

HB 378: ORGANIZED RETAIL CRIME

BY REP. ZACK FIELDS

House Labor & Commerce Committee
March 13, 2024

ORGANIZED RETAIL CRIME

- Homeland Security Investigations (HSI) defines ORC as “*the association of two or more persons engaged in illegally obtaining items of value from retail establishments, through theft and/or fraud, as part of a criminal enterprise.*¹”
- According to the 2021 joint report released by the Retail Industry Leaders Association (RILA) and the Buy Safe America Coalition, in 2019, nearly *\$70 billion* in goods were stolen from retailers.²
- ORC is not simply shoplifting, and these crimes are not victimless. A growing number of thefts turn violent, and consumers, local communities and businesses bear the costs of rising prices. These thefts are detrimental to both businesses, small and large alike, and the overall economy as they pose both societal and health risks to the community.

1: "DETECTING & REPORTING THE ILLICIT FINANCIAL FLOWS TIED TO ORGANIZED THEFT GROUPS (OTG) AND ORGANIZED RETAIL CRIME (ORC): A COMPREHENSIVE GUIDE FOR LAW ENFORCEMENT & FINANCIAL CRIME INVESTIGATORS" PRODUCED BY ACAMS & HOMELAND SECURITY INVESTIGATIONS. [HTTPS://WWW.ACAMS.ORG/EN/MEDIA/DOCUMENT/29436](https://www.acams.org/en/media/document/29436)

2: "THE IMPACT OF ORGANIZED RETAIL CRIME & PRODUCT THEFT IN THE UNITED STATES" [HTTPS://WWW.BUYSAFEAMERICA.ORG/IMPACT-OF-ORGANIZED-RETAIL-CRIME-AND-PRODUCT-THEFT](https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft)

Types of Retailer Targeted for ORC, by Ranking



"ORGANIZED RETAIL CRIME IS LEADING TO MORE BRAZEN AND MORE VIOLENT ATTACKS IN RETAIL STORES THROUGHOUT THE COUNTRY AND MANY OF THE CRIMINAL RINGS ORCHESTRATING THESE THEFTS ARE ALSO INVOLVED IN OTHER SERIOUS CRIMINAL ACTIVITY. TACKLING THIS GROWING THREAT IS IMPORTANT TO THE SAFETY OF STORE EMPLOYEES, CUSTOMERS, AND COMMUNITIES ACROSS THE COUNTRY."

- ACTING EXECUTIVE ASSOCIATE DIRECTOR STEVE FRANCIS, HOMELAND SECURITY INVESTIGATIONS

Most Commonly Targeted Items for ORC



Pharmaceuticals



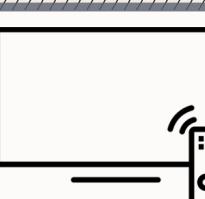
Building Supplies



Groceries



Household Goods



Electronics



Health & Beauty



Automobiles



Apparel



Clothing

SOURCE: The Coalition of Law Enforcement and Retail (CLEAR).

Products generally subject to shoplifting and those sought after through online marketplaces

Category	Marketplaces	Visits/Month (Million)	Sales (US\$)	Theft (US\$)	Percentage of Sales Stolen	Rank
General Merchandise	93	13,500	912,390,087,484	32,600,003,846	3.57%	1
Fashion	31	644	452,244,692,405	16,348,002,633	3.61%	2
Arts, Crafts, Gifts	3	402.5	N/A	N/A		
Homewares	7	281.2	235,302,033,513	8,313,002,402	3.53%	3
Electronics	6	80.8	206,584,642,838	7,801,817,813	3.78%	4
Music	2	80.3	N/A	N/A		
Books	5	42.8	29,292,502,626	1,003,693,094	3.43%	6
Sports	3	22.9	26,464,433,086	932,564,028	3.52%	7
Musical Instruments	1	16.8	N/A	N/A		
Collectibles & Antiques	2	6.4	N/A	N/A		
Toys & Baby	2	6	53,252,180,712	1,892,391,555	3.55%	5

Source: The Impact of Organized Crime and Theft in the United States

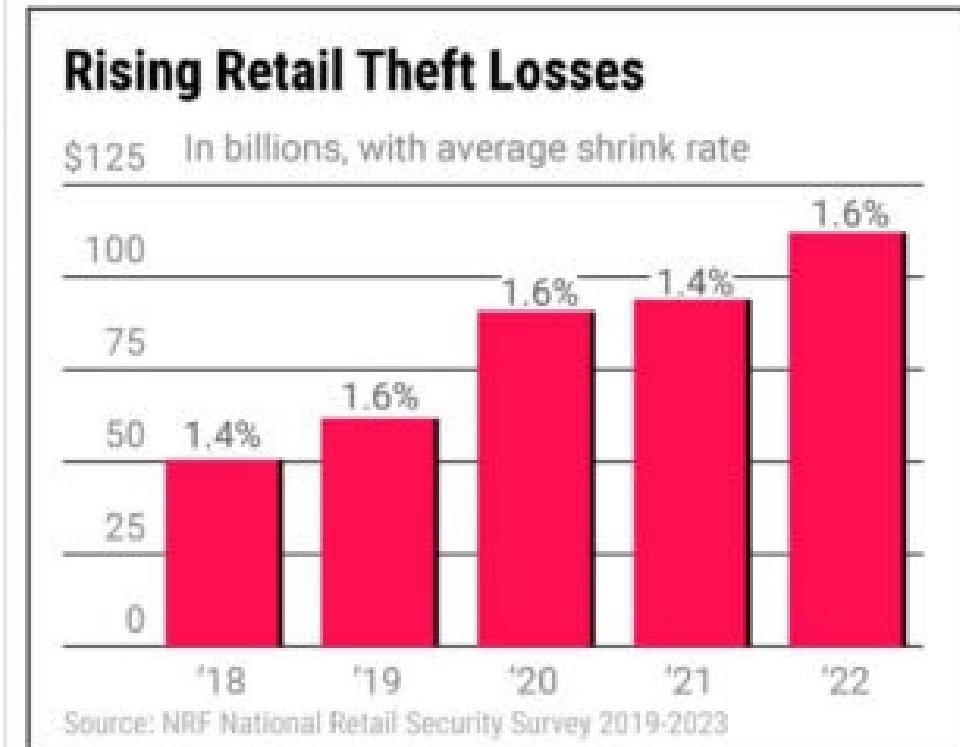
ORC Activity	Targeted Product	Retail Victims	Level of Violence	Scope	Financial Impact (per case)	Collateral Crimes	
↑ Severity	National Criminal Organizations (Control Pricing and Disrupt Infrastructure)	OTC medicines Razor blades Health and beauty aids	Pharmacies, big box, and grocery stores	Low Purposely non-violent	Transnational, national interstate theft across large geographic areas (includes e-commerce)	US\$10 - 200 Million	Interstate stolen goods, ML/wire fraud, international crimes/ counterfeiting, large scale financial fraud (gov), drug trafficking, human (labor) trafficking, terrorism financing
	E-Commerce High Level Sell Nationally	Tools, electronics, health and beauty aids	Home improvement, electronic stores, grocers, pharmacies, big box	Moderate	Product stolen regionally; same state or neighboring states	US\$500k- 2 Million	Interstate stolen goods, narcotics trafficking, ML/wire fraud
	E-Commerce Local Level Sell Nationally	Tools, cosmetics, clothing and accessories	Home improvement, electronic stores, grocers, pharmacies, and big box	Moderate	Product stolen and listed locally	US\$25K- 500K	Interstate stolen goods, narcotics trafficking, ML/wire fraud
	Local ORC Flea Markets, Small Illicit Businesses	Laundry detergent, hand and body lotions; personal hygiene and some clothing	Dollar stores, big box, soft lines, pharmacies	High probability for violence	Product stolen and sold locally in public forum	US\$10k- 200K	Interstate stolen goods, robbery/assault, narcotics trafficking, ML/wire fraud
	Smash and Grabs	High dollar designer goods, jewelry, clothing	High end, soft lines, jewelry, small businesses	Very violent	Local gangs	US\$5K- 100K	Robbery/assault, burglary, narcotics trafficking
	Retail Theft Personal Use	All retailers	All retailers	High potential for violence	Local homeless or drug addicted	Low dollar	Narcotics, robbery/assault

Source: chart provided by Ben Dugan, President of C.L.E.A.R.

ECONOMIC IMPACT OF ORGANIZED RETAIL CRIME

- The economic impact of retail crime is profound. Retailers face increased costs for lost product, security, and labor, which lead to higher prices for consumers and ultimately, lower sales. Lower sales translate to fewer jobs throughout the economy. The result is \$125.7 billion in lost economic activity and 658,375 fewer jobs, paying almost \$39.3 billion in wages and benefits to workers.
- National estimates reveal ORC costs federal and state governments nearly \$15 billion in lost tax revenue, not including lost sales taxes.
- It is estimated that the average American family will pay more than \$500 annually in additional costs due to the impact of ORC.
- ORC is a low-risk, high-reward income stream for domestic and transnational criminal organizations that greatly impacts inter-state and international commerce and the overall economic security of Alaska and the United States.

THERE IS A CORRELATION BETWEEN THE GROWTH IN ONLINE SHOPPING AND SHOPLIFTING



Shrink has become a bigger problem at Lowe's in recent years

The home improvement retailer lost nearly \$1 billion — more than 1% of net sales — in 2022

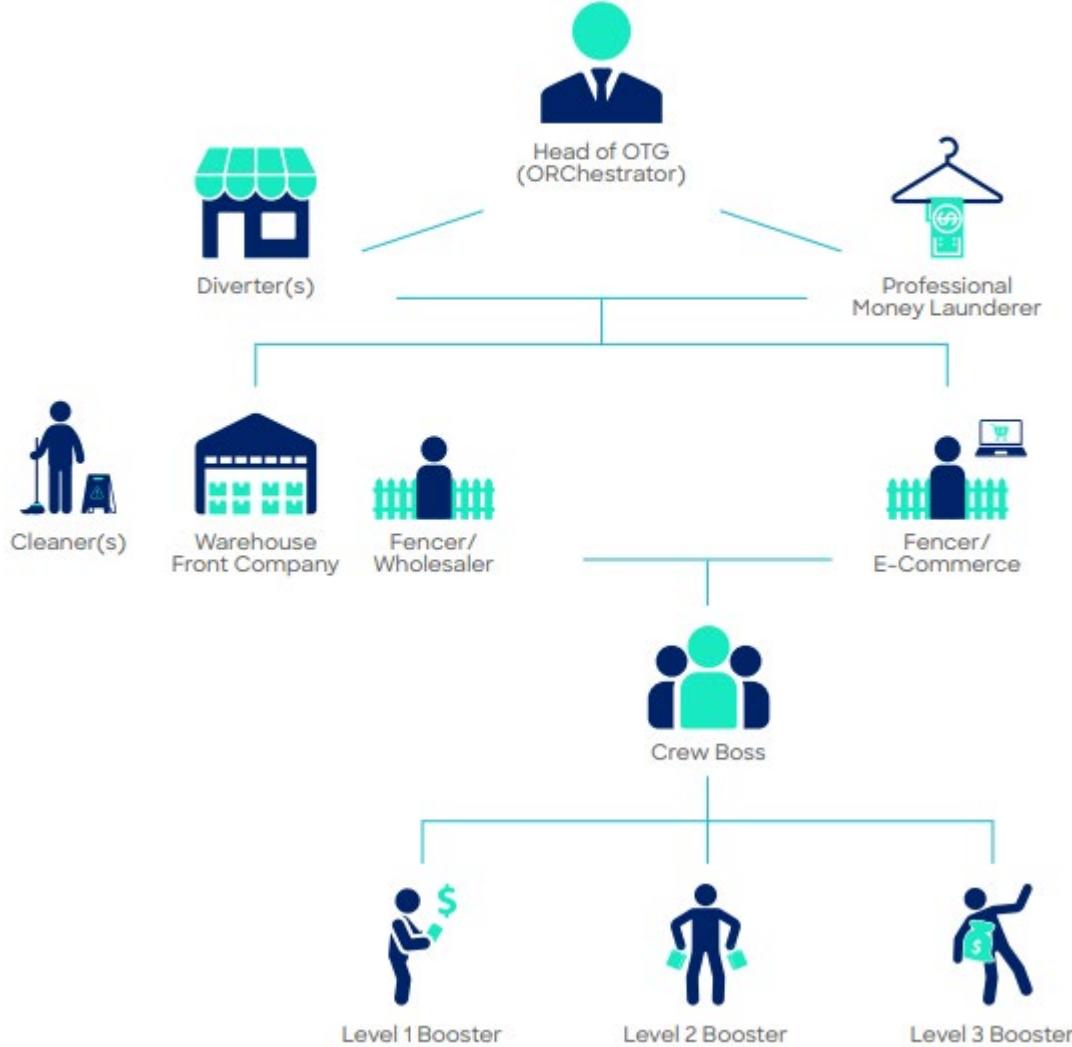
<i>FY ending</i>	<i>Total shrink</i>	<i>% of net sales</i>
Feb 3 2023	\$997M	1.03%
Jan 28 2022	\$796M	0.83%
Jan 29 2021	\$786M	0.88%
Jan 31 2020	\$511M	0.71%
Feb 1 2019	\$468M	0.66%
Feb 2 2018	\$433M	0.63%
Feb 3 2017	\$379M	0.58%
Jan 29 2016	\$336M	0.57%
Jan 30 2015	\$322M	0.57%
Jan 31 2014	\$309M	0.58%
Feb 1 2013	\$315M	0.62%

Table: Gabriel Cortes / CNBC
Source: Company reports

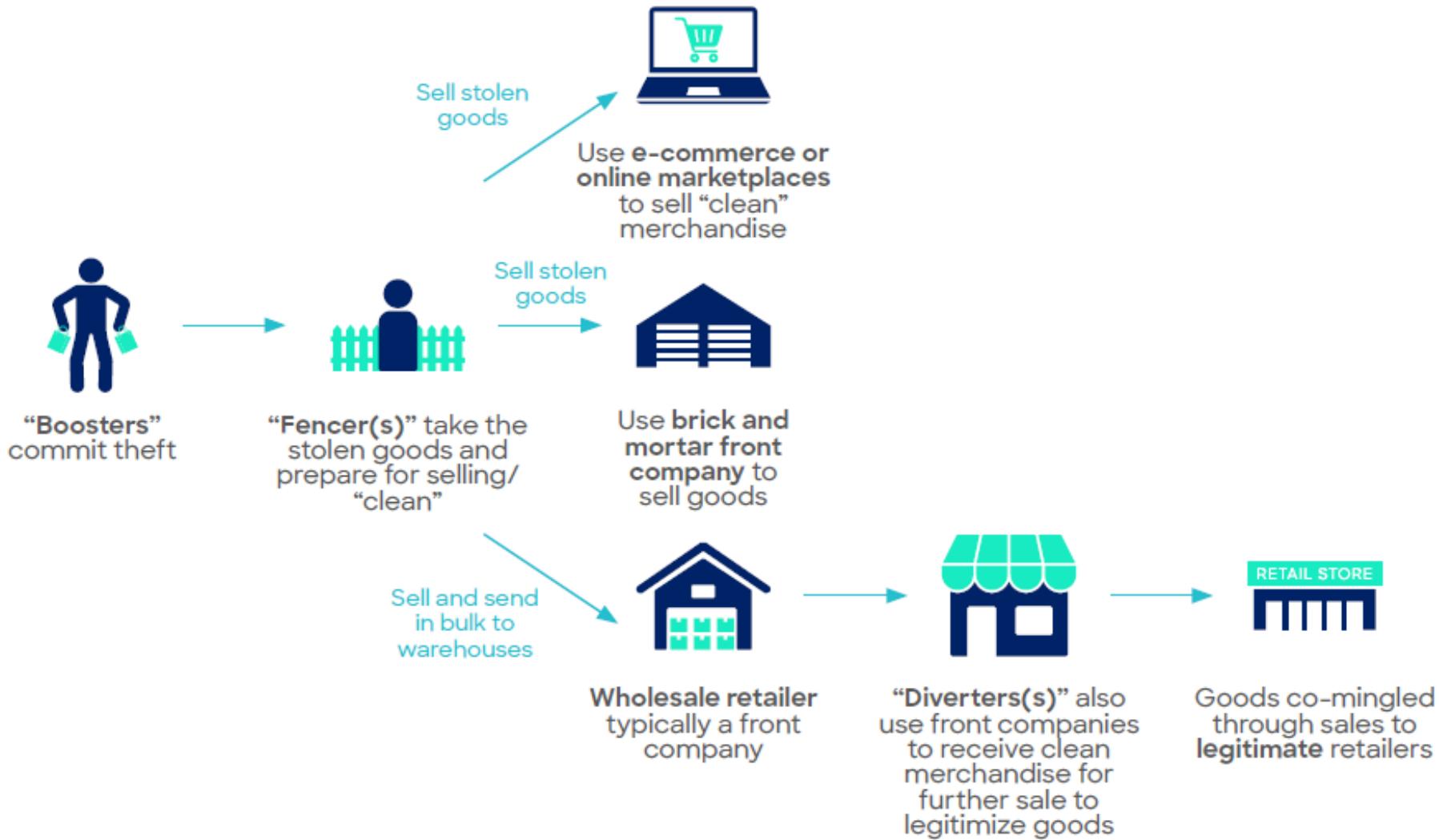




OTG Organizational Structure



The organized retail crime cycle



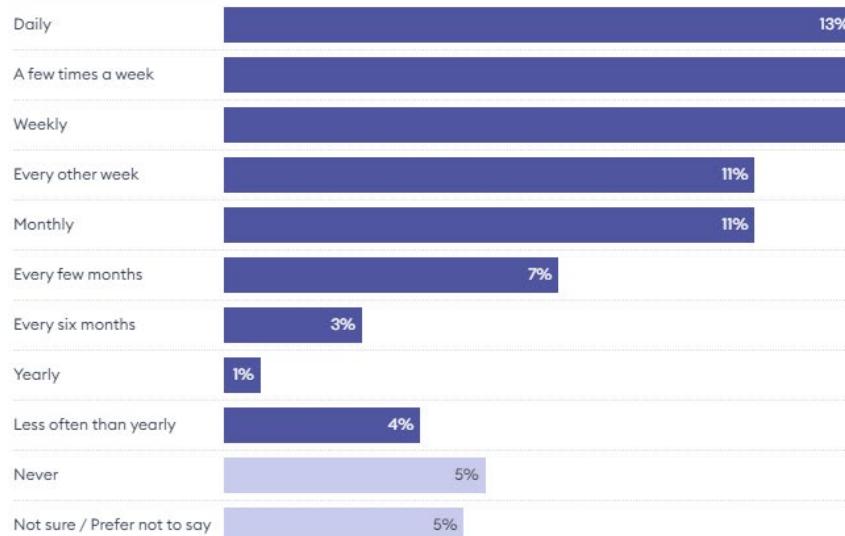
Example: Central America labor trafficking threat



IMPACT OF THEFT ON SMALL BUSINESSES

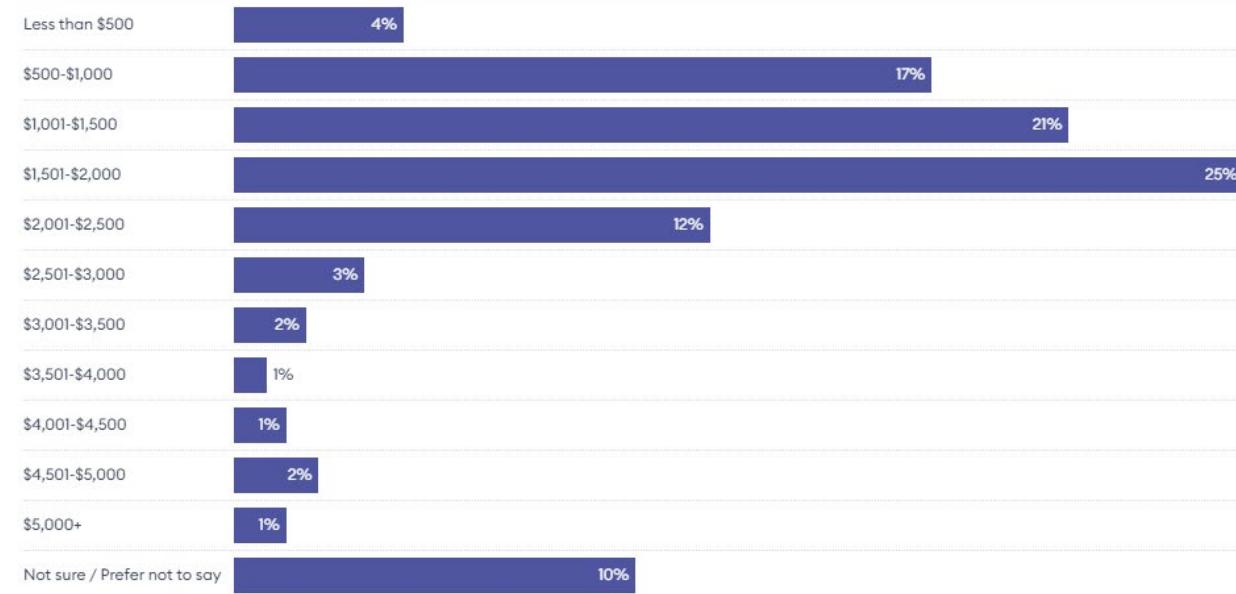
How Often Do Small Business Retailers Experience Theft?

We asked small business owners how often they experience theft by customers at their brick-and-mortar stores.



Estimated Monthly Theft Losses According to Small Business

We asked small business retailers to estimate monthly losses due to theft, and the average was \$1,686.



ORGANIZED RETAIL THEFT IN ALASKA



Marketplace

\$60 · Helly Han... \$50 · Camelbak... \$1,243 · Need it...

\$125 · Dyson Fa... \$1,234 · Downsi... \$1,234 · Downsi...

TV WALL MOUNT
\$1234 · downsi... \$1,234 · downsi... \$1,234 · downsi...

FOREO LUNA...
\$1,234 · downsi... \$1,234 · downsi... \$1,234 · downsi...

GIFT SET FOREO Skin Supreme LUNA
\$1,234 · downsi... \$1,234 · downsi... \$1,234 · downsi...

Mens Sitka Hunting Gear Size L For Both Pants & Pullover Sweater.
\$300 · Sold

Alerts Share Save

Description
Brand new gear, Sitka brand size large. No longer needed, need to get cash back for it asap. So \$300 OBO motivated to sell & move on.

Seller information Seller details

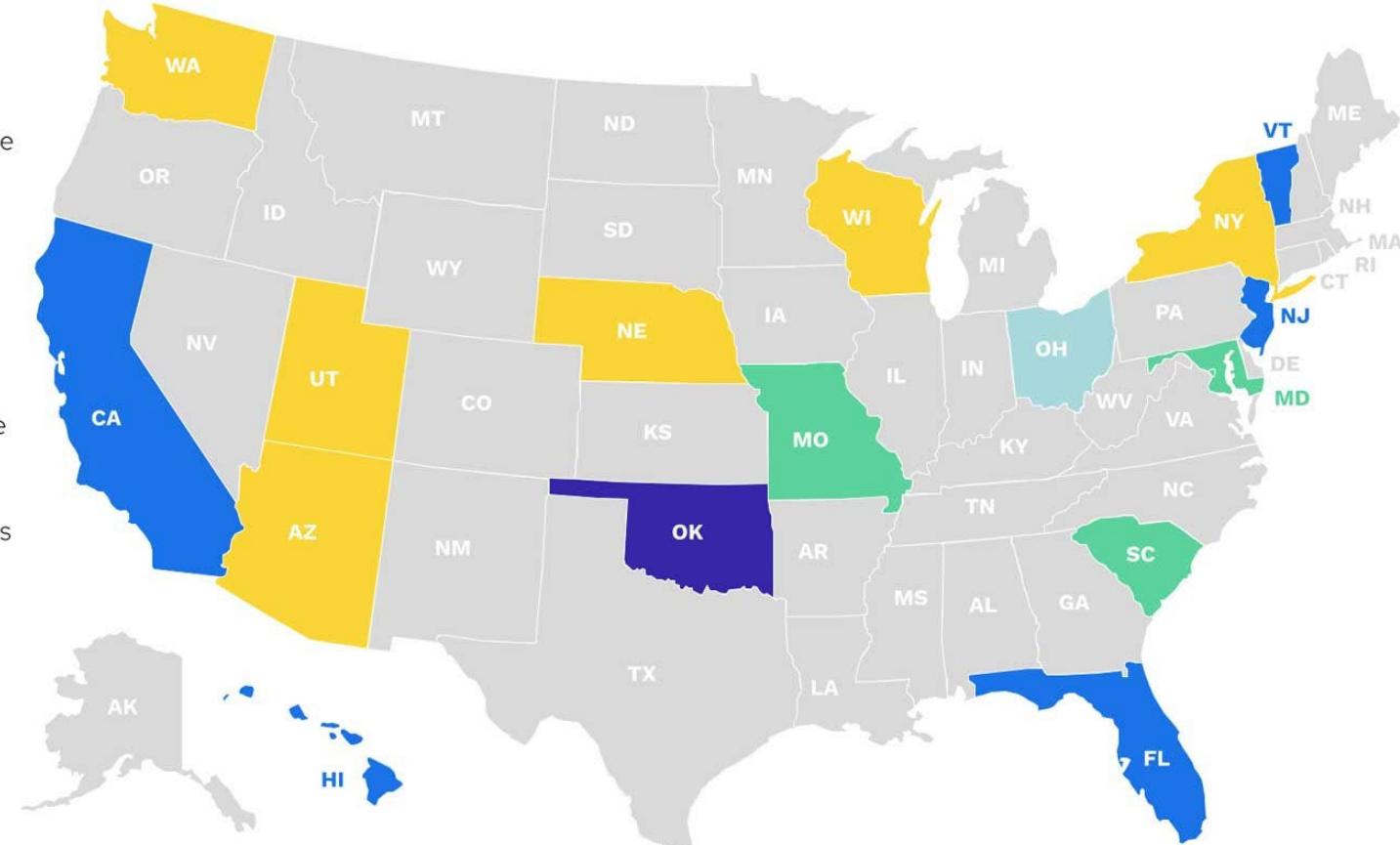
RETAILERS IN ALASKA LOST \$202 MILLION IN REVENUE TO THEFT IN 2022



WHAT IS BEING DONE TO ADDRESS ORGANIZED RETAIL CRIME?

Legislation Addressing Organized Retail Crime (ORC)

- Yellow square: Increase penalties for retail theft
- Dark blue square: Allow prosecutors to aggregate the total value of goods stolen either over a time period or multiple offenses
- Green square: Creates the offense of organized retail crime in the criminal code
- Cyan square: Creates an Organized Retail Crime Task Force
- Light blue square: Introduced legislation that contains multiple provisions on addressing ORC



Source: MultiState Associates, 2024.

WHAT CAN WE DO TO ADDRESS THE PROBLEM?

- **Update the definition of organized retail crime and increase criminal penalties:** States should act to define the crime of “organized retail theft” in criminal law to specify those thefts involving two or more participants and an intention of resale and include increased penalties for those specific violations.
- **The law and prosecutors must hold those who engage in organized and significant retail theft accountable:** Since 2000, at least 40 states have raised the thresholds for the value of stolen goods to trigger a felony charge. In some instances, criminals are taking advantage of these increased higher thresholds to engage in repeated thefts and avoid prosecution. States should reconsider these thresholds and prosecutors should avoid adopting broad non-prosecution policies.

HB 378 DEFINES ORGANIZED RETAIL THEFT AND LOWERS THE THRESHOLD FOR FELONY OFFENSES

Existing Criminal Code (Title 11)	Penalties for Organized Retail Theft (ORT) proposed in HB 378
<u>>\$25,000 = Theft in 1st Degree: Class B Felony</u>	<u>>\$20,000 = ORT in 1st Degree: Class A Felony</u>
<u>\$750 - \$25,000 = Theft in 2nd Degree: Class C Felony</u>	<u>\$2,500 - \$20,000 = ORT in 2nd Degree: Class B Felony</u>
<u>\$250 - \$750 = Theft in 3rd Degree: Class A Misdemeanor</u>	<u>\$500 - \$2,500 = ORT in 3rd Degree: Class C Felony</u>
<u><\$250 = Theft in 4th Degree: Class B Misdemeanor</u>	<u>\$250 - \$500 = ORT in 4th Degree: Class A Misdemeanor</u>
	<u><\$250 = ORT in 5th Degree: Class B Misdemeanor</u>

HB 378 PROPOSES A 2% SALES TAX ON ‘MARKETPLACE FACILITATORS’ – BOTH ONLINE & OFFLINE

- Marketplace facilitator means a person who contracts with a third-party seller to facilitate the sale of the third-party seller’s property, product, or services through a physical retail location or online marketplace operated by the person.
 - The bill sets a minimum sales threshold for marketplace facilitators who must remit the tax at \$100,000 or 200 separate transactions.
- HB 378 establishes an organized retail theft fund in the general fund, intended to be appropriated to local law enforcement agencies to investigate and prosecute organized retail theft and related fraud and property crimes