



Testimony for the Senate Judicial Proceedings Committee

January 21, 2025

SB 11 – Organized Retail Theft Act of 2025

UNFAVORABLE

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The ACLU of Maryland opposes SB 11, which would increase criminal penalties for theft by (1) permitting the joinder of theft cases across counties; (2) aggregating the value of separate retail theft incidents; and (3) potentially requiring a court to find whether a person may be further prosecuted for organized retail theft for conduct that has already been adjudicated under separate criminal statutes.

While organized retail theft is a legitimate concern, existing criminal provisions already address this conduct. By allowing the punishment and prosecution of such conduct to be needlessly compounded across jurisdictions, SB 11 raises serious issues of creating disproportionate and excessive penalties that further exacerbate the poverty-based motivations often driving retail theft.

In permitting multiple theft cases in different counties against the same person to be joined and prosecuted in any of those counties if the incidents are vaguely related under “one scheme or continuing course of conduct,” SB 11 would allow prosecutors to pursue the harmful practice of “charge stacking.” Instead of only being charged once for an incident in the county where it occurred, under this bill a person could receive multiple counts of the same charge for separate incidents that happened in different counties. This “stacking,” which can easily prejudice a person facing trial and result in disproportionate sentencing, has been viewed as a means to force a guilty plea by creating “pressure against criminal defendants when fewer charges would suffice and more accurately capture defendants’ culpability.”¹

Such excessive prosecution under this bill is further compounded in providing the “aggregate value” of property at issue as the basis for

¹ Note, *Where Criminal Charge Stacking Happens – And Where It Doesn’t*, 136 Harv. L. Rev. 1390, 1391 (2023).

determining the level of charges and penalties that may be imposed. 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 person is prosecuted for a number of petty thefts that do not cause a significant amount of loss to any one business, each minor loss can be added together to create a combined value that artificially meets the level required for more serious charges.

In addition to resulting in disproportionate and excessive penalties, the duplicative charging schemes proposed by SB 11 could significantly impact jurisdictional discretion and judicial latitude in retail theft cases. If separate incidents across counties were to be joined under this bill, it is unclear which county could prosecute if more than one seeks to do so, or whether a sentencing judge would need to consider differing legal precedents from other counties that may otherwise apply.

Moreover, where there has already been a conviction or probation before judgment disposition for certain criminal offenses, a court could be required under this bill to make a finding of fact as to whether the conduct underlying the adjudicated offense also amounts to organized retail theft. To trigger this requirement, a prosecutor would only need to present an argument meeting the preponderance of the evidence standard – a very low bar. This is particularly concerning where a judge has ordered probation before judgment, as such dispositions work as alternatives to further punishment and would be fundamentally undermined by this provision.

For the foregoing reasons, we oppose SB 11.