

## **BILL ANALYSIS**

S.B. 1300  
By: Flores  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Organized Retail Crime Association has estimated that the "annual cost of [organized retail theft (ORT)] in Texas was more than \$442 million in 2022...[resulting] in more than \$21 million in lost state tax revenue and 4,700 Texas jobs." Additionally, the Association of Certified Anti-Money Laundering Specialists notes that there is a connection between "low-cost, high-reward ORT to criminal activities such as drug trafficking and human smuggling due to its appeal for criminals to...further fund other criminal activities." S.B. 1300 seeks to strengthen the prosecution of ORT by establishing a robust legal framework for deterrence through the enhancement of penalties and by clarifying legal procedures involved in prosecuting ORT offenses.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1300 amends the Code of Criminal Procedure and Penal Code to revise the conduct, penalties, and provisions relating to the prosecution of the offense of organized retail theft.

S.B. 1300 removes as conduct constituting the offense of organized retail theft the intentional conduction, promotion, or facilitation of an activity in which the person receives, possesses, conceals, stores, barter, sells, or disposes of stolen retail merchandise or merchandise explicitly represented to the person as being stolen retail merchandise. The bill establishes that the following conduct instead constitutes the offense:

- while acting in concert with one or more other persons, unlawfully appropriating retail merchandise, money, or other property from a merchant with the intent to deprive the merchant of the property;
- on two or more occasions within a 180-day period, unlawfully appropriating retail merchandise, money, or other property from a merchant with the intent to deprive the merchant of the property;
- knowingly obtaining a benefit from such conduct that was committed by another person; or
- knowingly acting in concert with one or more other persons to overwhelm the security response of a merchant or a peace officer for the purpose of committing the offense or avoiding detection or apprehension for the offense.

The bill revises the definition of "retail merchandise" for purposes of the offense as follows:

- to apply to one or more items of tangible personal property displayed, held, stored, or offered for sale by a merchant, rather than such items displayed, held, stored, or offered for sale in a retail establishment as specified in current law; and
- to include a gift card in the definition.

The bill defines "merchant" as any business that sells items to the public.

S.B. 1300 makes statutory provisions establishing the conduct constituting the unlawful appropriation of property in connection with theft offenses applicable to organized retail theft for purposes of determining whether property was unlawfully appropriated from a merchant in the prosecution of the offense. The bill also establishes the following in the prosecution of the offense:

- the presumption that a person acted with the intent to deprive a merchant of retail merchandise if the person altered or removed a label, universal product code, price tag, or retail theft detector for retail merchandise or transferred retail merchandise from the merchandise's packaging into other packaging; and
- for conduct involving retail merchandise stolen from a merchant, the value of the stolen retail merchandise is:
  - the sales price of the retail merchandise as stated, posted, or advertised by the merchant, including applicable sales tax, at the time of the offense; or
  - the rental price of the retail merchandise as stated, posted, or advertised by the merchant, including applicable sales tax, at the time of the offense plus the cost of replacing the retail merchandise within a reasonable time after the offense.

S.B. 1300 establishes that the following circumstances are not a defense to the prosecution of organized retail theft:

- a person who acted in concert with the actor has not been charged, convicted, apprehended, or identified;
- the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;
- the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or
- the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense but would not encourage a person not predisposed to commit the offense to actually commit the offense.

S.B. 1300 increases each penalty for the offense of organized retail theft, currently ranging from a Class C misdemeanor to a second degree felony based on the value of the property involved, to the next higher category, and makes the current penalty of a first degree felony punishable instead by imprisonment in the Texas Department of Criminal Justice for any term of not more than 99 years or less than 15 years and a fine capped at \$250,000.

S.B. 1300 removes the provision increasing the offense to the next higher category if it is shown on the trial of the offense that:

- the person organized, supervised, financed, or managed one or more other persons engaged in the conduct; or
- during the commission of the offense, a person engaged in the conduct intentionally, knowingly, or recklessly:
  - caused a fire exit alarm to sound or otherwise become activated;
  - deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or
  - used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

However, the bill establishes that, for purposes of penalty enhancements required under statutory provisions relating to exceptional sentences, a person is considered to have been

convicted of organized retail theft if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for that offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision.

S.B. 1300 prohibits an indictment or information in the prosecution of organized retail theft from being held insufficient for failure to name or describe each item of property stolen. The bill establishes that it is sufficient to name the merchant and, if the offense level is based on a value of the property stolen, the aggregate value range of the stolen property applicable to the alleged offense.

S.B. 1300 establishes the following in the prosecution of organized retail theft for purposes of the evidence relating to such an offense:

- if issues of intent, knowledge, and whether the defendant was acting in concert with one or more other persons are raised by the defendant's plea of not guilty, evidence that the defendant has participated in any theft offense, other than a theft offense that forms the basis of that offense, on which the prosecution is based, is admissible for the purpose of showing intent or knowledge or as evidence that the defendant was acting in concert with one or more other persons;
- the unaltered price tag or other marking on retail merchandise identifying the price of the retail merchandise is prima facie evidence of the value of the retail merchandise; and
- a price tag or other marking that identifies or is unique to a merchant is prima facie evidence of the merchant's ownership of the retail merchandise.

S.B. 1300 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

#### **EFFECTIVE DATE**

September 1, 2025.