

MARYLAND RETAILERS ALLIANCE

The Voice of Retailing in Maryland



SB100 Criminal Law - Organized Retail Theft **House Judiciary Committee** **April 1st, 2024**

Position: Favorable

Comments: The Maryland Retailers Alliance (MRA) strongly supports SB100, which will do three things: 1) define and create the crime of organized retail theft within the Maryland Code, 2) allow organized retail crime (ORC) to be aggregated across jurisdictions, and 3) authorize data collection for statistics related to ORC.

Maryland currently has a theft scheme statute that applies when a person repeatedly steals from the same person or group over a period of time. This law contains a loophole in that it does not explicitly allow theft to be aggregated across jurisdictions. To be clear, the crime SB100 creates is not a new concept in Maryland, as multiple thefts committed within in one jurisdiction may already be aggregated and prosecuted together. Professional thieves and groups understand this and are aware of the \$1500 felony theft threshold limit in Maryland; organized crime rings strategically travel across county lines when committing multiple thefts in order to avoid aggregation and felony theft charges.

History and Landscape: Organized retail theft has ballooned to an over \$100 billion criminal industry in the United States alone which has resulted in action at both the Federal and State levels. The impacts are felt in communities in many ways: from higher prices, closure of stores, lost sales tax and revenue for the State and localities, and the proliferation of other illicit crimes which are funded by retail theft.

Congress passed the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act) in 2022 which creates transparency with third-party online sellers. Organized rings and professional thieves often use these online marketplaces to sell stolen goods. The federal law requires online marketplaces to collect and verify certain information from high-volume third-party sellers to ensure transparency and record keeping to help stop the sale of counterfeit and stolen merchandise.

The Federal Government in October of 2022 announced through Homeland Security Investigations (HIS) the launch of [Operation Boiling Point, which is](#) focused on combating organized theft groups (OTG) through the targeting of domestic and transnational criminal organizations (TCO) profiting from organized retail crime (ORC). “Operation Boiling Point provides a multi-faceted approach to disrupt and dismantle OTGs through investigations, consumer awareness, and partnerships with federal, state, local law enforcement and prosecutors, as well as financial, retail, freight transportation, and other industries.” Unfortunately, the threshold for their involvement remains high and is constantly evaded by professional groups.

34 states, both blue and red, have passed laws addressing the issue of retail crime. New legislation is being introduced and adopted every year and many states now have multiple statutes on the books. Laws range from mandated coordination to easier prosecution, task forces, funding, and the creation of new crimes to distinguish between petty and professional theft.

Issues Raised: Concerns have been expressed around the issue of “joinder” and we would refer the committee to the letter of advice issued by the Office of the Attorney General (OAG) which clearly states the provision found in SB100 is “discretionary and does not change existing common law or Maryland Rule”, The purpose of joining offenses and policies favoring judicial economy is to “save time and expense of separate trials under the circumstances named in the Rule...”. As we have previously pointed out to the committee, nothing in SB100 prohibits a defendant from seeking separate trials of their charges through a motion to sever if they believe the joinder of said charges would impact their rights. The court will then consider factors such as the complexity of the case, potential prejudice to the defendant, and the interests of judicial economy in deciding whether to grant the motion.

We would direct the committee to Maryland Code Criminal Law Title 9-804 which prohibits participation in criminal gangs and allows for joinder: “(3) Notwithstanding any other provision of law, in circumstances in which violations of this section are alleged to have been committed in more than one county, the respective State's Attorney of each county, or the Attorney General, may join the causes of action in a single complaint with the consent of each State's Attorney having jurisdiction over an offense sought to be joined.” As the letter from the OAG points out, “As long as the State can establish the mutual admissibility of the evidence of the multiple thefts under a single scheme or continuing course of conduct, a court may join charges or offenses in a single trial under Rule 4-253”. This proposed law is consistent with that authority and other laws in current statute.

Additional concerns have been brought up regarding loss prevention or asset protection not participating in court procedures when charges have been filed for theft. Our organization has made a commitment to prosecutors’ offices around Maryland to help them connect with the proper individuals in large companies and have done so for the past year. In discussing this issue with different State’s Attorney’s offices, it has also been pointed out to us that jurisdictions would be best served by allowing these witnesses to testify via Zoom as they did during the first years of the COVID-19 pandemic. Although we contend that in most instances companies do everything in their power to be present in court, virtual participation would help address this problem as theft cases and daily events can impact their ability to be physically present.

SB100 would close a loophole in Maryland’s law allowing criminals to avoid felony theft charges and would stabilize community retailers that are currently suffering from high theft rates. It provides another tool in the toolbox for prosecutors as these crimes grow by the day and would send a message to retailers that the State wants to help. We strongly urge the committee to vote favorably on SB100. Thank you for your consideration.