

DECEMBER 19, 2023

Overview of State Law Related to Retail Crime

PRESENTED TO: Select Committee on Retail Theft
 Hon. Rick Chavez Zbur, Chair



LEGISLATIVE ANALYST'S OFFICE

Overview of Handout

- At the request of staff, we have created this handout, which provides an overview of:
 - How treatment of crimes defined as felonies, misdemeanors, and “wobblers” (which can be punished as felonies or misdemeanors) differ at key stages of the criminal justice process.
 - Proposition 47, which was approved by the voters in November of 2014 and changed some crimes, including crimes related to retail theft, from being felonies or wobblers to misdemeanors.
 - Key retail-related crimes and how notable changes in law, including Proposition 47, have affected them.
 - The California Control of Profits of Organized Crime Act.
 - The dollar value thresholds that must be met for a theft to be a felony in various other states.



Treatment of Felonies, Misdemeanors, and Wobblers at Key Stages of the Criminal Justice Process

- There are three types of crimes: infractions, misdemeanors, and felonies. Misdemeanors are more severe crimes than infractions but less severe than felonies. Some crimes—known as wobblers—can be punished as either misdemeanors or felonies.

Arrest

- **Felonies and Wobblers.** Peace officers can make an arrest without a warrant if they have probable cause to believe that the suspect to be arrested has committed a felony or a wobbler.
- **Misdemeanors.** Peace officers can make an arrest without a warrant under the following circumstances:
 - The officer has probable cause to believe the suspect to be arrested has committed a misdemeanor *in their presence*.
 - A private person has probable cause to believe that the suspect to be arrested has committed a misdemeanor *in their presence* and the private person delegates their authority to make a citizens' arrest to the peace officer.
 - The peace officer has probable cause to believe that the suspect to be arrested has committed a misdemeanor and a specific exception—such as arrests for misdemeanor domestic battery—allows the officer to arrest the suspect even if the crime did not occur in the officer's presence.

Pre-Trial Detention

- **Felonies and Wobblers.** People arrested for felonies or wobblers are typically placed into jail and held until their first court proceeding, known as arraignment. At arraignment, judges determine whether people will be detained or can be released. People accused of felonies are generally less likely to be released pre-trial than those accused of misdemeanors.



Treatment of Felonies, Misdemeanors, and Wobblers at Key Stages of the Criminal Justice Process

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- **Misdemeanors.** People arrested for misdemeanors are generally cited in the field and released or taken to the jail, booked (meaning the details of their arrest are recorded) and then released. However, such people can be held until arraignment if certain conditions specified in statute are met. For example, those who cannot provide identification or are so intoxicated that they could be a danger can be held in jail until arraignment.

Sentencing

- **Felonies.** People convicted of felonies can be sentenced as follows:
 - **State Prison.** People convicted of felonies who have current or prior convictions for serious, violent, or sex crimes can be sentenced to state prison.
 - **County Jail and/or Community Supervision.** People convicted of felonies who have no current or prior convictions for serious, violent, or sex crimes are typically sentenced to county jail or the supervision of a county probation officer in the community, or both. Depending on the discretion of the judge and what crime was committed, some people who have current or prior convictions for serious, violent, or sex crimes can receive similar sentences.
- **Misdemeanors.** People convicted of misdemeanors may be sentenced to jail, county community supervision, a fine, or some combination of these. People convicted of misdemeanors are generally sentenced to shorter periods of incarceration and lower levels of community supervision than people convicted of felonies.
- **Wobblers.** People who are convicted of crimes that are wobblers will be convicted of either a felony or a misdemeanor and be sentenced accordingly. Whether they are ultimately convicted of a felony or a misdemeanor can depend on various factors, such as whether the prosecutor charged the crime as a felony or a misdemeanor.



Overview of Proposition 47

Reduction of Penalties for Certain Drug and Property Crimes

- Proposition 47 reduced certain nonserious and nonviolent drug possession and property crimes from felonies and wobblers to misdemeanors. The measure limited these reduced penalties to people who have not committed certain severe crimes, such as murder, and are not required to register as sex offenders.

Resentencing of People Previously Convicted for These Crimes

- Proposition 47 allowed people who were serving felony sentences for these crimes at the time the measure went into effect to apply to the courts to have their felony sentences reduced to misdemeanor sentences. In addition, people who had already completed their sentences could apply to have their felony convictions changed to misdemeanors.
- However, people who had committed a specified severe crime or are required to register as sex offenders were not eligible to be resentenced or have their conviction changed. In addition, under the measure, courts were not required to resentence a person currently serving a felony sentence if the court found it likely that the offender would commit a specified severe crime.

Funding for Truancy Prevention, Treatment, and Victim Services

- Proposition 47 requires that the estimated savings to the state from the measure be annually transferred from the General Fund into a state fund created by the measure—the Safe Neighborhoods and Schools Fund—and allocated as follows: (1) 65 percent for mental health and drug abuse treatment, (2) 25 percent for school truancy and drop-out prevention, and (3) 10 percent for victim services. In 2023-24, this transfer was \$113 million.



Overview of Proposition 47

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Limitations on Amendments

- Proposition 47 specifies that the provisions of the measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of the act. However, it allows the Legislature, by majority vote, to amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by the act.



Notable Changes in Law Affecting Theft

Current Crime	Description	Punishment
Petty Theft	Theft of any property (other than a firearm) worth \$950 or less.	Misdemeanor ^a punishable by up to six months in county jail.
Grand Theft	Theft of a firearm of any value or theft of any other property worth more than \$950.	Wobbler punishable by up to three years in state prison or county jail.

^a Crime is a wobbler punishable by up to three years in state prison or county jail if the defendant was previously convicted of certain severe crimes, including murder, or is required to register as a sex offender.

- **Chapter 28 of 2009 (SBX3 18, Ducheny) and Chapter 693 of 2010 (AB 2372, Ammiano).** Prior to Chapters 28 and 693, state law had various dollar value thresholds determining if theft was petty or grand theft that varied based on aspects of the crime, such as the type of property. Chapters 28 and 693 increased some thresholds, such as from \$400 to \$950.
- **Proposition 47.** Specified that all thefts of property worth \$950 or less are punished as misdemeanors. Previously, some of these crimes could be punished as felonies depending on the type of property taken or if the defendant had certain previous theft-related convictions. However, defendants with prior convictions for certain severe crimes (such as murder) or crimes requiring registration as a sex offender can still receive felony convictions.
- **Proposition 63 (2016).** Specified that theft of a firearm is grand theft, regardless of its value.
- **Chapter 22 of 2022 (AB 2356, Rodriguez).** Codified caselaw that the value of property in distinct acts of theft can be aggregated to a single count of grand theft if the acts are motivated by one intention, one general impulse, and one plan.



Notable Changes in Law Affecting Burglary and Shoplifting

Current Crime	Description	Punishment
Burglary	Entering certain places (such as a shop) to commit petty or grand theft or any felony.	Wobbler punishable by up to three years in state prison or county jail.
Shoplifting	Entering a commercial establishment to commit theft while it is open, where the property involved is worth \$950 or less.	Misdemeanor ^a punishable by up to six months in county jail.

^a Crime is a wobbler punishable by up to three years in state prison or county jail if the defendant was previously convicted of certain severe crimes, including murder, or is required to register as a sex offender.

- **Proposition 47.** Created the crime of shoplifting and prohibited acts of shoplifting from being charged as burglary, which was previously possible regardless of the dollar value involved. Courts have ruled in various cases on what specific types of conduct meet the definition of shoplifting. For example, in 2017, the California Supreme Court ruled that entering a bank to cash a stolen check of \$950 or less is shoplifting. In 2020, the Supreme Court held that obtaining \$950 or less from a commercial establishment through the use of identity theft does not constitute shoplifting.



Notable Changes in Law Affecting Other Key Retail-Related Crimes

Current Crime	Description	Punishment
Receiving Stolen Property	Knowingly buying, receiving, or selling property that has been stolen.	Misdemeanor ^a punishable by up to one year in county jail if it involves property worth \$950 or less. Wobbler punishable by up to three years in state prison or county jail if it involves property worth more than \$950.
Organized Retail Theft	Committing any of the following: (1) Working with others to steal merchandise with intent to sell or exchange it for value; (2) knowingly working with two or more people to receive stolen merchandise described in (1); (3) Acting on behalf of another to steal merchandise as part of an organized plan; and (4) recruiting, managing, or financing another to carry out any other merchandise theft.	Wobbler punishable by up to three years in county jail or state prison if violations of (1), (2), or (3) are committed on at least two occasions within 12-months and the aggregated value of the property involved exceeds \$950. Any other violation of (1), (2), or (3) is a misdemeanor punishable by up to one year in county jail. Any violation of (4) is a wobbler punishable by up to three years in county jail or state prison.
Robbery	Taking property directly from another through force or fear.	Felony punishable by up to five years in state prison.

^a Crime is a wobbler punishable by up to three years in state prison or county jail if the defendant was previously convicted of certain severe crimes, including murder, or is required to register as a sex offender.

- **Proposition 47.** Specified that cases of receiving stolen property worth less than \$950 are misdemeanors unless the defendant had prior convictions for certain severe crimes (such as murder) or crimes requiring registration as a sex offender. Previously, this crime was a wobbler regardless of the dollar value involved.
- **Chapter 803 of 2018 (AB 1065, Jones-Sawyer).** Included various provisions related to organized retail theft, including:
 - Establishing organized retail theft as a crime.
 - Adding conditions under which people arrested for misdemeanors can be held in jail until arraignment, such as having previously been cited for theft from a store or vehicle in the last six months.
 - Requiring the California Highway Patrol and the Department of Justice to convene regional property crime task forces with local law enforcement to address organized retail and other theft.

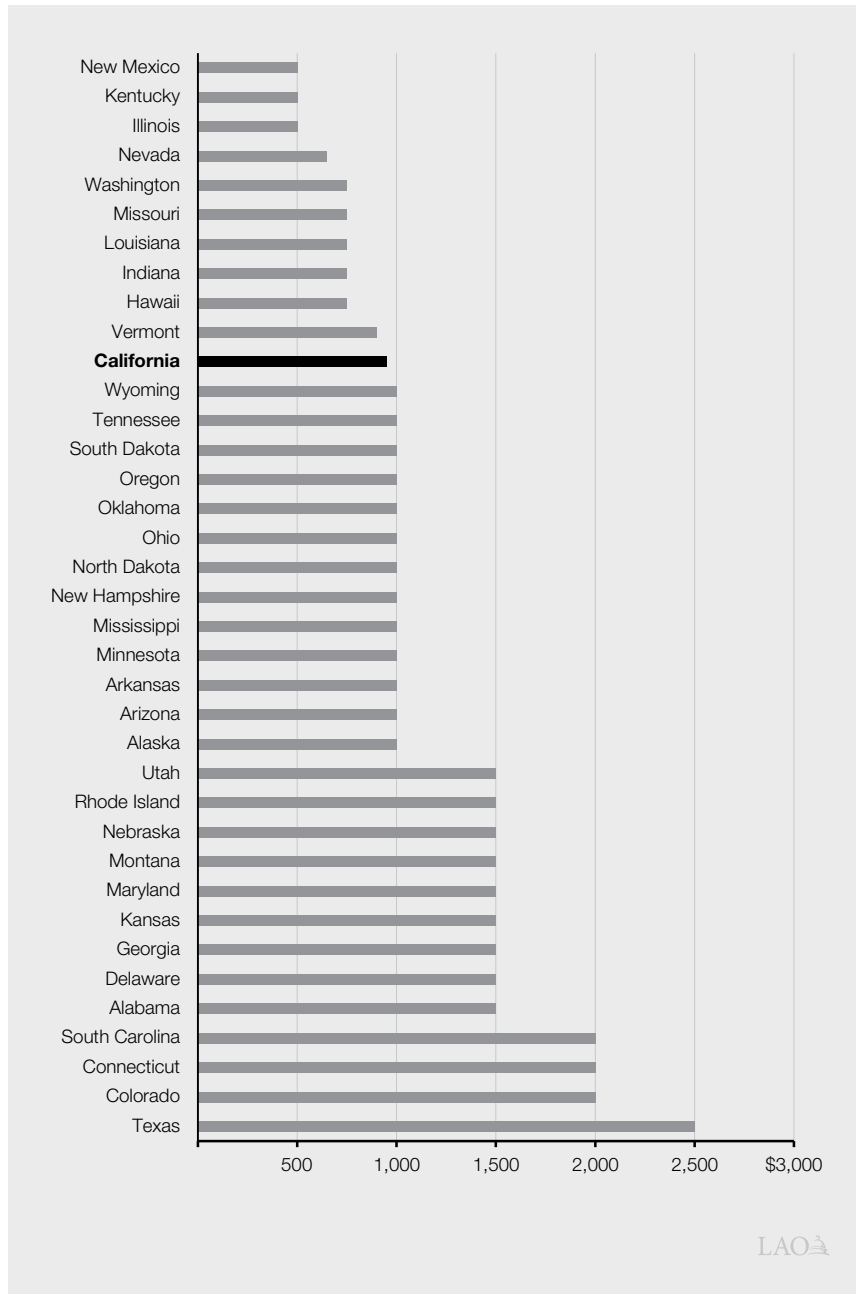


California Control of Profits of Organized Crime Act

- **Targets Organized Crime Through Asset Forfeiture.** The California Control of Profits of Organized Crime Act is a state law that targets organized crime through the forfeiture of profits acquired through criminal profiteering as follows:
 - **Defines “Criminal Profiteering Activity”** as certain acts or threats made for financial gain that may be charged as specified underlying crimes, including grand theft, receiving stolen property, and robbery.
 - **Defines “Pattern of Criminal Profiteering Activity”** as engaging in at least two incidents of criminal profiteering that (1) have a similar purpose, result, principals, victims, or methods of commission; (2) are not isolated events; and (3) were committed as a criminal activity of organized crime.
 - **Establishes a Process for Asset Forfeiture.** Under the act, any assets that people have acquired through a pattern of criminal profiteering activity are subject to forfeiture upon conviction of an underlying crime.
- **Somewhat Similar to Federal Racketeer Influenced and Corrupt Organizations Act (RICO).** People engaged in organized crime and/or criminal profiteering in California may be prosecuted by the federal government under RICO, which similarly provides for asset forfeiture but also establishes criminal penalties, including imprisonment and fines.



Examples of Dollar Value Thresholds for Felony Theft in Other States



Examples of Dollar Value Thresholds for Felony Theft in Other States

(Continued)

- In a 2017 report, The Pew Charitable Trusts identified at least 37 states that had raised their dollar value thresholds for felony theft since 2000. This figure shows the most recent threshold identified by the authors for each of these states as of 2017.
- This sample may not be representative of thresholds in states not included in the report. In addition, it is possible that prosecutors in these states may be able to use other laws—such as burglary—to charge incidents involving theft as felonies in cases that involve property below the dollar value thresholds.

