



Testimony for the Judiciary Committee

February 20th, 2024

HB948- Organized Retail Theft

Unfavorable

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The ACLU of Maryland opposes HB948, which would increase criminal penalties for retail theft and enjoin cases for retail theft across counties.

While addressing organized retail theft is a valid concern, HB948, as currently drafted, raises significant issues related to the value of stolen property, jurisdictional fairness, and potential unintended consequences such as charge stacking.

Aggregation of Value

While the bill allows for the aggregation of the value of stolen property in certain circumstances, this approach may lead to disproportionate penalties. Aggregating values across multiple incidents may not accurately reflect the severity of each individual offense, potentially resulting in harsher sentences than warranted. For example, if a defendant engages in numerous petty thefts that does not render any individual business any significant amount in loss, but the value of each individual item stolen was added and charged as a singular event, this could result in the classification of theft as a more serious charge than what it was in fact.

Charge Stacking

Conversely, this bill would allow for prosecutors to “stack” charges onto defendants in excess. Because HB948 would allow for joinder across jurisdictions, instead of charging a defendant once for theft, prosecutors would be able to charge defendants with theft for each individual instance. This is a practice known as “stacking” that “build pressure against criminal defendants when fewer charges would suffice and more accurately capture defendants’ culpability.”¹

¹ <https://harvardlawreview.org/print/vol-136/stacked-where-criminal-charge-stacking-happens-and-where-it-doesnt/>

Moreover, allowing for joinder across jurisdictions would take discretion away from judges who may follow different precedents when sentencing for the crime of theft in different jurisdictions. We believe that defendants should have a fair day in court, which includes sentencing.

This bill would also require, by request of the State's Attorney, a court to make a finding of fact as to whether anyone convicted of theft, robbery, burglary, or use of a firearm in the commission of a crime of violence or felony, should have the crime classified as organized retail theft. This is an extraneous measure to potentially increase penalties for defendants who have already been convicted of a crime. Criminal penalties already exist to curb the behavior this bill seeks to eliminate, it is not necessary to lengthen them. The defendants most often convicted for these crimes come from low-income communities and are engaging in these activities due to poverty. Further criminalization only perpetuates the cycle of poverty.

For the forgoing reasons the ACLU of Maryland urges an unfavorable report on HB948.

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