get it right. We can't make a mistake here.”

WHAT ARE SOME STORIES ON THE BILL?

[Read POLITICO news on AB 2934.](#)