

Organized Retail Crime and the Federal Response

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Retailers and retail industry advocacy groups have [expressed concern](#) about what they see as a general increase in retail crime, and more specifically an increase in [organized retail crime \(ORC\)](#). Reports of criminal groups, acting in *flash mobs*, storming stores and at times assaulting employees, have underscored these concerns. Some retail organizations have cited certain elements of the COVID-19 pandemic as possibly contributing to this apparent increase in ORC and [have urged](#) policymakers and law enforcement to take steps to educate the public and crack down on ORC. Some law enforcement agencies [have increased](#) resources and information sharing to counter these crimes.

Organized Retail Crime

ORC is a form of retail crime—a broader category of crime that also includes employee theft, shoplifting, and robberies. ORC typically refers to large-scale retail theft and fraud by organized groups of professional shoplifters, or *boosters*. Organized crime rings resell illegally acquired merchandise via a variety of *fencing* operations such as flea markets, swap meets, pawn shops, and online marketplaces. ORC differs from shoplifting in that amateur shoplifters tend to steal merchandise for personal consumption. Boosters, on the other hand, are professional thieves who make money by stealing merchandise and reselling it to fences, who in turn sell the goods—through legal or illegal economic outlets—for a fraction of the retail cost. Stolen and fraudulently obtained goods may be taken not only from retailers, but from manufacturers and distributors as well.

There are no national data on the prevalence of ORC, and some [rely on industry](#) experts to estimate losses. The National Retail Federation (NRF), through its [2021 National Retail Security Survey \(NRSS\)](#), notes that 69% of retailers responding to the survey reported an increase in ORC activity over the prior year. This follows the NRF's [2020 Organized Retail Crime Survey \(ORC Survey\)](#), in which 75% of retailers noted a slight (44%) or significant (31%) increase in ORC activity over the prior year. However, possible limitations to these survey data may include small sample sizes, lack of [generalizability](#), [barriers](#) to replication, and retailers' [varying conceptualizations](#) of ORC.

Based on the [2020 ORC Survey](#) results, NRF estimates that ORC costs retailers an average of \$719,548 for every \$1 billion in sales. This is an increase over the estimated costs of \$703,320 in 2019 and \$453,940 in 2015. However, the economic effects of loss—related to ORC and other causes of [inventory](#)

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[shrink](#)—extend beyond those to retailers. Retailers who do not subsume these losses may pass them along to consumers in the form of higher prices on goods, and states lose the tax revenue that would otherwise be generated from the sale of these goods by legitimate retailers.

Some have questioned whether ORC tactics could be changing. For instance, 65% of respondents to the [2021 NRSS](#) reported that ORC gangs have been more aggressive. There have been [anecdotal reports](#) of smash-and-grab, or flash mob style thefts, where a large group of thieves storm a retail establishment, overwhelming any potential security in place. Some criminal justice researchers [have questioned](#) whether this is a long-term trend in ORC or whether it may be short term, perhaps influenced by [incidents seen in videos](#) circulated online.

ORC and the COVID-19 Pandemic

While many retailers surveyed by the NRF reported an increase in ORC in 2020 and 2021, it is unclear if these changes were influenced by the COVID-19 pandemic. Nonetheless, 57% of retailers responding to the [2021 NRSS](#) indicated that the pandemic increased the risk of ORC. For instance, the increase in *multi-channel* sales—such as customers buying online and picking up goods in a store—can provide enhanced [opportunities](#) for fraud by ORC groups and others. In addition, as more [people turned to online shopping](#), [online marketplaces](#) have become even more attractive venues for fencing stolen goods.

Some may question whether ORC gangs would increasingly target goods early in the distribution chain due to supply chain disruptions. While some suggest there [has been an increase](#) in thefts from cargo containers and trucks, others [have not reported](#) a significant change.

Policy Issues

There is debate over the appropriate federal role in deterring ORC and sanctioning the actors involved in committing or facilitating these crimes.

Criminalizing ORC. Combating retail theft is primarily handled by state and local law enforcement under state criminal laws. States have often relied on felony theft statutes to investigate and prosecute ORC. Those, however, vary from state to state with respect to the monetary threshold constituting a felony theft and law enforcement's appetite to investigate them. Federal law enforcement such as the Federal Bureau of Investigation (FBI) engages directly [with retailers](#) and with state and local law enforcement through task forces and ad hoc partnerships to investigate and prosecute ORC. Federal law does not criminalize theft itself, but it prohibits [related crimes](#) such as transportation of stolen goods across state lines, sale or receipt of stolen goods, money laundering, and conspiracy. While some have [advocated](#) for a federal ORC law, [law enforcement has previously argued](#) that existing tools are sufficient. Impediments to investigating and prosecuting these cases may come more from a lack of resources and competing priorities than from needing additional tools.

Enhancing Awareness. Policymakers may consider whether regulating certain marketplaces (online markets, in particular) to require such entities to increase information-sharing with retailers and law enforcement would strengthen investigations and prosecutions of ORC as well as decrease opportunities to fence stolen goods through legitimate online marketplaces. Several bills in Congress (e.g., S. 936, the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act or INFORM Consumers Act, and companion bill H.R. 5502) would, among other things, require online marketplaces to collect, verify, and disclose certain information from high-volume sellers and to provide consumers with means to report suspicious activity. Some retailers and industry advocates [have supported](#) the INFORM Consumers Act, while [some online marketplaces have favored](#) small business protections in the House version.

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