WOKE RETAILERS – THIS YOU?

Corporations That Embraced Criminal Justice Reform Rhetoric Have Been Fueling Mass Incarceration

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Key Findings

- In recent years, the retail industry has advocated against criminal justice reforms that reduce shoplifting sentences and/or supported harsher anti-shoplifting laws in 18 states. Most of the time — in 11 states — the retail industry prevailed against reformers.
- The retail industry is currently opposing criminal justice reform legislation in California and Illinois.
- The industry exerts its influence against state criminal justice reforms – which seek to alleviate the mass incarceration crisis caused by over-policing communities of color – primarily through state retail industry groups, which are funded by national retail corporations.
- Among the national retail corporations that have funded the most retail groups opposing state criminal justice reforms are:
    - Best Buy, which disclosures show has funded 10 state groups;
    - Lowes, which has funded 9;
    - Home Depot, which has funded 6;
    - Target, which has funded 6;
    - Walmart, which has funded 4; and
    - CVS, which has funded 3.
- 17 of the retail corporations behind advocacy for strict shoplifting penalties have themselves paid penalties for theft – wage theft. They paid millions in penalties and back wages, but no individual executives or managers have been imprisoned for the civil violations.
- The retail industry's top criminal justice policy priority in the states has been keeping the dollar amount over which theft from a retailer can be charged as a felony as low as possible — sometimes as low as $200 (Virginia) and $300 (Florida and Illinois).
- When felony thresholds are raised, the industry supports making exceptions so some thefts under the threshold can be charged as felonies, such as repeat offenses and "organized retail crime," which in some industry-backed state legislation simply means theft with intent to sell (supported in Indiana and signed into law in Arizona and Michigan).

Introduction

In the wake of protests following the killing of George Floyd by Minneapolis police, major retail corporations have released statements expressing concern for the effects of police violence and systemic racism on Black communities.

The statements say the businesses will "move forward – together – in the fight for greater racial equity" (Walmart), "[use] our size, scale and resources to help heal and create lasting change" (Target), "invest in changing the status quo" (Albertsons Safeway) and "stand with all who are committed to change that will bring us closer to realizing an end to discrimination and hatred" (Home Depot). The CEO of Best Buy writes in a statement:

> "What do we do to change the cycle in which black men or women, with tragic frequency, are harmed by those who are supposed to protect them? Or the gut-wrenching truth that to be a person of color in America is often to not feel fully safe, seen or heard? For me, it starts with seeing the situation for what it is, acknowledging these experiences for what they are and, quite simply, apologizing for not doing enough. […] If everything were on the table, what could Best Buy do?"

One way for retail corporations looking to make a difference against systemic racism and police violence would be for them to stop fighting criminal justice reforms.

Best Buy, Lowes, Home Depot, Target, CVS, Walmart and Albertsons Safeway are among the top backers of groups and campaigns that oppose criminal justice reforms – even against clear evidence that harsher sentences are not an effective way to prevent retail theft.

Shoplifting is associated with poverty. It is also associated with mental health problems, particularly opioid addiction. It is also not uncommon – a peer-reviewed psychiatric study estimates about 10% of the U.S. population has shoplifted. FBI data shows property crime rates have plummeted since the 1990s – and we know longer sentences and bigger fines for accused shoplifters do not make a difference.

Instead of backing efforts to further criminalize poverty, retailers should support smart reforms that improve communities instead of fueling America's mass incarceration crisis, which disproportionately harms people of color.

Background

Over the past decade, many state governments – under both Republican and Democratic political control – have taken initial steps toward correcting the mass incarceration crisis, a priority of racial justice advocates. Bipartisan coalitions have emerged to advocate the adoption of criminal justice reforms to end the so-called "tough on crime" policies that fill the nation's prisons with nonviolent property and drug offenders. In a moment of historic partisan polarization, criminal justice reforms have been embraced by a broad spectrum of groups, from civil rights advocates like the Leadership Conference on Civil and Human Rights to corporate-backed libertarian organizations like the Koch brothers' Americans for Prosperity.

Mass incarceration disproportionately harms Black Americans and people of color. Because of inequities in policing and enforcement, Black Americans, who make up only 12% of the adult population, constitute a third of the prison population. Hispanic Americans make up only 16% of the population, but account for nearly a quarter of the prison population. Black Americans make up 30% of theft arrests. When Black Americans are charged with an offense, they are likelier to receive a harsher penalty compared with white Americans. Low-income people of color also disproportionately endure the harshest collateral consequences. With 2.2 million people in its prisons and jails, the United States locks up more of its own citizens than any other nation in the world.

There are a variety of criminal justice reform policies that states have implemented to begin to reverse the crisis of mass incarceration. Recent trends include raising the age accused youths can be tried as adults, decriminalizing marijuana, reducing reliance on private prisons, re-enfranchising former felons in states where they are denied the right to vote, and sentencing reforms. In their efforts to block or roll back reforms, retailers unsurprisingly have focused primarily on sentencing reforms that reduce penalties for shoplifting.

Gallup polls show that Black Americans are more likely than any other group to report unfair treatment while shopping. Stories of racial profiling and facing discrimination for "shopping while Black" are common. After George Zimmerman was found not guilty for killing Trayvon Martin in 2013, President Barack Obama remarked, "There are very few African American men in this country who haven't had the experience of being followed when they were shopping in a department store. That includes me."

When prosecutors bring charges against an alleged shoplifter, the dollar value of the stolen goods is a significant factor in determining the seriousness of the crime and, ultimately, the severity of the sentence. Particularly consequential, in terms of sentencing alleged shoplifters, is the dollar amount separating misdemeanor thefts from felony thefts. The felony threshold varies from state to state, and can mean the difference between relatively short sentence, including no prison time, to years in prison. The traditional distinction between felonies and misdemeanors written into the US Criminal Code is that felony crimes are so severe they carry a minimum punishment of one year of imprisonment, whereas for misdemeanors, one year in prison is the maximum sentence. In 2019, the average dollar value of goods a shoplifter was accused of stealing was $338.

Additional consequences of conviction beyond fines and incarceration can be severe. In 48 states, felons lose their right to vote, at least while serving time, and about half of states impose a lifetime ban on former felons receiving public assistance. Background checks mean jobs and housing also can be denied.

The current patchwork of state laws means shoplifting the same amount can carry widely different consequences depending on the state where the crime occurs. In Texas, shoplifting is not considered a felony unless the value of the goods that were stolen is $2,500 or more. In New Jersey – the state with the lowest felony threshold – the stolen goods' value need only exceed $200 to be considered a felony.

Since 2000, at least 40 states have raised their felony theft thresholds. The Pew Charitable Trusts compared changes in crime rates of states that raised felony thresholds and those that did not between 2000 and 2012 and found that the changes had no effect on property crime or larceny rates. In 24 out of 30 states that raised their felony thresholds between 2000 and 2012, property crime and larceny rates fell, according to Pew's analysis of FBI data. Furthermore, the Pew analysis found no correlation between felony threshold amounts and property crime and larceny rates.

Opponents in the retail sector say raising felony thresholds increases crime. The Alabama Retail Association panned a 2019 effort to raise the state's felony threshold from $500 to $2,500, claiming it would "basically allow shoplifters to steal five times more before they face any punishment of consequence." The Retail Association of Maine's executive director described a 2013 bill to raise the state's felony threshold from $1,000 to $5,000 as "a cost of living increase for the criminals." The Virginia Retail Merchants Association pledged in 2013 to fight to keep the state's lowest-in-the-country felony threshold of $200 from being

increased, asserting the group was "proud of Virginia's business-friendly threshold level."

At the federal level, the primary national groups are the Retail Industry Leaders Association (RILA) and the National Retail Federation (NRF). The NRF releases an annual survey on "shrinkage" — the various ways that theft reduces retail stocks — and estimated its cost in 2019 to be $50.6 billion. The federation also releases a survey on organized retail crime. These annual surveys, which are sometimes widely reported and cited by opponents of raising felony theft thresholds, have been criticized as methodologically weak for being based on surveys of retailers (only 63 in 2019). The survey makes no definition of organized retail crime — a term which can encompass a wide range of crimes — and emphasizes that 97% of its respondents claim to have been victims of organized retail crime in the past year. From this claim of mass victimization, the survey moves on to show that over 70% of its respondents say they want a federal organized retail crime law (though 64% also say they are currently are satisfied with federal law enforcement).

Retail industry groups are 501(c)(6) trade organizations, which not required to disclose their funders, and generally do not voluntarily disclose. However, many retail corporations voluntarily disclose the contributions they make to trade groups. From these disclosures, which are compiled and made searchable by the Center for Political Accountability's Track Your Company database, it is possible to identify many retail corporations that give to retail industry groups. Using this database and disclosures of sponsorships the groups made on their own websites, Public Citizen found the national retail corporations that have funded the most retail groups opposing state criminal justice reforms and/or supporting harsher state anti-shoplifting laws are:

- Best Buy, which disclosures show has funded 10 state groups;
- Lowes, which has funded 9;
- Home Depot, which has funded 6;
- Target, which has funded 6;
- Walmart, which has funded 4.
- CVS, which has funded 3;

For a state-by-state breakdown of retail groups and companies that fund them, see Table 1 below. (For more details, see the more detailed state-by-state descriptions of retail industry lobbying activity that follow this section.)

Table 1: State-by-state overview of retail industry group influence and funders / supporters.

Where	What		Who	
State	What industry tried to do	Did it succeed?	Groups and retailers pushing industry efforts	Retailers and other businesses that fund industry groups
Alabama	Opposed criminal justice reforms	Yes	Alabama Retail Federation	Walgreens Boots Alliance, Home Depot, Best Buy, Lowes
Alaska	Supported criminal justice reform rollback	Yes	National Federation for Independent Business, Anchorage Chamber of Commerce, Liquor Stores NA	(unknown)
Arizona	Supported tougher shoplifting/organized retail theft sentences	Yes	Arizona Organized Retail Crime Alliance	Arizona Retailers Association, Target
			Arizona Retailers Association	Home Depot, Best Buy, Lowes
California	Supported criminal justice reform rollback	Ongoing	Keep California Safe	Albertsons Safeway, Costco, Kroger (Ralph's)
Florida	Supported tougher shoplifting/organized retail theft sentences	Partially	Florida Retail Federation	Walmart, Publix, Disney
Illinois	Opposed criminal justice reforms	Ongoing	Illinois Merchant Retail Association	7-Eleven, Best Buy, CVS Health, Home Depot, Kroger, Target, Walgreens, Walmart
Indiana	Opposed criminal justice reforms	Partially	Indiana Retail Council	(unknown)
	Supported tougher shoplifting/organized retail theft sentences	No	Indiana Retail Organized Crime Coalition	Walmart, Lowes, JCPenney, Target
Maine	Opposed criminal justice reforms	Yes	Retail Association of Maine	Best Buy, Lowes
	Supported tougher shoplifting/organized retail theft sentences	Yes	Retail Association of Maine, JC Penney, Rite Aid, Lowe's, Cabela's, Auto Zone, Maine Grocers and Food Producers Association	(unknown)

Michigan	Supported tougher shoplifting/organized retail theft sentences	Yes	Michigan Retailers Association	DTE Energy Company, Best Buy, Lowes, Home Depot
Mississippi	Supported criminal justice reform rollback	No	National Federation for Independent Business	(unknown)
Montana	Supported criminal justice reform rollback	Yes	Montana Retail Association	Albertson's Food and Drug, Best Buy, CVS Caremark, Home Depot, Kohl's Department Stores, Lowes, Target, Walgreen Company, Walmart
New York	Supported burglary charge for repeat offenders	Yes	Apple Store, Bloomingdale's, Burlington Coat Factory, Century 21, DSW, Gap, Lorde & Taylor, Macy's, Marshall's, Rite Aid, Sephora, Walgreens	n/a
Oklahoma	Supported criminal justice reform rollback	Yes	Oklahoma Retail Merchants Association	Best Buy
	Supported tougher shoplifting/organized retail theft sentences	No	QuikTrip	n/a
Pennsylvania	Supported tougher shoplifting/organized retail theft sentences	Yes	Pennsylvania Food Merchants Association, Wegmans	(unknown)
South Carolina	Supported tougher shoplifting/organized retail theft sentences	Yes	South Carolina Retail Association	CVS Health, Best Buy
Tennessee	Supported burglary charge for repeat offenders	Yes	Walmart	n/a
			Retail Litigation Center	Target, Lowes
Virginia	Opposed criminal justice reforms	No	Virginia Retail Merchants Association	Dominion Resources, Best Buy, Lowes, Target
			Virginia Retail Federation	(unknown)
Washington	Supported criminal justice reform rollback	No	Washington Retail Association	Home Depot, Gap, Best Buy, Lowes

While raising felony thresholds does not increase crime, crime rates do fluctuate for a variety of reasons despite the national downward trend in property crime rates. Criminal justice reform opponents have exploited reported shoplifting

upticks in the efforts to roll back reforms. In Alaska and Montana, retail groups succeeded in their efforts to roll back criminal justice reforms. In California, they could succeed again – a state ballot initiative, Proposition 20, seeks to roll back criminal justice reforms, including by increasing potential penalties for shoplifting. The initiative has qualified for the November 2020 ballot. Albertsons Safeway, a supermarket chain headquartered in Arizona, is among the initiative campaign's top financial backers.

Another trend in state changes to criminal law is the widespread adoption of laws to curb what law enforcement calls "organized retail crime." While the definition of what constitutes organized retail crime is not consistent from state to state, the laws states adopt generally are intended to thwart organized groups who work together to steal and then resell large volumes of goods. According to a web site devoted to advocacy supporting the passage of these laws, at least 34 states have passed organized retail crime laws. Contrary to their intended purpose of combatting organized crime, in many states these laws allow aggressive prosecutors to get around the felony thresholds and pursue felony charges against alleged shoplifters accused of taking goods that are far less valuable, but which are purportedly stolen with the intent to sell rather than for personal use.

The actual content of these laws can vary greatly. The American Legislative Exchange Council (ALEC), an organization known for pushing duplicate bills in front of numerous state legislatures on behalf of its corporate funders, lobbied for an organized retail theft law that created a new class of felony theft. Under ALEC's model bill, an individual who in coordination with at least one other person steals at least $1,000 worth of goods over 180 days or is involved in the sale of these stolen goods can be found guilty of organized retail theft. Other bills, such as New York's 2016 law, do not create new categories of crime and instead enhance law enforcement's capacity to coordinate resources to address instances when crimes span multiple jurisdictions. Arizona's broadly written 2015 law appears to take ALEC's approach to the extreme — it places no dollar threshold on the value of the stolen goods and individuals can commit the crime alone if they resell the stolen goods themselves. The crime is a class 4 felony, which in Arizona means it carries a maximum penalty of three years.

Clearly, law enforcement has a duty to intervene when large-scale organized crime networks engage in rampant theft. In February 2020, federal and local officials in West Virginia worked with investigators with Kroger, CVS and Target, and were assisted by eBay, in bringing down what the U.S. Attorney's Office for the Southern District of West Virginia described as an organized retail theft operation

that allegedly stole nearly 4,000 items valued at nearly $400,000 over the course of two years. But there is a significant difference between the masterminds behind large-scale schemes such as this West Virginia operation and a man in Cottonwood, Arizona who faced felony shoplifting charges after pocketing less than $10 worth of goods from a Walmart.

The misapplication of organized retail crime laws that are written too broadly has the same result as excessively strict shoplifting laws: it contributes to racial enforcement disparities and mass incarceration. This is what a 2018 report in the Journal of Empirical Legal Studies, a peer-reviewed academic journal, found when its authors analyzed discrepancies in shoplifting charging decisions along racial, ethnic and class lines in Texas.

In Texas, "organized retail theft" became a distinct crime, separate from property theft, which includes shoplifting, in 2007. However, the definitions of the crimes in the state's criminal code overlap. The code states:

> A person commits an offense if the person intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barters, sells, or disposes of:
>
> (1) stolen retail merchandise; or
>
> (2) merchandise explicitly represented to the person as being stolen retail merchandise.

The ambiguity in possible charging decisions arises from the fact that anyone who steals from a retailer necessarily "possesses … stolen retail merchandise."[1]

The 2018 report analyzed charging decisions for both laws between January 1, 2012 and August 31, 2015 and found discrepancies in shoplifting charging decisions along racial, ethnic and class lines. The report looks at arrest records for 97,740 individuals whose crime could have been charged as either property theft or organized retail theft. The report found that Black people were twice as likely as white people to be charged with the more serious offense, and that Hispanic people were 20% more likely than whites to be charged with the more serious

[1]The ambiguity was not consequential until 2011, when the law was changed so that organized retail theft would be classified as one category higher than property theft. So, for example, while the felony threshold for property theft was $1,500, for organized retail theft the threshold was $500. This was the case until September 2015, when Texas passed reform legislation raising the felony theft threshold from $1,500 to $2,500 and applying this same threshold to both crimes.

offense. Individuals accused of shoplifting from stores based in more affluent locations were more likely to be charged with the more serious offense.

Interestingly, both law enforcement and some retailers attribute retail theft to the opioid epidemic. Home Depot CEO Craig Menear in 2019 told investors on a call about a theft of goods worth $1.4 million from a warehouse and said "We think this ties to the opioid crisis, but we're not positive about that." Gap Inc.'s executive in charge of loss prevention also ties the opioid epidemic to theft, saying that it is "driving people who are educated and have access to wealth to make decisions or to do things that they typically wouldn't do." In Tennessee, a spokesperson for the Knox County sheriff's office says addicts steal goods, then return them in exchange for gift cards, which they sell for drug money.[2] In Michigan, the Kent County Prosecutor said, "Retail fraud seems to be exploding and I think a lot of that has to do with opioid addiction and addiction in general.''

One reason this connection between the opioid epidemic and retailers is so important is that several of the retailers supporting tougher shoplifting penalties are themselves implicated in the epidemic (see Table 2). Albertson's Safeway, Costco, CVS, Rite Aid and Walgreens all have paid millions to settle allegations of opioid-related violations, primarily improper prescribing practices that allowed prescription opioids to be diverted for abuse and black-market sales. None of the settlements mention a single retail company executive, manager or employee being sentenced to prison or otherwise held individually accountable for the alleged violations. None of the companies were even required to admit they did anything wrong.

According to a shocking ProPublica report, Walmart would have faced a criminal indictment for opioid violations had Trump's political appointees at the Department of Justice not overruled prosecutors.

SEC filings show that all six of these retailers and pharmacy chains are named in numerous claims among the 2,000 lawsuits consolidated in the multi-district opioid litigation before federal court in Ohio.

[2] Knox County is where prosecutors are working with Walmart to charge repeat offender shoplifters with felony burglary.

Table 2: Retail corporations opposing criminal justice reforms that have faced opioid-related enforcement actions.

Retail Corporation	Year	Opioid Enforcement	Source
Albertsons Safeway	2020	An Albertsons-owned pharmacy in Casper, Wyoming, agreed with the DOJ to pay a $1 million settlement for alleged violations of the Controlled Substances Act. DOJ alleges the pharmacy illegally filled large volumes of Oxycodone prescriptions that served no medical purpose.	DOJ press release
		According to its SEC filing, Albertsons also is named in at least 70 lawsuits accusing the corporation of unlawful opioid distribution, including the multi-district litigation consolidating more than 2,000 cases.	SEC filing
Costco	2020	According to its SEC filing, Costco is named in at least 83 cases (in 43 states and America Samoa) in the multi-district opioid litigation consolidating more than 2,000 cases.	SEC filing
	2017	Costco agreed to pay $11.75 million for alleged violations of the Controlled Substances Act. The DOJ settlement, which notes compliance with the law is important for combatting the opioid epidemic, "resolves allegations that Costco pharmacies filled prescriptions that were incomplete, lacked valid Drug Enforcement Administration (DEA) numbers or were for substances beyond various doctors' scope of practice. Additionally, the settlement resolves allegations that Costco failed to keep and maintain accurate records for controlled substances at its pharmacies and centralized fill locations."	DOJ press release
CVS	2020	Omnicare (a CVS subsidiary) agreed to pay $15.3 million for allegedly allowing opioids to be improperly dispensed, according to the DEA.	DEA press release
	2020	According to its SEC filing, CVS is named in "hundreds of federal cases" in the multi-district opioid litigation consolidating more than 2,000 cases, plus "a significant number" of cases in state courts, and also cases filed by state attorneys general. The pharmacy chain is also under investigation regarding its opioid prescribing practices by state and federal authorities.	SEC filing
	2019	CVS agreed to pay $535,000 to settle allegations its Rhode Island stores for filling painkiller prescriptions that pharmacists had reason to believe were forged, according to the DEA.	DEA press release

	2018	CVS agreed to pay $1.5 million to settle allegations stores in New York counties failed to timely report the theft of opioids and other drugs, a violation of the Controlled Substances Act	DOJ press release
		CVS agreed to pay $3.5 million to settle federal allegations of failing to prevent drugs, "mostly addictive painkillers," from being diverted from Massachusetts pharmacies.	DOJ press release
	2016	CVS agreed to pay $795,000 to settle allegations from the Massachusetts Attorney General that the company failed to provide pharmacists access to a required prescription monitoring program, which helps deter opioid overprescribing by providing patients' prescription histories.	Mass. AG press release
		CVS agreed to pay $8 million to settle federal allegations of dispensing controlled substances, "including oxycodone, fentanyl and hydrocodone," with no legitimate medical purpose.	DOJ press release
	2015	CVS agreed to pay $450,000 to settle federal allegations of filling invalid prescriptions, including for opioid painkillers, and maintaining deficient records, in Rhode Island pharmacies	DOJ press release
Rite Aid	2020	According to its SEC filing, Rite Aid is named in the multi-district opioid litigation consolidating more than 2,000 cases, plus "a significant number" of cases in state courts and other cases. The pharmacy chain is also under investigation by state and federal authorities.	SEC filing
	2019	Rite Aid agreed to pay $177,000 to Massachusetts' Naloxone Fund to settle allegations the pharmacy chain improperly dispensed opioids and other drugs.	Mass. AG press release
	2009	Rite Aid and nine of its subsidiaries agreed to pay $5 million to settle allegations of Controlled Substances Act violations, including shortages and surpluses of opioids that indicate, according to the DOJ, a pattern of non-compliance with the law and regulations.	DOJ press release
Walgreens	2020	According to its SEC filing, Walgreens is named in the multi-district opioid litigation consolidating more than 2,000 cases, plus "numerous" of cases in state courts, and also cases filed by state attorneys general. The pharmacy chain is also under federal investigation for Controlled Substances Act violations.	SEC filing
	2017	Walgreens agreed to pay $200,000 to Massachusetts' Naloxone Fund to settle allegations the pharmacy chain improperly dispensed opioids and other drugs.	Mass. AG press release

	2013	Walgreens agreed to pay $80 million to settle federal allegations the pharmacy chain "committed an unprecedented number of record-keeping and dispensing violations" of the Controlled Substances Act, including allegedly allowing opioids to be diverted for abuse and black-market sales.	DEA press release
Walmart	2020	According to its SEC filing, Walmart is named in the multi-district opioid litigation consolidating more than 2,000 cases, plus "numerous" of cases in state courts, and also cases filed by state attorneys general. The pharmacy chain is also under investigation from "governmental entities related to nationwide controlled substance dispensing and distribution practices involving opioids."	SEC filing
	2018	Federal prosecutors sought to bring charges against Walmart for improper opioid prescribing practices. When Walmart pharmacists sought guidance for when they received large numbers of improper prescriptions, Walmart's compliance manager reportedly said the retailer's emphasis should be on "driving sales." Trump political appointees reportedly overruled the career prosecutors who sought the indictment, and the DOJ declined to prosecute Walmart.	ProPublica investigation

It is also noteworthy that law enforcement's approach to theft is very different when the retailers themselves are the thieves. When retailers fail to pay workers fully for their time spent working, they commit wage theft. A 2017 Demos report details the stark differences between shoplifting enforcement and wage theft enforcement. The report notes that shoplifters can be charged with a felony and sent to prison for stealing more than $2,500 in any state, while wage thieves until recently were required only to repay the stolen wages plus an equal amount in liquidated damages (that is, a total of double the stolen wages). In June, Trump's Labor Department made an announcement, using the coronavirus pandemic as a pretext, that its default position would be to only require employers to pay back the amount of wages that were stolen. According to the Demos analysis, 358,000 retail industry workers are cheated by minimum wage violations. Employers that fail to pay workers at least minimum wage reportedly steal an estimated $15 billion from their employees each year. While some local prosecutors, such as the Manhattan District Attorney, are reportedly prepared to bring more criminal

indictments against businesses accused of wage theft, corporate defense attorneys representing businesses against such charges call them "outrageous" and "unfair."

A search of wage and hour violations on Good Jobs First's Violation Tracker database shows at least 17 corporations that back groups that support tougher shoplifting penalties have settled wage theft[3] violations (see Table 3). Collectively, these businesses settled at least 57 wage theft cases – all through civil enforcement, with no apparent individual accountability or prison time for the executives or managers responsible for cheating workers out of their pay. The biggest enforcement action by far was an enforcement action the Department of Labor settled with Walmart in 2007, which required the retailer to pay $33 million in back wages plus interest to 86,680 employees, who the retailer underpaid for overtime work.

[3] For this analysis, wage theft is defined as violations categorized by Violation Tracker as Fair Labor Standards Act violations enforced by the Occupational Safety and Health Administration's Wage and Hour Division, excluding child labor violations, and state enforcement actions related to employers underpaying workers.

Table 3: Corporations opposing criminal justice reforms that have faced enforcement actions for wage theft since 2003.

Corporation	Number of Wage Theft Enforcement Actions	Total Penalties Paid for Violations
Walmart	7	$43,274,663
Aetna	6	$1,234,393
Costco	3	$458,467
Kroger	4	$185,788
7-Eleven	12	$160,938
Coca-Cola	4	$155,895
Target	1	$88,500
Staples	1	$76,699
Macy's	4	$64,524
CVS Health	4	$36,305
Lowe's	1	$30,375
Home Depot	3	$27,329
AutoZone	2	$24,804
Walgreens	2	$18,870
Best Buy	1	$7,500
Meijer	1	$7,245
Save-A-Lot	1	$5,521
Total	**57**	**$45,857,816**

Source: Violation Tracker

In fact, it has become a general rule that corporations facing federal criminal charges receive extraordinary lenience from law enforcement, even – or rather, especially – from President Trump, notwithstanding the president's "tough on crime" rhetoric. Instead of prosecution, corporations that are accused of crimes – including repeat offenders – typically strike deals with the government that allow them to avoid prosecution completely. These leniency agreements – which were originally developed to help first-time, nonviolent offenders avoid prison time – enable massive corporations to avoid accountability for their crimes even as they insist on the toughest possible consequences for shoplifters. Among the corporations supporting retail industry groups that advocate for tougher shoplifting penalties, Walmart, Rite Aid and CVS have resolved criminal investigations by entering a leniency agreement with the DOJ (see Table 4).

Table 4: Corporations opposing criminal justice reforms that have resolved federal criminal investigations with leniency agreements.

Corporation	Crime	Outcome	Year
Walmart	Violations of the Foreign Corrupt Practices Act in Mexico, India, Brazil, and China between 2000 and 2011, involving the company paying bribes public officials. (DOJ press release.)	Non-prosecution agreement	2019
Rite Aid	Controlled substances violations – specifically unlawful sales of pseudoephedrine, which is used to make the illegal drug methamphetamine. (DOJ fact sheet)	Non-prosecution agreement	2018
CVS Health	Controlled substances violations – specifically unlawful sales of pseudoephedrine, which is used to make the illegal drug methamphetamine. (CVS press release)	Non-prosecution agreement	2010

Source: Duke University / University of Virginia Corporate Prosecution Registry

In recent years, the retail industry has opposed criminal justice reforms and/or supported harsher anti-shoplifting laws in at least 18 states. Most of the time — in ten states — the retail industry prevailed against reformers. The retail industry is currently opposing criminal justice reforms and/or calling for harsher anti-shoplifting laws in two states — California and Illinois.

In July, Matthew Shay, president of the National Retail Federation, joined the national conversation following George Floyd's killing with a post on LinkedIn. Shay writes,

> Racism is a real problem in this country, and we all share the responsibility to address it. It requires leadership in the municipal, state and federal levels of government, in our schools, our places of worship, our businesses and our homes, so we can work together — honestly, transparently and inclusively — to find solutions.

Among the welcome actions Shay says retailers are doing is "supporting organizations that drive change," and lists among the groups retailers are supporting several that support meaningful criminal justice reforms: the Equal Justice Initiative, the NAACP and the Lawyers Committee for Civil Rights Under Law. It remains to be seen how the largest national retail lobby group will reconcile its industry's anti-reform efforts with support for groups that fight mass incarceration. Hopefully, this is a sign the industry is already moving in the right direction – and that highlighting the industry's harmful lobbying efforts will allow it to put these policy positions behind it, making the rapid changes the country requires for progress.

How the Retail Industry Tried to Derail Criminal Justice Reforms in Each State

This analysis divides retail industry efforts against criminal justice reforms into three categories: states where the industry opposed criminal justice reforms, states where the industry supported harsher penalties for retail theft, and states where retailers and prosecutors work together to bring felony burglary charges against shoplifters.

The full list of states and where they appear in the analysis is below.

- **States Where the Retail Industry Opposed Criminal Justice Reforms**
  - Alabama
  - Alaska
  - California
  - Illinois
  - Indiana
  - Maine
  - Mississippi
  - Montana
  - Oklahoma
  - Virginia

- **States Where the Retail Industry Supported Harsher Penalties for Theft**
  - Arizona
  - Florida
  - Michigan
  - Pennsylvania
  - South Carolina
  - Washington

- **States Where Prosecutors Use the "Walmart Burglary" Strategy to Increase Shoplifting Penalties**
  - Tennessee
  - New York

In states where the industry both opposed reforms and supported harsher penalties, the state is included in the first category.

States Where the Retail Industry Opposed Criminal Justice Reforms

Alabama

In 2003, Alabama raised its felony threshold from $250 to $500, where it remains.

During the 2019 legislative session, two separate bills to raise the felony threshold were introduced, one that would raise the threshold to $2,000 and another that would raise it to $2,500.

The Alabama Retail Association fought both bills and supported a third bill that would make it easier for police to arrest shoplifters. Of the bill to raise the threshold to $2,500, the association claimed it would "basically allow shoplifters to steal five times more before they face any punishment of consequence."

According to corporate disclosures, the state association's corporate backers include Walgreens Boots Alliance (the parent corporation of Walgreens, Boots and other pharmacies, which gave it $20,000 in 2018), Home Depot (which gave the association at least $15,000 between 2016 and 2018), Best Buy and Lowes (the latter two of which did not disclose the amounts of their contributions).

Both of the 2019 bills to raise the threshold died in committee.

In February of 2020, Rep. Jim Hill, the Republican sponsor of the bill raising the threshold to $2,000, introduced a new bill to raise the threshold to $1,500. The association published an article on the proposal, inaccurately claiming "[t]hat 200% increase would allow shoplifters to steal three times more before they face any punishment of consequence." As written, the bill would reclassify theft of less than $1,500 as a class A misdemeanor, which, in addition to fines, means it would carry a maximum sentence of one year in prison.

The bill died in committee in May 2020.

Alaska

In 2016, Alaska Governor Bill Walker signed into law SB 91, a bipartisan criminal justice reform bill intended to reduce the state's prison population. The bill raised the felony threshold from $750 to $1,000 and eliminated the policy of aggregating thefts when the value of stolen goods is less than $250. In anticipation of the problem of the threshold value decreasing over time, the bill also included a unique provision that makes the felony threshold automatically increase with inflation. In effect, this prevents the threshold from gradually creeping downward over time, which if not prevented would lead to increased penalties for the sole reason that the price tag of the goods increased over the years even if their actual value did not. Proponents predicted the bill, the product of extensive research, would save $380 million in prison and legal spending over the decade after its signing.

In 2017, Walker backtracked, signing into law a bill that returned the felony theft threshold to $750.

The National Federation of Independent Business (NFIB), which purports to represent small businesses, took credit for rolling back the felony threshold. The group sent a letter to Gov. Walker, apparently on behalf of its Alaska retail members, in support of the rollback bill, stating, "Our members are experiencing substantially more theft by these same people as a result of the lack of tools our police have to deal with petty theft." After its passage, NFIB issued a celebratory press release, declaring the new law "a huge victory for NFIB members and all small businesses."

Other business groups that lobbied for the rollback bill include Liquor Stores NA, which runs Alaska liquor store chain Brown Jug, and the Anchorage Chamber of Commerce.

Then, in November 2018, Republican Mike Dunleavy defeated the independent Walker in Alaska's three-way gubernatorial race. Dunleavy ran an explicitly Trump-aligned campaign, vowing to "Make Alaska Safe Again" and explicitly campaigning on repealing SB 91.

Less than a year later, Alaska's legislature passed and Dunleavy signed legislation to "repeal and replace" the criminal justice reform law.

The NFIB in a subsequent post on its on its website states takes some credit for the earlier rollback bill, the repeal and replace bill, and a third piece of legislation that allows judges to jail defendants who the reform law required be released:

> Crime became a big issue in the Legislature. Last year, NFIB was able to get the dollar lever for felony crimes back down to $750 along with several other major corrections to Senate Bill 91, the major crime reform bill of 2016. This year, the Legislature, in House Bill 312, granted judges more flexibility to hold offenders while awaiting trial and the ability to consider out-of-state charges when making pre-trial release decisions.

California (current battleground)

California has long been a battleground for criminal enforcement policy. In 1994, the state's infamous "three strikes" law made it so anyone convicted of a third felony would receive a mandatory minimum sentence of 25 years to life in prison. A 2004 study by the American Bar Association found that as a result of the law, which was unique among states with similar laws in that the third felony "strike" included nonviolent crimes such as theft, at least 360 Californians were serving life sentences for shoplifting.

In 2011, the U.S. Supreme Court decision in *Brown v. Plata* upheld a lower court's finding that the state's overcrowded prisons violated the Fourteenth Amendment's Cruel and Unusual Punishments Clause. The court ordered the state to reduce the number of prisoners in its overcrowded prisons by 33,000. At the time, the state's prisons housed twice the number of inmates they were built for.

In 2012, voters approved a ballot initiative to exclude nonviolent offenders from the three strikes law. More recently, voters in 2014 passed Proposition 47, a reform initiative that reduced some drug and theft-related felonies, including shoplifting, to misdemeanors. The law also raised the felony theft threshold to $950 from $400 retroactively reduced sentences for anyone previously convicted of these offenses.

This year, a ballot initiative, Proposition 20, dubbed by proponents as the Reducing Crime and Keeping California Safe Act, seeks to roll back many of Proposition 47's reforms and increase penalties for shoplifting. The initiative has qualified for the November 2020 ballot.

Part of the backlash has been driven by an increase in some crimes in some California counties after Proposition 47 went into effect. According to the Los Angeles Times, some counties saw sharp shoplifting increases in 2015, and critics point to these increases as an unintended consequence of the reforms. In subsequent years, however, shoplifting across the state dropped to its lowest levels in ten years.

Major supporters of the 2020 initiative to roll back reforms include bail companies, police unions and grocery stores.

The New York Times reports that Albertsons Safeway blames reforms for an increase in shoplifting. Campaign finance records show that Albertsons Safeway, which is based in Arizona, contributed $100,000 toward the effort in 2018. Other major retailers that have made contributions toward the Proposition 20 campaign include Ohio-based Kroger ($91,000 through its Ralph's subsidiary) and Washington-based Costco ($50,000). The California Business Roundtable contributed $15,000. Including contributions from several smaller local grocery stories, business interests collectively contributed more than $350,000 to support Proposition 20 as of early October.

According to the Los Angels Times, Costco has reportedly withdrawn its support for the ballot initiative.

Over the summer, Safeway and Ralph's were criticized for supporting the initiative by California Safety and Justice, a group organizing against the ballot initiative.

In response, initiative proponents posted an ad [on Twitter](#) thanking the grocery chains for their support.

Illinois (current battleground)

Policy conflicts between retailers and reformers are happening in Illinois at both the state and local level.

At the local level is the Cook County State's Attorney, the top law enforcement official for the city of Chicago and its surrounding Cook County suburbs. Kimberly Foxx, who campaigned on criminal justice reform and police accountability, unseated the incumbent state's attorney and was sworn in on Dec. 1, 2016.

One of Foxx's first official actions that December was to raise the county's felony theft threshold for repeat offender shoplifters from $300 to $1,000.

The retailers' state trade group reacted with outrage. Rob Karr, president of the Illinois Merchant Retail Association, told DNA Info Chicago that the policy change left him "extraordinarily shocked and disappointed" and that it was "tantamount to declaring open season on retail stores."

On its policy and positions page, the Illinois Merchant Retail Association makes clear its dedication to preserving the state's anti-theft laws:

> Illinois' retail theft laws are recognized as among the best in the country. IRMA will oppose efforts to undermine existing retail theft laws and ensure that retail theft is treated as the serious crime that it is.

The trade group does not disclose the identities of its corporate members, but its web site thanks the corporate sponsors of its annual meeting, which include major retailers such as 7-Eleven, Best Buy, CVS Health, Home Depot, Kroger, Target, Walgreens and Walmart.

Illinois' retail theft law is particularly strict. The crime is a Class 4 felony carrying a sentence of one to three years in prison when the stolen property is valued at $300 or more ($150 if the property is motor oil). The law additionally states that the crime automatically becomes a felony regardless of the value of the stolen goods if the offender is found guilty of retail theft a second time, making it a "two strikes" law.

Foxx isn't the only Illinois elected official fighting for criminal justice reform. In fact, a commission of lawmakers, law enforcement officials, academics, and other experts convened by the state's then-governor, Republican Bruce Rauner,

recommended in its final report raising the threshold to $2,000 and eliminating the automatic felony upgrade for repeat offenders.

As a result of Foxx's policy change, the number of felony shoplifting cases the Cook County State's Attorney's Office dropped from about 300 per month to about 70, according to data the office released. Felony shoplifting had been the second most frequent charge from the office in 2016. By mid-2019, it was eighth. At the same time, Foxx's office increased enforcement against illegal gun usage.

After a reported increase in Cook County thefts in 2018, the Illinois Retail Merchants Association was quick to blame the increased felony threshold. "Thieves have declared open season on small business owners in the retail industry and it has taken a toll on their patience, their finances and continually threatens the safety of employees in the convenience and grocery sectors," the group's general counsel told a local CBS affiliate. The state's attorney's office responded that raising the threshold enabled prosecutors to focus on violent crime.

At the state level, the Illinois General Assembly is considering HB 1614, legislation that would act on the criminal justice reform commission's recommendation by raising the statewide felony retail theft threshold to $2,000 and eliminating the automatic felony upgrade for repeat offenders.

The retail groups lobbying against the bill include the Illinois Retail Merchants Association, the Illinois Chamber of Commerce, the Illinois Petroleum Marketers Association, the Illinois Association of Convenience Stores, the Illinois Food Retailers Association and the National Federation of Independent Business. Several retailers also lobbied against the bill, including Save-a-Lot (a national discount grocery chain), Martin & Bayley, Inc. (the parent company of Huck's Food and Fuel, a midwestern convenience store chain), FKG Oil Company (the parent company of Moto Mart, a midwestern convenience store chain) and Sullivans Foods (an Illinois grocery chain).

Despite the opposition, the bill advanced out of the Judiciary Committee and continues to gather co-sponsors. Illinois legislature is scheduled to reconvene on Nov. 17.

Indiana

Before 2013, any theft at all in the state of Indiana, regardless of the value of the stolen goods, was categorized at least as a Class D felony, meaning the crime carried a sentence of between six months and three years in prison. That year, the state enacted legislation that put into place a variety of changes to its criminal code, including the creation of a $750 felony threshold for theft.

The legislation, which was signed into law by then-Gov. Mike Pence, reduced sentences for lesser offenses while raising sentences for more serious offenses. The Charles Koch Institute, a nonprofit funded by one of the conservative billionaire brothers more well-known for their dark money and partisan political spending, supported the bill. (The bill also eliminated mandatory minimum sentences for certain drug offenses. Libertarian criminal justice reform advocates criticized Pence in 2016 for backtracking on the reforms when he reinstated the 10-year mandatory minimum for repeat offenders convicted of selling heroine or methamphetamine.)

The retailer lobby did not acquiesce to the $750 felony theft threshold without a fight. The Indiana Retail Council lobbied for and won a technical change that would allow misdemeanor shoplifters to be charged even if police did not witness the crime, which is generally required in order for police to make a misdemeanor arrest in Indiana. The group also expressed that the felony threshold itself was a "huge problem" and called for its removal.

The $750 threshold would remain, but in the meantime a coalition of retail corporations and law enforcement officials organized as the Indiana Retail Organized Crime Coalition pressed for tougher laws against organized retail crime. The coalition supported legislation introduced in 2015 that would taking goods from a retailer with an intent to sell, regardless of the value of the goods, a Level 5 felony — meaning it would carry a sentence of between one and five years.

According to a history of the group on an organized retail crime advocacy website, the group's web site is funded by Walmart. The coalition's founding members include Grant Monahan, the president of the Indiana Retail Council, and loss prevention directors and managers of Lowes, Wal-Mart, JCPenney and Target. Russ Sering and Rick Jones of the Indianapolis Police Department and Andrew Wignall of the Marion County Prosecutor's Office are also founding members of the group. The group's president is Matt Thompson, a regional security director for Lowes.

In 2019, a version of the of the retailer-supported anti-organized retail theft bill was introduced by Indiana Rep. Sharon Negele. The bill passed out of the state House, but did not become law. After the end of the legislative session, Monahan vowed to keep advocating for the policy, writing in a letter to the editor published in the Indianapolis Star, "The 2019 session of the General Assembly has adjourned, but it is time for legislative leadership to support meaningful retail theft legislation that is aimed at thieves who are stealing for the purpose of reselling merchandise on the Internet or through local means in the community."

Maine

In Maine, retailers successfully blocked legislation raising the felony shoplifting threshold and won passage of strict legislation making organized retail theft into felony.

Maine's criminal code uses a letter system to categorize crimes as class A, B, C, D, or E. Class A and B crimes are felonies and class C crimes, which carry a minimum sentence of one year in prison, and higher are misdemeanors.

In 2013, Maine legislators proposed a bill to raise theft felony threshold from $1,000 to $5,000, which retailers opposed. "No one wants to condone the stealing of anything, but from my perspective we need to reserve felonies for the most serious of crimes," said Sen. Roger Katz, the Republican who introduced the bill. "It's also important because we have limited resources in our prisons and jails, and we really want to reserve those places for the most serious offenders."

But the executive director of the Retail Association of Maine dismissed the proposal as "a cost of living increase for the criminals," and the general manager of Marden's, a local retail chain, said he opposes the bill. The director of loss prevention for Kittery Trading Post said misdemeanor penalties are "a cost of doing business" for organized retail criminals.

According to Maine's criminal code, the maximum penalty for a class D crime (misdemeanor) is 364 days of incarceration and a $2,000 fine.

The 2013 reform bill died in committee.

Meanwhile, retailers' lobbying efforts succeeded in increasing shoplifting penalties. The Retail Association of Maine supported, and Maine's legislature passed, LD 310, a law purportedly intended to increase penalties for organized

retail crime. Specific offenses the broadly written law defines as a felony are "theft of retail merchandise by 2 or more people acting in concert, including an employee of a retail establishment" and "altering, affixing or presenting of a false product code or sales receipt in order to obtain or exercise unauthorized control over merchandise from a retail establishment." The bill, which went into effect in 2015, categorizes these offenses as class C crimes — punishable by up to five years of incarceration and up to a $5,000 fine.

According to the retail association, retailers that testified in favor of the bill include JC Penney, Rite Aid, Reny's, Mardens, Kittery Trading Post, Lowe's, Cabela's, Hannaford and Auto Zone. The Maine Grocers and Food Producers Association also testified in support on the bill. The Center for Political Accountability's Track Your Company database shows that Best Buy and Lowes fund the association.

Mississippi

In 2014, Mississippi enacted House Bill 585, which implemented 19 criminal justice reform policy recommendations to reduce the state's ballooning prison population. At the time, the state had (and still has) one of the highest imprisonment rates in the country — a problem that advocate Margaret Winter of the ACLU's National Prison Project described as "a crisis of over-incarceration." A bipartisan audit of the state's prison system found that three-quarters of the state's prisoners are nonviolent and that failing to proceed with reforms could cost the state as much as $266 million.

Among the reforms enacted was an increase to the felony theft threshold to $1,000 from $500. The 2014 bill also made involvement in an "organized theft or fraud enterprise" a felony offense. The bill defined the offense as a theft involving at least two people who are involved in the conduct engaged in transferring or selling the stolen goods. Pew Charitable Trusts provided "intensive technical assistance" in developing the bill's policy reforms.

The National Federation of Independent Business (NFIB), which claims to represent small and independently owned businesses but often lobbies for big business priorities, in 2019 supported at least two failed bills related to retail theft, one to make it easier to charge individuals with felony organized retail theft and one to create a new crime category of shoplifting. NFIB says the organized retail theft bill [w]ould have corrected a loophole in current law to ensure a ring of shoplifters can receive a felony conviction for multiple offenses." The anti-

shoplifting bill — which even the NFIB conceded was "possibly too severe to get passed" — would make it so a first-time offender accused of stealing goods valued at $250 or less could be jailed for up to six months. A third shoplifting conviction of goods valued at $100 or more would be considered a felony offense, punishable by up to five years in prison. A version of the bill failed again in 2020.

Montana

Montana raised its felony theft threshold from $1,000 to $1,500 in 2009. Nevertheless, the state's prison population continued to increase. In 2015, lawmakers launched a bipartisan initiative to identify policies that would reduce overincarceration, and that initiative culminated in the 2017 passage of ten pieces of legislation, collectively referred to as justice reinvestment bills. Among the reforms instituted by one of the bills, House Bill 133, is the elimination of six months of imprisonment as a possible penalty for a first-time offender accused of misdemeanor theft. The law also reduced the maximum fine for first-time misdemeanor theft from $1,500 to $500.

The rollback came two years later. The Billings Gazette reports that retailers and police were the driving force pushing 2019 legislation to make incarcerating first-time theft offenders easier again. The legislation specifically reintroduces six months of imprisonment as a penalty option when an accused shoplifter uses an emergency exit and at least a day of imprisonment for disorderly conduct. Billings, Montana's deputy city attorney says police are not authorized to make an arrest unless the perpetrator is accused of committing a crime that carries a possible jail sentence.

The Montana Retail Association apparently pursued the criminal justice reform rollbacks on behalf of its big box store members, claiming "We have members who are losing $10,000 to $20,000 per week, just in shoplifting," he told the Billings Gazette. "That's on top of the Amazon effect."

Among the association's members are major retailers, supermarkets and pharmacies such as Albertson's Food and Drug, Best Buy, CVS Caremark, Home Depot, Kohl's Department Stores, Lowes Companies, Target Stores, Walgreen Company and Walmart. Albertson's, CVS and Target are represented on the group's board of directors.

The bill became law in 2019. The state estimates it will increase its public defender costs by at least $264,260.

Oklahoma

A 2016 ballot initiative, State Question 780, raised Oklahoma's felony theft threshold from $500 to $1,000 and eliminated the automatic upgrade of a third theft offense to a felony regardless of the stolen good's value. Among the reform effort's supporters were the ACLU and business groups, including local Chambers of Commerce and the state affiliate of the Koch-funded Right on Crime campaign. The reform effort sought to reduce Oklahoma's extraordinary incarceration rate. Two years after the initiative's adoption, the rate spiked to the highest in the country, 1,079 per 100,000 residents.

Business groups and retailers have sought to roll back the reforms. The Oklahoma Retail Merchants Association, which receives funding from Best Buy, in 2018 lobbied for authorities to be able to aggregate separate misdemeanor thefts together into a felony charge if the total value stolen over 90 days exceeds the threshold. In a survey the retail group released as part of its lobbying efforts, it seemed to directly attack reform advocates, saying,

> Retailers are the experts on this subject. WE know more about who is stealing from our stores, how often and why – not the policy wonks that are opining on this subject without ever consulting us or seeing our internal numbers.

The group celebrated the inclusion of the stronger theft punishments in a broader criminal justice reform bill that was signed into law among its 2018 achievements.

The law also introduces penalty tiers for shoplifting, with jail time increasing as the value of the stolen goods increases. At the lowest tier, a misdemeanor retail theft of goods valued at less than $1,000 can result in up to one year in jail; at the highest tier, theft of goods valued at $15,000 or more can result in up to eight years in prison.

Another retailer, Tulsa-based QuikTrip, lobbied in 2019 for increasing shoplifting penalties. QuikTrip is privately held by the Cadieux family, which Forbes estimates holds a collective net worth of $1.3 billion thanks to the over 800 convenience stores the family owns across eleven states, bringing in $11.5 billion in annual sales. A QuickTrip lobbyist claimed at a hearing that after the reform's

passage, "the lost inventory in Oklahoma is four times higher than anywhere else that we operate."

Every other state where QuickTrip operates has a felony theft threshold of $1,000 or more.

Virginia

Democratic Virginia Gov. Terry McAuliffe proposed a number of criminal justice reform measures in his January 2017 State of the Commonwealth Address. Among them was a pledge to raise the state's threshold for grand larceny, or felony theft, from $200, then the lowest in the nation, to $500.

The threshold had not been raised since it was originally set in 1980. Adjusted for inflation, $200 in 1980 is valued at more than $600 in 2017. As a result, as inflation increases, the law becomes stricter, and a greater proportion of the thefts that would have been treated as misdemeanor offenses are treated as felony offenses. According to Virginia's sentencing guidelines, the lowest-level felonies call for a sentence of between one and five years in prison.

Conspiracy to commit grand larceny also is a felony in Virginia's criminal code — meaning that to secure a felony conviction, prosecutors needed only prove a perpetrator *intended* to steal goods valued at $200 or more. A 2008 report by the Virginia Sentencing Commission noted that the maximum prison sentence for conspiracy to commit grand larceny — 20 years — was actually *twice* the sentence for conspiracy to commit first-degree murder (10 years). One man the Associated Press interviewed received a felony conviction and served six months in prison for stealing a pair of $230 sunglasses. The story notes a subsequent sentencing commission report that found that in fiscal years 2012 and 2013, 850 people in Virginia were convicted of felony larceny who would instead have had received misdemeanor if the felony threshold had been $500.

After Gov. McAuliffe's speech, the Virginia Retail Merchants Association was quick to defend Virginia's status as the state with the lowest felony threshold as "business-friendly":

> Virginia Retail Merchants Association opposes any increase of the Commonwealth's threshold for felony larceny. The Governor points out that Virginia is fiftieth out of fifty for the lowest felony threshold

> in the nation. VRMA is proud of Virginia's business-friendly threshold level.

The group lamented,

> [W]hat about the families of small businesses that are victims of shoplifting and organized retail crime or the large retail companies that have come to Virginia and provided thousands of jobs? It is no secret that two iconic retailers are closing a large number of stores in the United States. Anyone who thinks that retail crime doesn't hurt businesses, jobs or an employee's end of day earnings, is mistaken.

It is unclear which two "iconic retailers," the association is referring to in its statement. The so-called "retail apocalypse" that generated headlines in 2017 has more to do with increasing numbers of consumers shopping online and private equity raiding, not shoplifters.

The association does not disclose its funders, but a Center for Public Integrity analysis of corporate disclosures reveals that Dominion Resources Inc., a Virginia utility corporation, gave it $67,500 and that Best Buy, Lowes and Target all have contributed to it, though the amounts are unknown.

The Virginia Retail Federation also opposed raising the threshold. Both groups lobbied the legislature when the bill raising the threshold from $200 to $500 was up for debate. The group's lobbyist told The Virginian-Pilot that raising the threshold was like inviting thieves to steal more.

The retail groups' efforts to block reforms were largely effective. Political analyst Bill Rice noted in an analysis for the Richmond Public Interest Law Review that retail industry lobbying over the years had repeatedly thwarted bipartisan efforts to raise the felony theft threshold.

It was McAuliffe's successor, Gov. Ralph Northam, who ultimately prevailed in February of 2018 in signing legislation raising the threshold into law. The package of bills containing the reform was reported as a compromise, which included stricter restitution-payment requirements for convicted criminals. In a statement, Northam said, "Raising the felony larceny threshold will maintain Virginia's tough position on criminal theft, while modernizing our law so that one mistake does not define a person's entire life."

Two years later, Northam would start 2020 presiding over a newly Democratic controlled legislature with the proposal of stronger criminal justice reforms, including legislation doubling the new felony theft threshold from $500 to $1,000.

The Virginia Retail Federation pledged it would continue to oppose raising the threshold, "especially since no mitigation for Organized Retail Crime has been included." A Richmond, Va.-based CBS affiliate reported, "Several representatives for retail organizations spoke in opposition to the bill, telling lawmakers they expected theft in their member stores to increase."

Nevertheless, over the retail lobby's objections, Northam signed into law legislation raising the threshold to $1,000 in March of 2020. The legislation is slated to go into effect on July 1, 2020.

States Where the Retail Industry Advocated Harsher Penalties for Theft

Arizona

Retailers and law enforcement officials in Arizona formed a partnership in 2012 to combat organized retail crime. The partnership, dubbed the Arizona Organized Retail Crime Alliance, or AZORCA, includes a secure website for nonpublic communication and coordination between retailers and police.

Among AZORCA's primary backers are the Arizona Retailers Association and Target, whose investigations team leader said (in what appears to be a re-posted press release that relies heavily on flawed National Retail Federation data), "As a Company, Target has a goal to engage in strategic partnerships with key law enforcement and public safety organizations nationwide. To this end, Target sponsors and participates in websites similar to AZORCA that have been developed in other states and we are excited to roll out AZORCA."

The Arizona Retailers Association has received funding from Home Depot (at least $15,000), Best Buy and Lowes.

Meanwhile, lawmakers in Arizona had been discussing organized retail crime legislation since as early as 2008. In 2015, the state enacted one of the most broadly written organized retail theft laws. The law defines retail theft by one or more individuals with the intent to sell as organized retail crime and classifies the

offense as a class 4 felony, carrying a sentence of between one year and three years and nine months.

The state also enacted a "three strikes" anti-shoplifting law that also categorizes a third shoplifting offense over the course of five years as a class 4 felony. As a result of this law, one accused shoplifter faced two felony shoplifting charges after being accused of taking goods valued at $9.12 from a Walmart.

A bill introduced to Arizona's state legislature in February 2020 would have reformed Arizona's shoplifting laws. The bill sought to raise the felony shoplifting threshold from $2,000 to $5,000, reform the three strikes rule so a third offense is a class 6 felony (with a sentencing range of four months to two years), and reform the organized retail theft law so the definition requires at least two individuals to be involved. The bill also would reduce the sentence for organized retail crime by making it into a class 6 felony.

In May, the Arizona Senate ended its legislative session early because of the COVID-19 pandemic, effectively killing this and numerous other pieces of legislation.

Arizona Gov. Doug Ducey vetoed a similar bill in 2019.

Florida

Before 2019, Florida had one of the lowest felony theft thresholds in the country: $300. In neighboring states, the threshold is $1,000 or $1,500.

The Florida Retail Federation fought to keep the threshold low. On its website, the federation, whose members reportedly include Walmart, Publix and Walt Disney World, said in 2018:

> We are also excited to share the news that FRF was able to keep the felony threshold at its current limit of $300. This will deter retail theft and organized retail crime and help protect our smaller businesses. FRF fought all session to not give criminals a cost of living increase on the backs of retailers.

In 2019, the federation agreed to a compromise: $750. The retail industry group also advocated for allowing prosecutors to aggregate the theft amount over 90 days. A spokesperson for the American Civil Liberty Union of Florida's criminal

justice reform campaign acknowledged the federation's willingness to compromise was a "major step forward," but made clear the ACLU's opposition to aggregating penalties:

> The idea that theft over a 90-day period could be combined to find someone guilty of committing a felony simply seems misguided […] "A lot of this comes from the retail federation which likes to … scare legislators into sticking with the 'tough on crime' mentality that has not reduced crime across our state but has led to mass incarceration.

A Miami Herald analysis found that the federation and its members had made $46.5 million in contributions to political campaigns and committees over the previous five years.

In 2019, there were two competing bills to raise the felony theft threshold: one the retail industry supported, which would raise the threshold to $750 and allow for penalty aggregation over 90 days, and one that would raise the threshold to $1,000 and aggregated penalties over 48 hours.

The consequences of a felony conviction in Florida can be disproportionately severe. Defendants can be sentenced to up to five years in prison for stealing more than $300 (and less than $5,000) and branded for life as a convicted felon. (Until a recent ballot initiative, felons in Florida were denied their right to vote even after serving their time. A recent state court ruling now denies them the right to vote until fully paying their fines – up to $5,000 for felony grand theft.)

One of the strongest proponents of reform in Florida was the Reason Foundation, a libertarian nonprofit organization which published a report in 2017 on the state's low felony threshold and found that Florida's prisons held 1,890 inmates who were incarcerated because they'd committed low-level felony theft offenses. The group estimates the cost of incarcerating these offenders exceeds $35 million per year.

Ultimately, a third bill, which the Associated Press described as a "massive criminal justice bill," raised the threshold to $750 and allowed penalty aggregation over 30 days, prevailed. The 350-page bill included numerous reforms and received unanimous approval in the House and nearly unanimous approval in the Senate and was signed into law by Gov. Ron DeSantis.

Michigan

In 2012, Michigan enacted a broadly written bill to deter what it calls organized retail crime — essentially, theft of retail merchandise with the intent to sell. The law, which includes no minimum threshold for the theft amount, makes the crime a felony offense carrying a maximum sentence of five years in jail and a maximum fine of $5,000.

Without the intent to sell, shoplifting — retail fraud in Michigan — reaches the felony threshold only if the stolen merchandise carries a value of at least $1,000. This crime carries a maximum sentence of five years and a maximum fine of $10,000.

The chief sponsor supporting the organized retail theft law was State Rep. Joseph Graves, whose wife was a manager at Meijer, a midwestern big box department store chain. To honor Graves, the Michigan Retailers Association named him legislator of the year.

The association reportedly "spearheaded" the effort to get the law passed. Corporations funding the association include DTE Energy Company (which contributed $50,000), Home Depot (which has contributed at least $15,000), Best Buy and Lowes, according to the Center for Political Accountability's Track Your Company database.

In 2013, MLive reported a 26-year-old Michigan woman who was arrested for shoplifting merchandize valued at between $200 and $1,000 from a JC Penny was facing a felony organized retail crime charge. (The charge was eventually dismissed.)

Also in 2012, the state established an official ORC (Organized Retail Crime) Advisory Board "to develop a database of organized retail crimes, to compile annual statistics on organized retail crime acts, to recommend actions to be taken by the department and law enforcement to further combat organized retail crime, and to submit an annual report to the director of the department on the effectiveness of this act in reducing organized retail crime."

By statute, the board's six members are appointed by the governor and include:

(a) One member who is a county prosecuting attorney or an assistant county prosecuting attorney.

(b) One member who is a representative of a city, village, or township police department or of a county sheriff department.

(c) The state attorney general or his or her designated representative.

(d) One member who is recommended by the Michigan retailers association.

(e) One member who is a member of the general public.

(f) The director of the department of state police or his or her designated representative.

The Michigan Retailers Association cites the creation of the advisory board and the passage of the 2012 Organized Retail Crime Act among its advocacy accomplishments. In addition to the Michigan Retailers Association, retail companies represented at recent board meetings (in February and September of 2019) include Target, Meijer, Lowes, Home Depot and Kroger.

For nearly all the meetings whose minutes are posted, "legislation" is the top item of the board's agendas. The agendas are posted at the bottom of an obscure Michigan State Police page. This suggests retailers and law enforcement officials are using the meetings to coordinate on lobbying strategy — a purpose that is not only outside of the scope of board's mission, but inappropriate. Official bodies created by the state should not be used for the purpose of influencing the state legislature. Nevertheless, the meetings' published minutes make it clear that this is in fact how this time is being used. For example, the minutes of the June 8, 2017 meeting include the following "legislative update,"

> Sergeant Fitzgerald handed out copies of a substitute for Senate Bill 44, regarding organized retail crime. He reported that this bill will be taken up in the fall. The substitute language has been out since our last meeting, and so far there is no indication of opposition. Sergeant Fitzgerald asked everyone to review the substitute bill and let him know if there is any concern or suggested change to the language. There was discussion. The group discussed the future creation of a pawn shop bill.

The board also discussed organizing a conference and a spinoff 501(c)(3) nonprofit organization.

In 2020, a state taskforce reported that despite the crime rate reaching a 50-year low, the state's prison population since 1975 has nearly tripled. Among the taskforce's recommendations for stemming the state's exploding prison population is increasing the felony theft threshold to $2,000. There are business leaders among the supporters of Michigan's criminal justice reform effort,

including the husband of Education Secretary Betsy DeVos, the billionaire Amway co-chairman Doug DeVos.

Pennsylvania

In Pennsylvania, anti-shoplifting laws have becoming increasingly strict.

In 2013, the state enacted SB 731, a law that reduced, rather than raised, the state's felony threshold from $2,000 to $1,000 and introduced a "three strikes" provision so a third theft conviction is felony regardless of the value of the stolen goods.

As one Pennsylvania law blog put it, the law "means you could steal a $1 candy bar and run the risk of committing a felony if it is your third retail theft offense."

In a column for the Pennsylvania Food Merchants Association, a Wegmans loss prevention manager wrote in support of the bill, quoting the grocery chain's state asset protection manager:

> We need not only the law-enforcement and retail community, but our Judges and elected officials to understand some of these so-called retail thefts are actually fueling much more dangerous enterprises. We can talk at length about the negative impact on the retailers, increased prices passed onto the public and millions in lost tax revenue to our state, but when you talk about crimes that impact the safety of people there is a much greater sense of urgency. It is clear that Organized Retail Crime (ORC) has links to gang violence, drug activity, and even terrorism. This puts our children and our communities at risk. Hopefully these laws will provide law enforcement officers with the correct tools needed to prosecute offenders to the fullest.

According to Pennsylvania's lobbying database, criminal justice was among the issues the National Federation for Independent Business lobbied on throughout 2013.

A press release from Pennsylvania State Republicans for SB 731 cites the National Retail Federation's flawed study to justify the harsh sentencing, with its main sponsor, Sen. John Rafferty, saying, "This bill will make sure that those who repeatedly steal face tougher penalties."

The law is a reason that a 36-year-old cancer patient received a seven-year prison sentence in 2020 for shoplifting goods from a Weis grocery store valued at less than $110. (She will be eligible for parole after 10 months.)

Pennsylvania Lieutenant Governor John Fetterman, an outspoken criminal justice reform advocate, personally offered to repay the cost of the stolen goods.

South Carolina

The South Carolina Retail Association, which has received funding from CVS Health (at least $50,000) and Best Buy, credits itself with "authoring and supporting" the organized retail crime law that the state passed in 2013.

The law broadly defines organized retail crime to include stealing goods with an aggregate value of at least $2,000 over three months with intent to sell and in cooperation with another person. Other forms of theft and fraud that the law makes into a felony are tampering with price tags and receiving a refund of greater than $2,000 using a false identification card, and receiving stolen property believed to have been stolen from police.

The maximum sentence for a felony in South Carolina is ten years in prison and a $5,000 fine.

Washington

Washington raised its felony theft threshold from $250 to $750 in 2009.

Recently, Democratic State Representative Roger Goodman introduced legislation to make arresting accused shoplifters easier by criminalizing the act of concealing merchandise before leaving a store.

The Washington Retail Association, which receives funding from Home Depot, Gap, Best Buy and Lowes, credits itself with drafting the legislation and describes Goodman's bill as "WRA-backed."

In March, the Washington's legislature ended its session, effectively killing this and numerous other pieces of legislation.

States Where Prosecutors Use the "Walmart Burglary" Strategy to Increase Shoplifting Penalties

Tennessee

Tennessee raised its felony theft threshold in 2016 from $500 to $1,000, but that hasn't stopped some district attorneys from finding a way to charge shoplifters accused of stealing far less with a felony offense: burglary. Normally, shoplifters face a maximum of one year in prison for misdemeanor shoplifting. However, individuals accused of shoplifting more than once from the same store after being banned from the store — typically a Walmart — can face a sentence of up to 12 years.

While burglary is generally understood to mean forcing one's way into a nonpublic place such as a home or closed business in order to commit theft, at least two Tennessee district attorneys have interpreted the state law to include individuals who reenter a Walmart and steal after they've been banned.

According to Knox News, the Walmart burglary charging policy is a result of lobbying by Walmart, which is disproportionately affected by shoplifting because of its size, and retail industry lobbyists.

In the case of one woman who was banned from Walmart and accused of subsequently shoplifting merchandise valued at $72.12, prosecutors sought the burglary charge during her retrial.

Tennessee's criminal appellate court ruled in the woman's case that it was unconstitutional to apply the burglary statute to charge repeat shoplifters with felony burglary. In her majority opinion, Tennessee Criminal Court of Appeals Judge Camille R. McMullen wrote, "Our review of the legislative history of the burglary statute shows that charging of burglary in these instances is unreasonable, unjust, and violative of due process."

That didn't stop Tennessee's district attorneys from defending the charging policy, which apparently had been used against other shoplifting defendants. The office of Knox County District Attorney Charme Allen, which takes credit for initiating the policy and suggesting it to a Putnam County prosecutor, defended the practice, saying, "Citizens should be able to shop in Knox County without being exposed to chronic criminal activity. [...] These prosecutions have been a valuable tool as we seek to ensure that Knox County remains a safe place for businesses to operate."

Tennessee's Supreme Court agreed to take up the "Walmart burglary" question in 2019. In a ruling by Justice Roger A. Page filed in February 2020, the court agreed with the district attorneys, concluding "our review leads us to conclude that the burglary statute is properly applied to defendants who enter a store without the effective consent of the owner and therein commit a theft, felony, or assault."

The decision favorably cites an amicus brief filed by retail groups — the Retail Litigation Center (which is associated with the Retail Industry Leaders Association), National Association for Shoplifting Prevention and the Tennessee Retail Association — which support using burglary charges against a shoplifter banned from a store:

> As pointed out by amici curiae Retail Litigation Center, Inc., National Association for Shoplifting Prevention, and Tennessee Retail Association, "no trespass" letters are critical to breaking the cycle of recidivist shoplifting. If individuals comply with the letters, they serve to avoid future encounters between loss prevention officers and "serial shoplifters." However, "no-trespass letters serve little purpose if they are effectively voided any time a person manages to re-enter a store in defiance of being barred from the premises." The "more sensible approach," as advocated by amici, is the one adopted in this case and others in Tennessee and several other states. It "recognizes that shoplifters who re-enter a store to steal (again) after being formally barred have committed a serious crime, which will be deterred only with serious penalties."

A ProPublica investigation into corporate giving to nonprofits found that Target and Lowe's are among the Retail Litigation Center's donors. The donation amounts are not disclosed.

New York

Meanwhile in New York City, a report by New York County Defender Services — the city's public defenders' office — finds that Manhattan retailers and prosecutors are using the same "Walmart burglary" strategy to increase what would normally be misdemeanor petty theft charges into felony burglary charges. The retailers ban the shoplifters they catch from their stores, then if a shoplifter is caught again removing items from the same store, they are charged with burglary on the logic that they are trespassing.

New York's criminal code states that "A person is guilty of burglary in the first degree when he knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein[.]"

The office defended a total of 47 people in 2018 who had petty theft charges bumped up to burglary — nearly 40% of all burglary charges the office defended that year. (The office represents 25% of people charged.) Jailing and/or imprisoning these defendants, 97% of whom pleaded guilty, cost taxpayers over $1.4 million. The median sentence for those who were charges was 180 days. Two received sentences of more than a year. More than a third of the defendants were homeless.

The public defender's office calls the prosecution of shoplifting of hygiene or other necessary items the "quintessential example of policing poverty." One of the office's clients was a homeless, mentally ill man who faced two to four years in Rikers Island jail for stealing four packs of socks from Bloomingdale's. The man spent nine months in jail before being transferred to a facility for mentally ill defendants.

The office's report states,

> Our criminal punishment system is not equipped to get people who are sick or suffering on the path to stability. Jail and prison are not the answers to ending the cycle of homelessness, drug abuse, mental illness and other struggles that lead them to survival theft. There is no doubt that we need policy solutions to address shoplifting and other problematic behaviors, but the existing remedies are failing to make our communities more secure.

Christopher Boyle, the director of data research and policy for the public defender's office, notes that the practice of increasing petty theft charges to burglary in this way has been going on in Manhattan for twenty years and that the policy is unique to Manhattan among the New York City boroughs.

According to the report, the 13 stores that worked with the Manhattan District Attorney's Office to increase shoplifting charges to felony burglary for the 47 defendants were: Apple Store, Bloomingdale's, Burlington Coat Factory, Century 21, DSW, Duane Reade, Gap, Lord & Taylor, Macy's, Marshall's, Rite Aid, Sephora and Walgreens.

Conclusion

The coronavirus pandemic is raging on, and more and more leaders are attempting to show their concern for workers and families by saying, "We're all in this together." Truly, the crisis has made it impossible to ignore the numerous ways our shared society interconnects the fates of individual American lives. Just as a societal crisis like the pandemic requires a societal response, systemic racism and the mass incarceration crises likewise require societal responses far greater than individual actions or small-scale reforms. The next necessary shift is simple — and significant. Lawmakers and executives with the authority to make a difference must pledge to stop moving backward, to stop defending the unfair status quo, and to start moving forward.

Retail corporations that back groups and campaigns that fight criminal justice reforms should start prioritizing the people and communities they are supposed to serve. With regards to criminal justice, they should support systemic reforms that can more effectively reduce crime — reforms like strengthening community resources and infrastructure, improving education, and alternative first responders for nonviolent crimes — instead of simply helping police forces lock up more and more accused shoplifters. There is no question a shift like this will be difficult for Corporate America, with its reflexive tendency to prioritize short-term profits over long-term sustainability. The Business Roundtable — a top corporate lobbying group — may have pledged last year to support expanding the purpose of corporations from simply increasing shareholder profits to promoting "an economy that serves all Americans" — but that hasn't translated to its signers, for example, supporting tax reforms to more equitably share the nation's wealth.

To reckon with the ways businesses are taken from, they must face a reckoning with the ways in which they themselves unfairly take from communities. The ways Big Business limits the material wealth of workers and communities are numerous and well known. They pay poverty wages. They oppose paid sick time. They fight universal health care. They suppress unions. They perpetuate systemic racism and gender discrimination. They concentrate pollution in low-income communities. And so on. There are, of course, exceptions. But the broad trends up to this point have been clear.

The first step toward shifting this trend may already have been taken. The National Retail Federation, one of the major retail industry groups, is urging retailers to support organizations that drive change – and prioritizing groups that support criminal justice reform. The more support reform groups receive, the

more they can push public policy away from mass incarceration and toward reforms that can improve communities. And the more progress that can be made on this front, the more it becomes clear that if "We're all in this together," the less sense it makes to lock so many of us up.

All that being said, there are limits to what can be achieved by urging corporations and the executives that manage them to do the right thing – especially when we know corporations already have a habit of using the rhetoric of allyship while lobbying against the interests of the very people whose allies they claim to be. Public pressure can be an effective strategy for encouraging some companies to stop fueling the mass incarceration crisis. But a small number of companies doing the right thing is no substitute for systemic change.

The necessary systemic changes include requiring corporations to disclose their political spending – including spending on 501(c)(6) trade groups that lobby on their behalf. H.R. 1, the omnibus campaign finance reform legislation that has passed the U.S. House of Representatives, but which Sen. Mitch McConnell's Senate refuses to consider, would empower the U.S. Securities and Exchange Commission to enact this reform. The SEC doesn't have to wait for Sen. McConnell – the agency immediately can begin its work toward this necessary reform.

In the meantime, advocates for criminal justice reform – and for the public interest more broadly – must continue to hold corporations accountable. If nothing else, retailers that depend on Americans as customers should refrain from spending money toward putting more of our friends, family, neighbors, and fellow community members in prison.

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