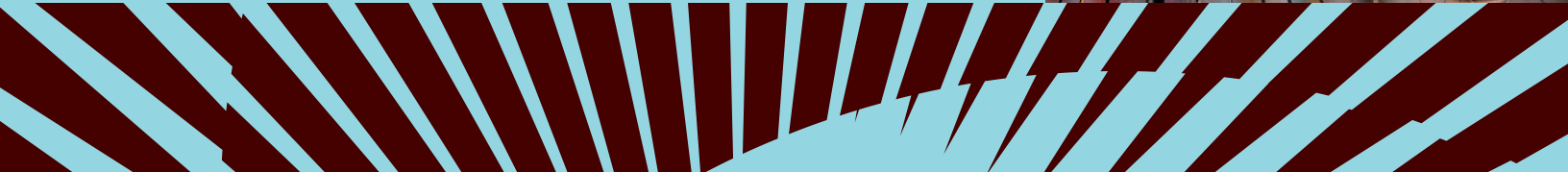


U.S. Chamber of Commerce

Crime Risk to Business: 2023

Crime continues to be a major problem for businesses large and small across the U.S. The U.S. Chamber of Commerce's Senior Vice President for State and Local Policy Tom Wickham provides this policy update on federal, state, and local anti-crime efforts and calls for further action.



Introduction

Communities and businesses across the U.S. are facing a historic increase in crime, an alarming trend requiring a robust response. The rising crime problem is affecting both small businesses and large retailers and warrants a serious response from policymakers.

A U.S. Chamber of Commerce survey of small businesses found that as many as 56% of small businesses reported theft, with 53% of small businesses saying that the problem has gotten worse.

At the aggregate level, the National Retail Federation (NRF) reports that as much as \$100 billion has been lost to general crime, or shrink, in the past year, and that organized retail crime—or crime perpetrated by organized criminal rings—continues to rise, with 26.5% of businesses reporting an increase in organized retail theft.

This surge in crime is reflected in the earnings calls and financial documents of major corporations. According to a Chamber survey of a range of company documents (10-K filings, earnings calls, presentations, and other documents) by S&P 500 companies, mentions related to organized retail crime for January 1, 2023, through August 31, 2023, have already exceeded 2022's numbers by 43%. At this rate, mentions related to organized retail crime are on track to nearly double from 2022 to 2023 (a 94.5% increase projected by the end of the year).

In a March 2022 letter from the Chamber to federal and state officials, the Chamber declared organized retail crime to be a national crisis, calling upon policymakers to take specific actions to help businesses fight crime. Progress has been made at all levels, but more must be done.

This report contains an update on anti-crime initiatives at the federal, state, and local levels, as well as the Chamber's policy recommendations for further action.



Anti-Crime Updates

INFORM Act Takes Effect

At the end of the 117th Congress, Congress heeded the Chamber's call and passed the bipartisan Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers, or the INFORM Consumers Act, with bipartisan majorities in both the House of Representatives and the Senate. The legislation was signed into law in December 2022, with the law taking effect in June 2023.

The INFORM Act combats the online sale of stolen, counterfeit, and dangerous consumer products by ensuring transparency in online retail marketplaces. It directs online retail marketplaces that include third-party sellers of consumer products to verify the identity of "high-volume third-party sellers," which helps deter the online sale of goods by anonymous sellers and prevents organized criminal rings from stealing items to resell them in bulk online.

The INFORM Act is a key piece of a comprehensive federal, state, and local response to rising crime, and the Chamber will continue monitoring its implementation to see if it meets its intended effect.

States Are Fighting Back

The states have been active in the fight against organized retail crime. In the March 2022 letter from the Chamber to federal and state officials, the Chamber recognized some states for passing laws to more clearly define and aggressively prosecute organized retail crime, as well as states that have allowed for the aggregation of offenses committed across multiple jurisdictions and have established statewide anti-crime task forces.

12
states

Twelve states have created new statutes, revised existing statutes, or created enhanced penalties to allow for greater prosecution of organized retail crime.

5
states

Five states have passed laws to allow for aggregation of offenses that equip prosecutors to go after theft rings exploiting arbitrary felony theft thresholds by structuring the number of thefts.

2
states

Two states have established new organized retail crime associations to foster greater coordination between law enforcement and business to tackle this serious issue.

2
states

Two states have passed laws that empower the state's attorney general to take charge to prosecute in cases of multi-jurisdictional organized retail crime.

New Laws on the Books

Since March 2022, 19 state legislatures have put new laws on the books to combat organized retail crime.

Alabama

In May 2023, Alabama passed a [law](#) to increase penalties for organized retail theft and require restitution to business owners.

Florida

In June 2022, Florida passed a [law](#) targeting theft from 10 or more items from at least two different locations within a 30-day period a third-degree felony charge.

Georgia

In May 2022, Georgia passed a [law](#) making it more difficult for organized gangs to sell stolen goods online.

Illinois

In May 2022, Illinois passed a [law](#) making those who knowingly engage with others in a theft valued at \$300 or more guilty of a Class Three felony.

Indiana

In May 2023, Indiana passed a [law](#) to make organized retail theft a Level 6 felony.

Kansas

In June 2023, Kansas passed a [law](#) to allow the attorney general to be the primary prosecutor in cases that occur across multiple counties, a common element of organized retail crime.

Michigan

In August 2022, Michigan passed a [law](#) to add organized retail crime to a list of racketeering offenses.

Minnesota

In May 2023, Minnesota passed a [law](#) creating a separate offense for organized retail theft with a possible sentence of 15 years depending on the value of the good stolen.

North Carolina

In June 2022, North Carolina passed a [law](#) making it a felony for organized retail crimes that result in \$1,500 or more in damage.

New Mexico

In April 2023, New Mexico passed a [law](#) to allow aggregation of retail crime offenses over a 90-day period.

New York

In May 2023, New York passed a [law](#) to reform bail and other pretrial conditions, especially for repeat offenders.

Nevada

In June 2023, Nevada passed a [law](#) authorizing the attorney general to investigate and prosecute the offense of organized retail theft.

Ohio

In April 2022, Ohio passed a [law](#) requiring greater disclosure of seller's information in online marketplaces.

Oklahoma

In May 2023, Oklahoma passed a [law](#) creating an Oklahoma Organized Retail Crime Task Force.

Oregon

In May 2023, Oregon passed a [law](#) allowing prosecutors to combine organized retail crime offenses happening across jurisdictions.

Texas

In May 2023, Texas passed a [law](#) providing for the removal of prosecutors who do not prosecute classes of crimes such as theft.

Virginia

In February 2023, Virginia passed a [law](#) to make organized retail theft a felony and make those convicted of the crime eligible for prison sentences of up to 20 years.

Washington

In April 2023, the Washington State Legislature fully [funded](#) an Organized Retail Crime Unit within the Office of the Attorney General.

Wyoming

In March 2023, Wyoming passed a [law](#) that made five separate convictions of theft a felony penalty.

Public-Private Partnerships Are Key in Fighting Crime

Tired of violent smash-and-grabs hitting local businesses, U.S. Rep. Young Kim (R-CA) introduced the [Improving Federal Investigations of Organized Retail Crime Act \(H.R. 316\)](#).

Kim observed how the federal government, the states, and local law enforcement struggle to align efforts to more effectively combat this multi-jurisdictional problem. Her bipartisan legislation calls on federal agencies to coordinate federal law enforcement efforts with a cohesive overall strategy and increase collaboration between retailers, anti-organized retail crime associations, and state-run retail crime task forces to better combat crime.

The Chamber is proud to support H.R. 316 and its focus on increased federal coordination and the role of public-private partnerships. In September 2023, Kim [spoke with the Chamber](#) on how coordination is key to combating rising crime against businesses.



“[Information sharing] will assist state and local authorities in compiling evidence so that the prosecutor teams can really have good, solid evidence and prosecute those organized retail crimes.”

—Rep. Young Kim (R-CA)

New Innovative Solutions

As crime has risen in communities, local business organizations have also stepped forward with innovative solutions to combat it. Whether serving as a coordinator or an informational resource, local business organizations can be leaders and cut through bureaucratic red tape and siloed local offices. Positive problem solving can be found in examples set by state and local chambers of commerce and retail groups:

The New Mexico Chamber of Commerce

in partnership with retail member companies and law enforcement, formed the [New Mexico Organized Retail Crime Association \(NMORCA\)](#). NMORCA provides an online digital platform for retailers and law enforcement to more easily share information in real time to prevent and prosecute organized retail crime in the state.

The Missouri Chamber of Commerce

surveyed its members on the impact of crime on their businesses and the state. The result was a joint report with Gov. Mike Parson titled "[Safer Missouri, Stronger Missouri](#)," which sparked lawmakers to pass anti-crime legislation in the state.

The Tucson Metro Chamber

relaunched its [Coalition Against Retail Theft](#) and won a \$100,000 local grant to help small businesses that have experienced or are seeking to prevent crime. The program was so popular with small businesses that the chamber was met with an overflow of applications after only 10 days.

The Anchorage Chamber of Commerce

published a [community care kit](#) in response to the growing concerns of the business community about public safety. A member survey found that property damage was the most common experience among Anchorage businesses. The action-orientated kit included building improvements to enhance safety and wide-ranging employee resources guides ("What to do if ...").

The Washington Retail Association

helped start the state's Organized Retail Crime Association (WAORCA) and published a [Guide to Navigating Public Safety and Retail Crime](#) for its members. The guide contains comprehensive anti-crime planning and crime response information such as surveillance, communications, and post-trauma coping strategies.

Prosecutors Need to Prosecute

According to [the most recent National Retail Federation report](#), organized retail crime is growing in “scope and complexity,” with robberies featuring increasing violence.

While there are many anti-crime stakeholders, local prosecutors are the gatekeepers to the criminal justice system and must prosecute crimes to stem this rise in violent crime. Prosecutors’ bail and charging practices have to consider the interests of the community and ensure that these crimes are prioritized.

Transparency in the local prosecutor’s office is a critical first step in ensuring that the communities’ needs are actually being served. At the federal level, Rep. Nicole Malliotakis (R-NY) plans to address this issue by spearheading the [Prosecutors Need to Prosecute Act \(H.R. 27\)](#), which aims to increase transparency by requiring prosecutors to release key arrest, release, and conviction data, including larceny offenses. Evan Jenkins, senior vice president for Government Affairs at the Chamber, [interviewed Malliotakis](#) in April on how her legislation intends to keep American businesses safe.



“It is just an attack on the hardworking taxpaying American, and the job creator, and the business that is providing those goods. They’re going to try to make up for the theft that they’re losing by maybe increasing prices so they can break even—particularly if it’s a business that’s just trying to get by month to month.”

—Rep. Nicole Malliatakis (R-NY)

Addressing Prosecutor Conduct

On the state level, at least 24 bills have been introduced in 16 states to address prosecutors' conduct. The following states have acted to make it easier to remove underperforming prosecutors:

Tennessee

In November 2021 Tennessee passed a law giving the attorney general the power to go to the state Supreme Court in the hopes of temporarily replacing local district attorneys on cases they “peremptorily and categorically” refuse to prosecute.

Texas

In June 2023 Texas passed a law providing that a prosecutor’s refusal to prosecute could be labeled “official misconduct,” leading to potential removal from office by a judge from outside that district.

Georgia

In May 2023 Georgia passed a law that created a commission with the power to remove prosecutors who refuse to enforce certain crimes.



Policy Recommendations

The Chamber is calling on state and local leaders as well as the business community to adopt a three-part action plan to combat crime:

State Officials and Businesses Should Coordinate Resources to Combat Criminal Gangs


Crime is a complex, multi-jurisdictional problem in which sophisticated criminals commit crimes in cities and surrounding suburbs where they perceive an advantage.

State leaders and business organizations can fight back by organizing statewide resources to outsmart criminal gangs.

Local officials and business organizations can join forces to organize a statewide anti-crime association within a chamber of commerce, like the New Mexico Chamber of Commerce.

Attorneys general can bring together law enforcement and business in innovative ways, like Georgia's first-ever state Gang Prosecution Unit, initiated by Georgia Attorney General Chris Carr.

Business owners can take effective, practical steps encouraged by prosecutors like Erie County New York District Attorney John Flynn, who has urged stores take out non-contact orders against serial offenders to allow prosecutors to add charges against them. In September 2023, Flynn spoke with the Chamber about the serious impact of surging crime on business and why effective prosecution is seriously needed.



“There are hundreds of district attorneys across the country who do take [retail crime] seriously, who are prosecuting these crimes, and who are out there to support the business community and keep our streets and our stores safe.”

—John Flynn, District Attorney,
Erie County, NY,
Chair of the Board,
National District Attorneys
Association

Lawmakers Need to Update Their Laws to Allow Prosecutors to Aggregate Multiple Offenses

Some states like Florida and Illinois have made it easier to prosecute serial criminals who steal or engage in violence in different city or county jurisdictions.

More states need to act to counter this common problem for businesses. San Diego County District Attorney Summer Stephen [says of the situation in California](#), which has a high felony threshold law for stolen goods.

More states should follow the lead of attorneys general in [Florida](#) and [Illinois](#) and update their laws to allow aggregation of charges, as these criminal rings commonly commit many offenses across multiple jurisdictions with impunity.



“Many states like ours don’t allow aggregation, so a person can go to different stores, and you can’t aggregate the amount to show that [the stolen goods are worth] more than \$950. The intent [of the law] was absolutely taken advantage of.”

—Summer Stephen,
District Attorney,
San Diego County

Local Prosecutors Must Aggressively Prosecute Crimes Against Businesses, and if They Don't, Lawmakers Should Circumvent Them or Make It Easy to Remove Them

At the center of this rising crime epidemic are prosecutors who will not prosecute the criminals responsible for multiple offenses on businesses.

Local prosecutors with lax policies on bail, charging, and release practices are worsening the crime problem. State and local officials need to hold such prosecutors accountable by aligning with the business community to advance legislation that helps reduce backlogs in cases.

Attorneys general also can be empowered to act in cases that cross multiple jurisdictions, with states like [Kansas](#) and [Nevada](#) recently enacting such permissions into law.

Finally, and perhaps most critical, states should seriously consider mechanisms for the removal of prosecutors who refuse to prosecute certain classes of crime, like organized retail theft.

