

2024-02-20 HB 948 (Support).pdf

Uploaded by: Adam Spangler

Position: FAV

CANDACE McLAREN LANHAM
Chief Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

CAROLYN A. QUATTROCKI
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

LEONARD HOWIE
Deputy Attorney General

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO
(410) 576-6588

February 20, 2024

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: HB948 - Organized Retail Theft – Venue for Prosecution, Warrantless
Arrest Authority, and Court Finding - **Support**

The Office of the Attorney General requests a favorable report of House Bill 948. Maryland has a consolidated theft statute. Unlike other states, who have separate offenses for larceny, shoplifting, possessing stolen property, etc., Maryland considers all of those as simply “theft” under Criminal Law Article 7-104. The penalty for theft (both in terms of jail time exposure, as well as whether the crime is a misdemeanor or felony) is determined by the value of the items taken.

Currently, under Criminal Law Article Section 7-103(f), if someone commits multiple thefts in one county as part of “one scheme or continuing course of conduct,” then “the value of the property or services [taken] may be aggregated in determining whether the theft is a felony or a misdemeanor.” While useful in certain circumstances, this aggregation is not helpful when someone commits crimes in multiple jurisdictions, as is often the case.

This bill would allow all thefts committed as part of “one scheme or continuing course of conduct” to be “joined and prosecuted in any county in which any of the thefts occurred.” This

change will significantly aid in the efforts to combat multi-jurisdictional organized retail theft. House Bill 948 additionally creates a reporting requirement where the clerk must mark a file as “Organized Retail Theft-related,” which will help with data tracking.

The Office of the Attorney General further supports House Bill 948 because it contains the useful venue change without also having the unnecessary creation of a new “organized retail theft” law to criminalize what is already criminalized as theft or theft scheme.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on House Bill 948.

cc: committee Members

2024 GBCC HB 948 Organized Retail Theft Support.pd

Uploaded by: Ashlie Bagwell

Position: FAV



Testimony on behalf of the Greater Bethesda Chamber of Commerce

*In Support of
House Bill 948—Organized Retail Theft---Venue for Prosecution, Warrantless Arrest
Authority, and Court Finding
February 20, 2024
House Judiciary Committee*

The Greater Bethesda Chamber of Commerce (GBCC) was founded in 1926. Since then, the organization has grown to more than 550 businesses located throughout the Greater Bethesda area and beyond. On behalf of these members, we appreciate the opportunity to provide written comments in opposition to House Bill 948— Organized Retail Theft---Venue for Prosecution, Warrantless Arrest Authority, and Court Finding.

With the increase in organized retail theft in recent years, the Greater Bethesda Chamber appreciates the introduction of House Bill 948. This bill seeks to address an issue that impacts Montgomery County and jurisdictions across the state of Maryland. Just last summer, the Montgomery County Police Department arrested a group accused of stealing large amounts of items from eleven stores in the county, the loss suffered by these stores totaling just under \$50,000. Organized retail theft impacts the safety and well-being of retail employees and customers and impedes a businesses' ability to operate.

On behalf of our retail members, we appreciate Delegate Tole's leadership on this issue and urge a favorable vote on House Bill 948.

Letter Supporting Org Ret Theft Bill 948 2-2024.pdf

Uploaded by: Jason Shoemaker

Position: FAV



CIRCUIT COURT DIVISION
301-600-1523

DISTRICT COURT DIVISION
301-600-2573

CHILD SUPPORT DIVISION
301-600-1538

JUVENILE DIVISION
301-600-2980

J. CHARLES SMITH, III
STATE'S ATTORNEY

STATE'S ATTORNEY FOR FREDERICK COUNTY

KIRSTEN N. BROWN
DEPUTY STATE'S ATTORNEY

County Courthouse
100 West Patrick Street
Frederick, Maryland 21701

www.statesattorney.us

February 16, 2024

The Honorable Luke Clippinger
Chairperson, House Judiciary Committee
House Office Building, Room 100
6 Bladen Street
Annapolis, MD 21401

Dear Chair Clippinger and Members of the Judiciary Committee:

On behalf of the Maryland State's Attorney's Association, and the Frederick County State's Attorney's Office, I write in support of House Bill 948. This bill has the intended purpose of consolidating and aggregating theft amounts for retail theft when occurring pursuant to one scheme or continuing course of conduct and to authorize prosecution in one Maryland county where the scheme/continuing course of conduct involves offenses in multiple Maryland counties.

This is a national issue. And, last fall, my elected, J. Charles Smith, III, and I had occasion to meet with multiple retailers at the local level, in Frederick County, to hear their stories regarding this type of offense. As we engaged with them, there was a common theme. Organized retail theft is real, it is brazen, it financially impacts communities, and, yes, even puts the public at risk. Traditionally, theft has been a crime associated with stealth. It has also, typically, been motivated by one or multiple of the following factors: substance abuse, poverty, or disregard for the property rights of others.

Organized retail theft on the other hand is engaged in with the intention of stealing items to be re-sold, enabling the re-seller to make 100% profit. And profitable it is, based on the amount of this crime being engaged in all over the United States. As laws are passed, the criminal elements expend the effort to identify and exploit inefficiencies and weaknesses in those laws.

The rise of organized retail theft has been the result of a somewhat perfect storm. First of all, retail theft, is a property crime. Based on Maryland Sentencing Guidelines, within the criminal justice system, the trend, since the Justice Reinvestment Act was passed, has been that those engaging in property crimes are rarely held pre-trial and are facing increasingly shorter sentences when standing before a judge after being convicted. The criminal element who engage in organized retail theft are reported to be informed. Knowing the consequences are less, they then pick their retailer victims based on accessibility to interstates, make sure to steal amounts below felony theft thresholds, and intentionally cross county lines to avoid aggregation of values.

Adding to the above, these crimes are typically engaged in by groups or crews who travel hundreds, if not thousands, of miles to hit as many retailers as possible. They are bold and threatening. They enter the stores, in some instances declaring they are there to steal items when contacted by store employees, with the sole purpose of stealing as much product as they can grab. They take bolt cutters from the hand tool section and cut the locks, the retailer has paid for, placed to secure their battery-operated tools. They put the public, including the store employees and customers at risk, as they dash out of the store with their stolen items.

They are secure in the knowledge that the reduced staffing of police forces and the publicly available information about non-confrontation policies of many retailers will mean they can engage in their crime as brazenly as they wish with little chance of a consequence.

We hear the stories of retailers shuttering their stores due to this criminal epidemic. Notably, organized retail theft excursions tend to initially focus on urban areas and continue, successively moving out to the suburbs and even more rural communities. The stolen product is not insured, which leads to retailers raising prices to cover the losses. This means that people in communities all over the country, including right here in Maryland, are impacted by these offenses.

This bill would encourage law enforcement and prosecutors to work together, across county lines, enabling them to coordinate prosecutions for maximum impact, thereby increasing the risk of consequences for those who choose to engage in this type of crime. It is time for Maryland to address this issue. It also is time to reassure the employees and customers of these stores, as well as our communities, that we want them to be able to work and shop in safety.

Thank you for the opportunity to provide support for this bill and I urge this Committee to issue a favorable report on House Bill 948.

Sincerely,

A handwritten signature in black ink that reads "Jason S. Shoemaker". The signature is fluid and cursive, with the first name "Jason" being the most prominent.

Jason S. Shoemaker,
Chief, Economic Crimes Unit

HB 948 Support Testimony (Retail Crime - Organized

Uploaded by: Julian Wills

Position: FAV



February 15, 2024

RE: HB 948 – Organized Retail Theft – Venue for Prosecution, Warrantless Arrest Authority, and Court Finding

Dear House Judiciary Committee Members,

My name is Julian (Blackie) Wills and I am the President and CEO for Dash In Convenience Stores, a Maryland-based company with 40 outlets in the state employing about 800 between these outlets. We are owned by The Wills Group, Inc., a Maryland-based company founded over 98 years ago and I am part of the fourth generation of family leadership for the organization. We have community-based values and donate over \$1 million annually to our charitable partners including various food banks.

I am writing in support of House Bill 948 for the following reasons:

- Retail theft has been on a rapid ascent in the last two years. We previously would see about one major incident per month across our network, but it now seems there is at least one major theft every week.
- The value of the goods in our stores is low but the thieves have focused their attention on tobacco products, namely cartons of cigarettes. We often experience robberies of cigarette cartons. (Previously, we experienced robberies of cash, but our cash management procedures have reduced the amount of cash available to a minimal amount, thus shifting the focus to our products.)
- It is typically the same suspects who are hitting multiple stores. They know that the value of the theft results in a misdemeanor charge so they hit multiple outlets at a time.
- The proposed legislation should force these criminals to think twice about continuing with these thefts. And it will give law enforcement and the judicial system the required teeth to prosecute these criminals.

Thank you for your time and please advise of any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julian Wills III".

Julian (Blackie) Wills III
CEO & President
443.532.5222
bwills@willsgroup.com

ICSC HB948 Testimony.pdf

Uploaded by: Justin Rice- Moore

Position: FAV

February 20th, 2024

The Honorable Luke Clippinger
Judiciary Committee
Room 101, House Office Building
Annapolis, Maryland 21401



House Bill 948—Organized Retail Theft – Venue for Prosecution, Warrantless Arrest Authority, and Court Finding: FAVORABLE

Chair Clippinger, Vice Chair Bartlett, and Members of the Judiciary Committee,

ICSC respectfully asks for your support on *House Bill 948—Organized Retail Theft – Venue for Prosecution, Warrantless Arrest Authority, and Court Finding*. ICSC is the member organization for the advancement of the Marketplaces Industry, made up of shopping centers, malls and main streets, and the commerce they drive and the communities they create. Our member network includes property owners, developers, financial institutions, professional service providers and, importantly, shopping center tenants such as retailers, restaurants, gyms, childcare providers, and health centers. In Maryland, 1900 marketplaces with over 525,000 jobs, make up nearly 14% of the State’s job force. For over 65 years, ICSC has promoted and elevated the marketplaces and spaces where people shop, dine, work, play and gather as foundational and vital ingredients to everyday life. On behalf of our Maryland membership, we are submitting the comments below that focus on our concerns with the currently proposed building energy performance regulations.

Organized Retail Crime (ORC) is not petty shoplifting. It is coordinated, sophisticated, and targeted retail theft, usually carried out by organized criminal networks, where substantial quantities of high-demand products are stolen and re-sold, often on online marketplaces. These organizations recruit participants, enforce quotas, and use their profits to fund other illicit activities.

According to the National Retail Federation; Buy Safe America Coalition, ORC accounted for:

- \$100 Billion in inventory loss in 2022 alone
- \$15 Billion loss to federal and state governments in personal and business tax revenue, not including lost sales taxes
- An 81% increase in retailers reports of violence and aggression
- \$500 of additional cost to the average American Family
- A 26.5% increase in organized theft incidents in 2021

Organized retail crime impacts everybody — from retailers and retail employees to shoppers, community residents — as well as the entire economy. While ORC groups most often target large retailers, the economic impact of their activity is significant and extends far beyond those immediately involved. ORC is on the rise and store fronts, supply chains, and businesses’ bottom lines are being negatively affected. Our industry must join with others to ask lawmakers at every level of government to take further action to fight ORC.

From a Maryland perspective, it is easy to extrapolate the impact of ORC given estimated sales tax revenue generated per establishment:

- General Merchandise - \$4,437,890
- Food and Beverage (Grocery) - \$2,044,207
- Apparel – \$363,147
- Drug Stores - \$1,024,020

ORC groups are discerning in their selection of targets and primarily favor large national retailers, big-box retailers, and cargo shipments, largely targeting everyday consumer goods. In areas specifically targeted, ORC leads to forcing many stores that anchor neighborhoods and community shopping centers to leave, costing localities jobs, state and local tax revenues and ultimately the character of the places we live.

In 2023, 7 states across the United States, enacted legislation that would work to address prosecutorial issues related to ORC: including Alabama, Kansas, Nevada, New Mexico, North Dakota, Oregon and Virginia.

In the opinion of the Maryland members of ICSC, we urge the General Assembly to also take action. We urge a favorable report of House Bill 948.

For any questions or more information regarding ICSC's position, please contact Sushant.Sidh@capitol-strategies

HB 948 Unfavorable MOPD.docx (1).pdf

Uploaded by: Elizabeth Hilliard

Position: UNF



NATASHA DARTIGUE
PUBLIC DEFENDER

KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
ACTING DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

**BILL: House Bill 948 – Organized Retail Theft – Venue for Prosecution, Warrantless
Arrest Authority, and Court Finding**

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 16, 2024

**The Maryland Office of the Public Defender urges an unfavorable report on House Bill
948.**

This bill aims to permit the prosecution for the aggregate of MULTIPLE THEFTS COMMITTED BY THE SAME PERSON IN MULTIPLE COUNTIES UNDER ONE SCHEME OR CONTINUING COURSE OF CONDUCT MAY BE AGGREGATED AND PROSECUTED IN ANY COUNTY IN WHICH ANY ONE OF THE THEFTS OCCURRED.

MOPD's first concern is that the "One scheme" is overbroad and vague. According to Maryland criminal law, "if the acts alleged are of the same nature and so connected that they can be construed as stages in one criminal transaction, they may be joined in one count, although separately considered they are separate offenses." *Ayer v. State*. The language of the law does not define what one scheme is. It is unclear if the thefts have to be similar (meaning similar items or similar stores or the same store?)

In Maryland, a penal statute is considered impermissibly vague when it fails to explicitly inform those who are subject to it what conduct on their part will render them liable to its penalties. *Galloway v. State*, 130 Md. App. 89. In general, the vagueness doctrine balances the

need for criminal statutes general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited. *Todd v. State*, 161 Md. App. 332. A statute is unconstitutionally overbroad if it includes within its prohibitions what may not be punished under the First and Fourteenth Amendments - it criminalizes constitutionally protected speech and/or expressive conduct. *McCree v. State*, 214 Md. App. 238.

To survive strict judicial scrutiny, a law must be necessary to serve a compelling state interest and narrowly drawn to achieve that end. *State v. Sheldon*, 332 Md. 45. Under strict scrutiny, a statute may be validated only if it is deemed to be suitably, or narrowly, tailored to further a compelling state interest. *Koshko v. Haining*, 398 Md. 404. A statute is not “narrowly tailored” if a **less restrictive alternative** would serve the Government's purpose. This requirement ensures that speech is restricted no further than necessary to achieve the intended goal, for it is important to ensure that legitimate speech is not chilled or punished. *See Nefedro v. Montgomery County*, 414 Md. 585 (finding that a Montgomery County, Maryland ordinance prohibiting the acceptance of payment for fortune telling services was unconstitutional as the Court identified at least one less restrictive, effective means of combating fraud).

Turning to the issue of overbreadth, in *Ayre v. State*, the Maryland Court of Special Appeals overturned a conviction under Md. Ann. Code art. 27, § 418, finding the statute was overly broad because it **charged multiple offenses** in one count. *See Ayre v. State*, 21 Md. App. 61 (holding that § 418 created separate offenses, and therefore charging them all together in one count made the statute defective). In a subsequent case, the Court held that a statute simplified the common law by consolidating the three types of escape into one statute and making all escape a felony. *See Robinson v. State*, 353 Md. 683, 699 (explaining that the common law crime

of larceny was abrogated by the enactment of the consolidated theft statute, which merged all the formerly distinct larceny-like common law offenses, as well as the offense of receiving stolen property, into a single crime of theft).

The prohibition of **duplicity** is said to implicate a defendant's rights to notice of the charge against him, to a unanimous verdict, to appropriate sentencing and to protection against double jeopardy. *See State v. Cooksey*, 128 Md. App. 331, 335. The goal is to avoid violations of proportionality by aggregating various petty, non-violent offenses to artificially create a new felony.

In *Kelley*, multiple items of property were taken from three different owners, over differing periods of time, from three separate locations a mile or more apart from one another. *See Kelley v. State*, 402 Md. 745, 747 (defining ‘continuing course of conduct’ as “quick or unbroken succession of those acts from another so as to indicate a single scheme or continuing impulse or course of conduct that would require the three separate incidents to be considered as one theft for the purposes of sentencing).” The petitioner asserted the State could not aggregate the value of the property taken with respect to the three individual counts, so as to make the separate takings one felony theft in each case, but then consider the thefts separate for sentencing purposes. The court found that the case did not involve takings from the three owners occurring in quick and unbroken succession as the thefts occurred during different time periods, at least two of which did not even overlap. The court found that there was no evidence that any of the takings from one owner occurred in quick or unbroken succession of those from another, and therefore the theft did not constitute a continuing course of conduct. All 3 of these thefts occurred within a 90 day period, and the court still said they are not related enough to constitute a continuing course of conduct, thus it seems ill advised to include in “within a 90 day period.”

With that in mind, it seems that the 90 day period suggested by House Bill 948 is not sufficient to constitute continuing a course of conduct.¹

Moreover, the 7-103(f)(2): language of “any” county invites jurisdictional issues. It does not clarify what procedure may exist, if any, when two counties who have an equal claim to bring a case want to bring the case. It does not address if one of the thefts necessary to aggregate the value of the property to raise the offense to a felony occurs in a county in a different state.

We are also concerned with issues of **misjoinder**: Due process prevents the State from going forward with two trials at the same time before a single jury. *Epps v. State*, 52 Md.App. 308, 317 (1982) holds that: “[A] defendant charged with similar but unrelated offenses is entitled to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials.” *See also McKinney v. State*, 82 Md.App 111 (1990) (discussing whether evidence of one crime would otherwise be admissible in the trial of the second crime). House Bill 948 appears to overlook the potential of prejudice in joinder as noted in Maryland 4-253. *State v. Kramer* indicates that: "Potential prejudice is the overbearing concern of the law of this State with respect to the question of joint or separate trials of a defendant charged with criminal trials." 318 Md. 576, 583 (1990)

Additionally, this would create evidentiary issues in light of the prohibition on character evidence and could lead to unconstitutional presentation of evidence of other crimes.

House Bill 948 seems to be a reaction to overpublicized incidents of non-violent offenses spotlighted by certain segments of the media. The behavior in this is already adequately addressed by existing statutes. For example, Theft Scheme is already on the books to address the

¹ Note that Theft Scheme has been evaluated by the Court of Appeals, explaining that "separate thefts involved same subject matter, same **modus operandi**, same perpetrator, **same geographic area, and they occurred within a week of each other**, and thus, evidence of one scheme or continuing course of conduct was compelling. [Underlining and bolding added.] [Painter v. State, 2004, 157 Md.App. 1.](#)

proscribed behavior. House Bill 948 may be subject to prosecutorial overreach in an attempt to elevate non-violent offenses to felony prosecutions, it would allow for the prosecution of as few as a single person who steals in non-violent events as little twice. It is unnecessary to speculate that this proposed law would be a weapon misused by overzealous prosecutors.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on House Bill 1057

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

HB948 Unfavorable.pdf

Uploaded by: Gregory Brown

Position: UNF



Testimony for the Judiciary Committee

February 20th, 2024

HB948- Organized Retail Theft

Unfavorable

GREGORY BROWN
PUBLIC POLICY
COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL
ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

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.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

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LIBERTIES UNION
FOUNDATION OF
MARYLAND

hb948.pdf

Uploaded by: Linda Miller

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 948
Organized Retail Theft – Venue for Prosecution, Warrantless
Arrest Authority, and Court Finding
DATE: February 7, 2024
(2/20)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 948. The bill adds language to Criminal Law Article § 7-103(f) allowing prosecution of multiple thefts committed by the same person in multiple counties, in any county in which at least one of the thefts occurred. The bill also allows for warrantless arrests for a theft of property or service less than \$1,500 in Criminal Procedure Article § 2-203(b)(4). The bill establishes Criminal Procedure Article § 6-237 in which organized retail theft is reported to the Criminal Justice Information System Central Repository in accordance with Criminal Procedure Article § 10-215.

While the legislature is authorized to determine venue, the bill may result in charging numerous co-defendants, including those that may have no connection to one another or to the jurisdiction (p. 3, line 20). This poses due process and constitutional concerns by admitting evidence that would not be mutually admissible if the trials were separated and is unduly prejudicial to one or more defendants. The bill may also extend the length of trials and may delay scheduling trials in coordinating the availability of the court, the State, and various defense counsel.

The Judiciary acknowledges the legislature’s intent to identify cases involving “organized retail theft” similarly to cases identified as “domestically related,” however, having the court make a finding of fact based on evidence produced at trial is problematic (p. 3, lines 31-32). First, the case may be disposed of by plea instead of trial. Second, the court’s finding may be based on inadmissible and prejudicial evidence. Third, to report an event into the Criminal Justice Information System Central Repository, the State must prove “organized retail theft” by a preponderance of evidence while, at the same time, prosecuting a criminal offense beyond a reasonable doubt standard.

cc. Hon. Karen Toles

Judicial Council
Legislative Committee
Kelley O'Connor