

SENATE COMMITTEE ON CRIMINAL JUSTICE

Interim Charges Report to the Texas Senate
89th Legislature



December 2024



Senate Criminal Justice Committee

SENATOR PETE FLORES
Chairman
SENATOR PHIL KING
Vice Chairman

MEMBERS:
SENATOR PAUL BETTENCOURT
SENATOR JUAN "CHUY" HINOJOSA
SENATOR JOAN HUFFMAN
SENATOR BORRIS L. MILES

December 1, 2024

The Honorable Dan Patrick
Lieutenant Governor of Texas
Texas State Capitol
Austin, Texas 78701

Dear Lieutenant Governor Patrick:

The Senate Committee on Criminal Justice of the Eighty-Eighth Legislature hereby submits its interim report including findings and recommendations for consideration by the Eighty-Ninth Legislature.

Respectfully submitted,

Senator Pete Flores, Chair

Senator Phil King, Vice -Chair

Senator Joan Huffman

Senator Paul Bettencourt

Senator Juan "Chuy" Hinojosa

Senator Borris L. Miles



Table of Contents

Interim Charges	5
Interim Hearings Schedule	6
Charge No. 1: Stopping Child Predators	7
Charge No. 2: Bail Reform	33
Charge No. 3: Monitoring Senate Bill 1004 (88th Legislature)	53
Charge No. 4: Supporting Victims of Sexual Assault	62
Charge No. 5: Retail Theft	76
Charge No. 6: Financial Crimes	124

Interim Charges

The Senate Committee on Criminal Justice was charged with conducting a thorough and detailed study of the following issues and preparing recommendations, when appropriate, to address problems or issues that were identified.

- 1. Stopping Child Predators:** Study how predators use deepfake technology and artificial intelligence (AI) to harm and exploit children. Monitor the implementation of House Bill 2700, 88th Legislature, relating to prosecution of certain criminal offenses prohibiting sexually explicit visual material involving children. Recommend additional legislation to protect children as technology continues to evolve..
- 2. Bail Reform:** Examine “charitable bail organizations” that pay bail for defendants, thereby relieving them of any financial incentive to appear in court. Study the operations and funding sources of these organizations. Make recommendations to ensure accountability for “charitable bail organizations” that provide free bond for arrested individuals that reoffend while out on bond; further restrict these organizations’ ability to post bail for violent individuals; and promote transparency.
- 3. Monitoring:** Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice passed by the 88th Legislature, as well as relevant agencies and programs under the committee’s jurisdiction. Specifically, make recommendations for any legislation needed to improve, enhance or complete the implementation of the following: Senate Bill 1004, relating to the criminal offense of tampering with an electronic monitoring device and to certain consequences on the conviction of that offense.
- 4. Supporting Victims of Sexual Assault:** Examine the collection and processing of “rape kits” by law enforcement agencies and testing laboratories. Make recommendations to ensure that forensic evidence collected from victims of sexual assault is processed in a timely manner.
- 5. Retail Theft:** Study the effects of organized retail crime in Texas and in other states. Evaluate the reporting and legislative suggestions from the Organized Retail Theft Task Force. Make recommendations to protect the safety of retail employees and business owners in Texas.
- 6. Financial Crimes:** Evaluate financial criminal activity trends in Texas, including the fiscal impact on consumers, financial institutions, local economies, and businesses. Determine the extent of payment fraud by transnational criminal gangs. Study the impact of the Financial Crimes Intelligence Center (FCIC). Make recommendations that enhance penalties for check and payment fraud and identify ways to strengthen financial crime investigations in Texas.

Interim Hearings Schedule

June 5, 2024, Capitol Extension Room E1.028, Austin, Texas

The Committee took invited and public testimony from a total of 16 witnesses on Charges 2 and 3.

June 6, 2024, Capitol Extension Room E1.028, Austin, Texas

The Committee took invited and public testimony from a total of 10 witnesses on Charge 1.

October 10, 2024, Capitol Extension Room E1.028, Austin, Texas

The Committee took invited and public testimony from a total of 28 witnesses on Charges 4, 5 and 6.

Interim Hearings By Charge

Charge No. 1

Stopping Child Predators: Study how predators use deepfake technology and artificial intelligence (AI) to harm and exploit children. Monitor the implementation of House Bill 2700, 88th Legislature, relating to prosecution of certain criminal offenses prohibiting sexually explicit visual material involving children. Recommend additional legislation to protect children as technology continues to evolve.

Witnesses

Testifying ON

Carl Szabo, Vice-President, General Counsel, NetChoice, Washington DC

Brent Dupre, Director of Law Enforcement , Office of the Texas Attorney General, Austin TX

Christina Green, Chief Advancement and External Relations Officer,
Children's Advocacy Centers of Texas, Inc., Austin TX

Anna McAdams, Self, Aledo TX

Chris Seufert, Assistant District Attorney, Montgomery County District Attorney's Office,
Houston Metro ICAC Task Force, Conroe TX

Renzo Soto, Executive Director for Texas and the Southeast , Tech Net, Austin TX

Captain Steven Stone, Texas Department of Public Safety, Austin TX

Lori Varnell, Assistant District Attorney, Tarrant County District Attorney's Office, Fort Worth TX

Zach Whiting, Policy Director, Texas Public Policy Foundation, Austin TX

Registering ON, but not testifying

Brody Burks, Office of the Attorney General, Austin TX

Background

Child sexual abuse material (CSAM) continues to proliferate in ways never envisioned as technology, and artificial intelligence (AI) applications continue to expand. Technology's use in everyday life continues to provide avenues for offenders to produce and distribute CSAM, proliferating the distribution and abuse of minors through technology and deepfakes.

Generative AI models are the latest technologies used to produce custom CSAM and deepfakes. These tools and platforms are being used to generate images of children from benign imagery for the purposes of fantasy, extortion, and peer-based bullying within our schools and communities.

Deepfake technology and artificial intelligence allowing individuals to create sexually explicit visual material of another person, specifically children, continues to be a massive problem. The state must continue to proactively take action in order to combat predators who create explicit visual material involving minors, deepfakes, and other technology enhanced avenues that allow abusers and offenders to continue to proliferate and expand access to and distribute prohibited material.

Testimony & Discussion

Current Texas law specifies conduct that constitutes the possession or promotion of child pornography, electronic transmission of certain visual material depicting a minor, and possession or promotion of lewd visual material depicting a child, includes visual material that depicts a child or minor who:

- is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
- whose image as a child younger than 18 years old was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

Current law requires that law enforcement and/or the prosecution find an **identifiable** minor as a victim. It should not be necessary to prove the actual identity of an identifiable minor. CSAM has long been prohibited by state and federal law. Abusers continue to use the evolution of technology to proliferate the production and distribution of CSAM and deepfakes, leading to more victims of abuse. Several states have addressed or are currently seeking to address the "identifiable minor" issue.

Testimony before the committee made it clear that technology will continue to constantly change, and Texas policy makers and their staff should continue to stay educated on the most proactive and necessary tools aiding law enforcement, prosecutors, and judges in the prosecution and punishment for this prohibited conduct.

Several other states have already revised their laws based on the new, emerging technologies, and others are evaluating needed changes. A few examples are provided as attachments. Federal law has continued to adapt to new abuse proliferation as well. Current federal law is attached as a reference, and new legislation may continue to emerge from Congress as needed.

Current Texas law also conflicts in respect to section 43.26 of the Texas Penal Code. Senate Bill 129 and Senate Bill 1527 from the 88th Regular Legislature provide for different degrees of punishment depending on the amount of prohibited material that is in possession of the offender. Legislation is needed to resolve the current conflicts in law to provide clarity for law enforcement, prosecutors, and the judiciary.

Current Texas law does not provide adequate protection for victims of deepfakes, specifically school districts policies on how to manage allegations or complaints involving students, ensuring these victims are prioritized in ending the abuse and provide a clear path for the students' safety and the removal of offenders as appropriate.

Technology companies have created tools used by child sex abusers, producers of CSAM material, sex traffickers, and deepfake purveyors. Serious evaluation is needed regarding what more can be done by the companies who have created these tools that enable the abuse of children and the proliferation of CSAM. While there is a requirement for these companies to report, the amount of publicly available images is evidence that truly little reporting is on-going. This is indicative of an extensive and growing problem.

Creators of this technology should play a huge role in reporting, ceasing, and preventing such abuse. Turning a blind eye to what is actually happening with *their* technology and on *their* platforms is not acceptable. Technology tools that are so easily and readily abused should be evaluated for the appropriate amount of oversight, accountability, responsibility, and potential liability.

Recommendations

- Modify current law to specifically NOT require law enforcement or prosecution prove the identity of an actual minor child for purposes of conduct that constitute certain CSAM offenses.
- Modify current law to resolve all conflicts in section 43.26 of the Penal Code.
- Consider legislation directly addressing technology companies and their role in preventing continued CSAM and deepfake proliferation with the goal of preventing abuse and sex trafficking, while prioritizing reporting, and action.
- Consider legislation mandating school districts to have appropriate policies and procedures in place to address victims of deepfakes and student access to technology while involved in any school activities.
- Prioritize victims' rights with respect to all legislation and evaluate funding opportunities to continue to support victims of CSAM and deepfakes.
- Continue to monitor federal legislation and congressional action on all CSAM and deepfakes, technology guardrails and legislation designed to report, prevent, and prosecute offenders and opportunities for victim assistance.

Related Documents Follow



State Statutory Considerations: Addressing AI-Generated CSAM

(1) Amend Texas Penal Code to include AI-Generated CSAM

Amend *Texas Penal Code* § 43.26 to explicitly include AI-generated child sexual abuse material (CSAM) as a criminal offense. This update should identify and define, key AI relevant terminology, and specifically target material that is "virtually indistinguishable" from actual minors, in accordance with the standards set in response to *Ashcroft v. Free Speech Coalition* and as outlined in 18 U.S.C. § 2256.

(2) Revise Texas's Obscenity Laws to Cover AI-Generated CSAM

Revise the state's obscenity laws, particularly Sec. 43.21, to clearly classify AI-generated or similar sexually explicit content depicting children as obscene. This adjustment would establish that visual depictions of sexually explicit conduct involving minors, produced through AI or digital tools, are in direct conflict with Texas's moral standards.

(3) Mandatory Registration and Reporting for AI Platforms

Require AI platforms and models capable of producing visual content to register with the Texas Attorney General, and the National Center for Missing & Exploited Children (NCMEC). This registration must outline the AI model's functions, its preventive measures against CSAM, and legal compliance contacts. In addition, require AI platforms to report AI generated-CSAM detected on their platforms to NCMEC.

(4) Penalties for Non-Compliance and Unregistered AI Systems

Establish penalties for operators of unregistered AI systems and models, particularly those that produce CSAM or are trained on such material. These penalties should address both the failure to register and the production of CSAM, ensuring that operators face significant consequences for non-compliance. The intent is to incentivize all AI technologies to adhere to strict registration and safety standards, thus reinforcing Texas's commitment to child safety in the digital age and emphasizing the responsibility of AI in preventing child exploitation.

(5) Operational Standards and Liability for Generative AI Operators

Design standards for Generative AI operators, and define clear liabilities for entities misusing AI technologies. This includes implementing stringent penalties for AI platform operators who neglect CSAM prevention efforts. In additions, mandatory operational standards for AI platforms and models, should include proactive content filtering, age verification, and constant CSAM monitoring, with stringent penalties for failed to compliance.



**United States House Committee on Oversight and Accountability
Subcommittee on Cybersecurity, Information Technology, and Government Innovation**

“Addressing Real Harm Done by Deepfakes”

March 12, 2024

**Testimony of John Shehan
Senior Vice President, Exploited Children Division & International Engagement
National Center for Missing & Exploited Children**

I. Background

The National Center for Missing & Exploited Children (NCMEC) is a private, nonprofit organization created in response to an unthinkable tragedy. In 1981, 6-year-old Adam Walsh vanished without a trace from a Florida shopping mall. His parents, John and Revé Walsh, endured 10 excruciating days searching for Adam before he was found murdered 100 miles away. The Walshes channeled their grief and came together with other child advocates to create NCMEC in 1984. Over the past 40 years, NCMEC has grown into the nation’s largest and most influential child protection organization on missing and exploited children issues. Today NCMEC fulfills its congressionally designated mission to help find missing children, combat child sexual exploitation, and prevent child victimization through five main programs of work relating to: (1) missing children; (2) exploited children; (3) community outreach; (4) educational and professional resources; and (5) family support.

NCMEC has worked actively to combat evolving forms of the sexual exploitation of children since it was founded over 4 decades ago. During this time, we have learned that individuals who seek to sexually exploit children are often early adopters of new technology and use technological developments to exploit and endanger children in ways that current laws may not anticipate. The emergence over the past year of generative artificial intelligence (GAI) platforms that can be used to create child sexual abuse material (CSAM)¹ and facilitate child sexual exploitation is a recent example of a new technology that is challenging efforts to keep children safe and to detect, identify, remove, investigate, and prosecute online CSAM and sexually exploitative content relating to children.

II. NCMEC’s Work to Combat Online Child Sexual Exploitation

NCMEC operates two core programs to combat child sexual exploitation: (1) the CyberTipline; and (2) the Child Victim Identification Program (CVIP). NCMEC created the CyberTipline in 1998 to

¹ NCMEC uses the term child sexual abuse material (CSAM) to refer to images and videos of children that meet the legal definition of child pornography. 18 U.S.C. § 2256(8).

report to NCMEC's CyberTipline; none have engaged with NCMEC regarding how to avoid creation of sexually exploitative and nude content of children; and none have submitted reports to NCMEC's CyberTipline. A complicating factor is the uncertainty that exists under current law with regard to whether GAI produced nude images of children, without other evidence, are criminal, especially when the perpetrator is a minor, or can be grounds for civil liability.

V. Impact of GAI Technology on Child Safety and Potential Solutions to Better Protect Child Victims

GAI technology has been widely available to the general public for just over a year, yet already has raised significant concerns and impacted child safety. Against this rapidly evolving landscape, NCMEC has identified several operational and legal concerns, as well as potential areas to develop best practices, new legislative/regulatory measures, and strengthen legal protections for victims, including the following items:

A. Areas of Concern Relating to Impact of GAI Technology on Child Safety

Rising Volume of CSAM and Sexually Exploitative Imagery of Children – the volume of GAI CSAM and sexually exploitative content reported to NCMEC in 2023 (4,700 reports) is minor compared to the more than 36 million CyberTipline reports NCMEC received last year. However, as GAI technology becomes more accessible, capable of producing sophisticated image – and increasingly video – content, and continues to exist in open-source forms without training parameters for the underlying machine learning technology, NCMEC is concerned that GAI CSAM reports will lead to even more dramatic increases in reports. This has the potential to strain NCMEC and law enforcement resources, in addition to further normalizing the sexual exploitation of children within society.

Potential Legal Uncertainty Relating to Criminal and Civil Remedies for Children Victimized by GAI Imagery – currently there is some uncertainty regarding precisely how existing criminal and civil laws at the federal and state levels will apply to protect children victimized by GAI CSAM and sexually exploitative/nude images. As more legal cases involving GAI imagery move forward, certain gaps and essential refinements in the law likely will be highlighted that will require legislative action.

Difficulty Distinguishing a “Real” Child from a Child Depicted in GAI CSAM – there are concerns that the proliferation of GAI CSAM images will complicate child identification efforts undertaken by NCMEC and law enforcement. In conducting victim identification of children depicted in CSAM imagery, it is essential to be able to determine if the child victim is a real child and if the offender has access to that child in real life. GAI CSAM complicates child victim identification because now NCMEC and/or law enforcement first must determine which cases depict a real child in need of rescue and which child victims are GAI generated for an offender's personal gratification. An additional concern is that offenders will produce CSAM with a real child victim and then use GAI technology to alter the imagery in order to avoid detection or identification of the victim.

GAI Technology Accelerates Enticement/Sextortion – the use of GAI technology to accelerate enticing and sextorting (including through financial sextortion), a child is an especially troubling trend. An offender previously had to manipulate or trick a child into sharing a nude or sexually exploitative image of themselves prior to sextorting them. With GAI technology, an offender only has to locate innocuous images of a child on social media, sexualize the images using a GAI platform,



TechNet Southeast | Telephone 956.266.2588
P.O. Box 82454, Austin, TX 78708
www.technet.org | @TechNetSE

June 6, 2024

Members of the Senate Criminal Justice Committee
201 E. 14th Street, 470
Austin, TX 78701

Re: TechNet Testimony to Senate Criminal Justice Committee

Dear Chairman Flores, Vice-Chair King, and committee members,

Thank you for the opportunity to present the technology industry's work to fight against the creation and proliferation of child sexual abuse material (CSAM). TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.4 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet members have been leaders on the responsible development and deployment of advanced generative AI (GAI) systems that have captured the world's attention. Our companies have also been at the forefront of AI that has long helped us in our daily lives – navigating traffic, searching the internet, securing our mobile devices, homes, and bank accounts, translating languages, and discovering new music and other entertainment. New AI technologies provide even more potential to improve people's lives – and society broadly – on a larger scale.

TechNet is supportive of the committee's efforts to identify policy solutions that would prevent individuals from misusing GAI to create and disseminate CSAM. TechNet members take multi-faceted approaches to combat CSAM on their services and in the world. While each company must determine the most effective measures for that company considering its primary audience, the features of its products, and the technical options presented by its architecture, TechNet member companies collaborate and share know-how and tools to fight CSAM. CSAM is contraband in all contexts, and TechNet members have long-established this on our various services.

Responsible development and deployment of AI

TechNet members recognize the importance of responsibly developing and deploying AI systems to prevent and mitigate risks. This is particularly the case for CSAM. There are multiple ways that the industry actively works to prevent the creation and dissemination of CSAM through their products and platforms.

Safety by design

Addressing CSAM risks is especially effective in the development and design of AI models. Integrating safety standards into the design process helps to proactively anticipate possible

Austin • Boston • Chicago • Denver • Harrisburg • Olympia • Sacramento • Silicon Valley • Washington, D.C.

threats and prevent them from occurring in the first place once the technology is deployed. TechNet members employ several strategies to do this, including responsible sourcing of training datasets. Having CSAM and other exploitative content in a training dataset increases the risk of AI models being able to generate this harmful content. As such, industry works to actively detect and remove CSAM from their training data, as well as reporting found CSAM to appropriate authorities. Another helpful safety standard is iterative stress testing, which is the process of working to understand the capabilities of an AI model to produce contraband results. Responsibly conducting structured, scalable, and consistent stress testing allows industry to take their findings, feed solutions back into the AI model, and further train the model so that any potential gaps are filled in.

Deployment

TechNet members are also leading on the development and refinement of industry standards and technologies to fight against CSAM for deployed AI models. This starts with prohibiting CSAM and other exploitative materials entirely from products through terms and conditions, policies, and enforcement. However, industry also ensures that there are safety net solutions in place to respond to criminal and illegal activities. One such practice is hash matching, which uses a foundational technology in the child protection ecosystem allowing for CSAM to be turned into a unique string of numbers through an algorithm. Once CSAM has been turned into a hash, it is compared via algorithms, without users' content ever being seen, against a hash list of known CSAM. This not only allows for a more efficient and thorough review of CSAM, but it also helps to protect victims from being retraumatized. There are additional technologies used by industry, like machine learning classifiers, to discover novel CSAM that are not yet known, which helps discover child victims in need and grows existing hash lists.

Ongoing maintenance and innovation

It's crucial to remain vigilant on potential abuses of AI models by individuals. TechNet members take great care to monitor their platforms and detect such abuses. Whenever bad actors build models that are meant to generate CSAM, for example, we remove these from platforms and search results. Companies also partner with expert third parties who specialize in flagging violative content, including CSAM, so that companies' internal teams can review and address the content appropriately. Furthermore, innovation in this area is key for more efficient and effective solutions to preventing CSAM. TechNet members are heavily investing internally and with public and private partners on research and development, like new technologies that protect user content from AI manipulation.

Law enforcement and federal partnerships

TechNet members also assist and collaborate with law enforcement to combat CSAM. Federal law, 18 USC § 2258A, requires that online providers report instances of CSAM to the CyberTipline at the National Center for Missing and Exploited Children (NCMEC). NCMEC takes in reports, assesses them, and refers them to federal, state, local and international law enforcement for investigation. In addition, the law also requires providers to retain important data related to their reports in the event of a law enforcement investigation.

After CSAM is reported to NCMEC, it is frequently investigated by law enforcement. State and local law enforcement may have limited familiarity with the details of how different online services work and how to request assistance in an investigation. Many providers and companies maintain dedicated teams to handle data requests from law enforcement, including the ability to respond around the clock to emergencies involving imminent harm. In addition, providers may publish instructions for law enforcement seeking to serve legal processes or to understand what records may be available. Providers also provide training

through in-person events such as trainings held at NCMEC, regional Internet Crimes Against Children Task Force meetings, and at the Dallas Crimes Against Children annual conference which attracts thousands of law enforcement personnel.

This year, several states have filed and passed legislation to criminalize AI generated CSAM and ensure that criminals can be prosecuted. TechNet has actively worked with state lawmakers to ensure that industry can continue meeting federal requirements, maintain partnerships with law enforcement, and conduct their own efforts. We're glad to work with this committee and the Texas Legislature broadly as well on this issue.

Thank you again for the opportunity to testify and present how industry is a willing and active partner in the fight against CSAM. New AI technologies will undoubtedly be a watershed that has placed us on the cusp of another industrial revolution, but responsible development and deployment of these technologies that allows for innovation while protecting consumers, especially children, is absolutely crucial. We look forward to staying involved and working with this committee. Please do not hesitate to use TechNet as a resource.

Respectfully submitted,



Renzo Soto
Executive Director for Texas and the Southeast
TechNet

Testimony of

Carl Szabo

Vice President & General Counsel

NetChoice

before

the United States House Subcommittee on Cybersecurity,
Information Technology and Government Innovation
Hearing on *Addressing Real Harm Caused by Deepfakes*

March 12, 2024

NetChoice¹ is a trade association of leading e-commerce and online companies promoting the value, convenience, and choice of internet business models. Our mission is to make the internet safe for free enterprise and for free expression.

We work to promote the integrity and availability of the global internet and are significantly engaged in issues in the states, in Washington, and in international internet governance organizations.

Introduction

Thank you Chairman Mace, Ranking Member Connolly, and distinguished members of the Subcommittee for the opportunity to testify on the critical issues surrounding deepfakes and artificial intelligence.

My name is Carl Szabo and I serve as the Vice President and General Counsel for NetChoice, a trade association of leading online businesses working to make the internet safe for free enterprise and free expression. I am also an Adjunct Professor at the George Mason University Scalia School of Law.

The Transformative Potential of AI

2023 was a watershed year for artificial intelligence (AI) advancement, and 2024 is set to be the year when many of AI's promises become reality. AI has the potential to profoundly enhance our lives across a wide range of domains, from healthcare and education to productivity and creativity. However, as with any transformative technology, AI also introduces certain risks that we must carefully navigate.

Deepfakes, AI-generated synthetic media that features highly realistic yet false depictions of real people, exemplify both the potential benefits and dangers of AI. On one hand, deepfakes have many positive applications. In education, deepfakes could allow students to interact with historical figures or explore scientific concepts in immersive ways. In healthcare, they have great potential to aid in the treatment of Post Traumatic Stress Disorder. And in the arts, deepfakes open up new avenues for creativity and storytelling. However, deepfakes can also be weaponized as tools for misinformation, fraud, and abuse.

AI is Already Heavily Regulated

While some have called for extensive new regulations on AI, the reality is that this technology is already subject to a wide array of existing laws and regulatory frameworks. Any AI system must comply with the same rules as any other technology or business practice in its sector. This

¹ NetChoice is a trade association of e-Commerce and online businesses, at www.netchoice.org. The views expressed here do not necessarily represent the views of every NetChoice member company.

means that AI applications in healthcare are regulated by HIPAA and FDA guidelines, AI in finance is subject to FCRA and ECOA, and AI in education must adhere to FERPA, just to name a few examples. The notion that AI will inhabit some kind of lawless Wild West is simply false.

For example, the federal government has already declared intentional lying about the time, manner, or place of an election to prevent qualified voters from voting a crime. This means the government is free to go after individuals publishing deepfakes that seek to subvert election integrity. Moreover, existing consumer protection laws, such as the FTC Act's prohibition on unfair and deceptive practices, already provide robust safeguards against AI systems that might mislead consumers or otherwise cause them harm.

There are hundreds of laws that govern AI today.

The FTC has made clear that it will vigorously police the AI industry under its existing authorities, and has already brought enforcement actions against companies for making misleading claims about their AI products or failing to secure sensitive data used in AI development. At the same time, broadly applicable anti-discrimination statutes like the Civil Rights Act, Fair Housing Act and Americans with Disabilities Act all constrain the use of AI in high-stakes domains like employment, credit and housing to prevent disparate impacts. Finally, existing defamation and false light torts will protect the subjects of deepfake media from reputational harm.

To be clear, this is not to say that every conceivable AI harm is perfectly addressed by current law, or that thoughtful, targeted updates may not be warranted in certain areas. But the core frameworks for regulating the responsible development and use of AI are very much in place today. Policymakers and the public can take comfort in the fact that our existing legal structures are, by and large, well-equipped to prevent and remedy the highest-risk AI failures.

Before rushing to pass sweeping new AI-specific regulations, we should think carefully about how they would interact with this dense, overlapping web of existing rules. The goal should be to strategically fill discrete gaps, not to create a redundant layer of AI law that could impede innovation while adding little marginal protection for the public.

The Biden Deepfake Robocall Incident: A Case Study in Addressing AI Misuse with Existing Laws

In January 2023, as New Hampshire voters prepared to cast their ballots in the Democratic primary, many received troubling phone calls featuring what sounded like then-candidate Joe Biden announcing his withdrawal from the race due to health concerns.

The calls were quickly revealed to be a hoax; a malicious "deepfake" generated by artificial intelligence tools to deceive voters and disrupt the democratic process. While the Biden deepfake incident illustrates the potential for AI to be abused by bad actors, it also demonstrates how existing laws and collaborative efforts between law enforcement and the tech industry can effectively combat such misuse.

Pindrop, a leading voice authentication company, analyzed the audio and compared it to samples from over 120 known voice synthesis engines. Their deep learning models determined with over 99% confidence that the fake Biden calls had been generated using technology from ElevenLabs, an AI speech generation platform.²

Armed with this information, ElevenLabs quickly identified and suspended the account responsible for violating its terms of service, while state and federal authorities launched investigations to uncover and prosecute the perpetrator under existing anti-fraud and election interference statutes.

Existing Laws Against Election Interference

The malicious use of AI tools to influence an election already falls squarely within the scope of numerous state and federal laws. New Hampshire law prohibits knowingly distributing communications that falsely represent a candidate's withdrawal. Federal law prohibits using artificial or prerecorded voice messages in robocalls to cell phones without prior consent. The Federal Trade Commission Act bars unfair or deceptive practices, granting the FTC flexible enforcement authority that encompasses novel forms of digital deception. Finally, using AI to impersonate a real person to defraud voters could constitute wire fraud, punishable by fines and imprisonment.

Some have pointed to the Biden deepfake incident as evidence that AI has outpaced our legal system, necessitating sweeping new regulatory frameworks. In reality, however, the malicious use of AI tools to influence an election already falls squarely within the scope of numerous state and federal laws:

Intentionally deceiving qualified voters to prevent them from voting, with or without deepfake media, is voter suppression—and it is a federal crime.

New Hampshire law, among other states', prohibits "knowingly causing to be distributed, or distributing, a communication that falsely represents that a candidate has withdrawn his or her candidacy."³ Violations are punishable by fines up to \$1,000.

² Margi Murphy, Rachel Metz, and Mark Bergen, *AI Startup ElevenLabs Bans Account Blamed for Biden Audio Deepfake*, Bloomberg (Jan. 26, 2024).

³ NH Rev Stat § 664:14-a.

Federal law prohibits the use of "artificial or prerecorded voice messages" in robocalls to cell phones without prior consent.⁴ The Telephone Consumer Protection Act provides for statutory damages of \$500-\$1,500 per illegal robocall.

More broadly, the Federal Trade Commission Act bars "unfair or deceptive acts or practices in or affecting commerce,"⁵ granting the FTC flexible enforcement authority that readily encompasses novel forms of digital deception. The FTC has made clear it will aggressively police misuse of AI systems under its existing powers.

Finally, using AI to impersonate a real person in an attempt to defraud voters could constitute wire fraud under 18 U.S.C. § 1343, punishable by fines and up to 20 years in prison.⁶

The full weight of anti-fraud, consumer protection, and election integrity laws can and should be brought to bear against bad actors who deploy AI tools like deepfakes to deceive and disenfranchise voters. The Biden incident is not a case of legal frameworks struggling to keep pace with technological change, but of the ongoing challenge to ensure existing laws are effectively enforced in the digital domain.

Supplementing Law Enforcement with Cross-Sector Collaboration

Still, the Biden case does highlight the critical role of collaboration between law enforcement and the private sector in detecting and preventing AI-enabled crimes. Pindrop's sophisticated deepfake detection technology, developed through machine learning on massive datasets of real and synthetic audio samples, was instrumental in tracing the fake robocalls back to ElevenLabs' platform.

This kind of public-private partnership will only become more important as generative AI grows ever-more accessible and capable. By continuously honing AI-powered forensic tools to detect misuse, responsible tech companies can serve as valuable allies to law enforcement in identifying AI-generated disinformation, fraud, and other harms.

At the same time, by promptly acting on this information to suspend bad actors and cooperating with investigations, companies like ElevenLabs demonstrate the power of responsible self-governance in the AI ecosystem. ElevenLabs' swift action in this case likely helped limit the reach and impact of the fake Biden calls.

As AI evolves, nurturing this kind of proactive, collaborative approach will be far more effective in safeguarding the public than relying on reactive, potentially innovation-chilling regulations. By fostering close coordination between law enforcement and the AI community, policymakers can help ensure that cutting-edge detection and prevention tools keep pace with emerging threats.

⁴ 47 U.S.C. § 227.

⁵ 15 U.S.C. § 45.

⁶ 18 U.S.C. § 1343.

Resolution

The Biden case highlights the critical role of collaboration between law enforcement and the private sector in detecting and preventing AI-enabled crimes. Pindrop's sophisticated deepfake detection technology was instrumental in tracing the fake robocalls back to ElevenLabs' platform, demonstrating the power of AI-powered forensic tools.⁷ ElevenLabs' swift action in suspending the bad actor and cooperating with investigations showcases the importance of responsible self-governance in the AI ecosystem. Nurturing this proactive, collaborative approach will be more effective in safeguarding the public than relying on potentially innovation-chilling regulations.

While the Biden deepfake incident does not obviate the potential need for targeted legislative updates to address AI harms not covered by existing law, such as non-consensual deepfake pornography and AI-manipulated child exploitation material, overly-broad proposals to restrict deepfakes or generative AI could do more harm than good. The incident demonstrates the resilience of our existing legal and collaborative frameworks in addressing AI-enabled threats. By doubling down on enforcement, fostering public-private collaboration, and judiciously updating laws to cover unique AI harms, policymakers can effectively combat malicious deepfakes without compromising the technology's vast beneficial potential.

Mitigating Deepfake Harms

Like with any other technology, bad actors will predictably abuse AI to harass women, sexually exploit minors, in addition to undermining public trust in our democratic processes. Law enforcement is already reporting that abusers are using AI tools to generate realistic depictions of real children in sexual situations, then arguing in court that since the explicit images were "AI-generated," they skirt existing child pornography laws. Elsewhere, criminals are using deepfake technology to falsely depict adults in compromising, sexual situations to extort, defame and intimidate victims.

Though amendments to existing laws may be appropriate to capture harms wrought by deepfake technology under certain circumstances, the vast majority of malicious deepfake uses are already illegal under existing statutes. Laws against harassment, defamation, fraud, identity theft, and copyright infringement all apply to deepfakes, just as they do to any other content. And election laws barring deceptive practices and voter manipulation encompass deepfakes aimed at election interference.

However, Congress should address the gaps that do exist in current law in a careful, targeted fashion.

⁷ Margi Murphy, Rachel Metz, and Mark Bergen, *AI Startup ElevenLabs Bans Account Blamed for Biden Audio Deepfake*, Bloomberg (Jan. 26, 2024).

The Stop Deepfake CSAM Act

First, the *Stop Deepfake CSAM Act* would clarify that harmful AI-manipulated sexual images exploiting real minors are unambiguously illegal under existing federal child pornography statutes. Specifically, it would amend the definition of child sexual abuse material (CSAM) to include any visual depiction of a minor engaging in "actual or simulated" sexual conduct, where a criminal has used AI tools to "modify" sexually explicit material to include recognizable features of a real child.

This would prevent abusers from escaping accountability through the perverse argument that digitally manipulated CSAM gets a free pass.

The Stop Non-Consensual Distribution of Intimate Deepfake Media Act

Second, the *Stop Non-Consensual Distribution of Intimate Deepfake Media Act* would update privacy laws to expressly cover identifiable deepfake media shared with intent to harm. It would make it unlawful to distribute a deepfake depicting a non-consenting person engaging in fabricated sexual conduct with intent to coerce, harass or intimidate. This would close a loophole that allows deepfake harassment and exploitation to slip through the cracks.

Importantly, both bills include robust safeguards for constitutionally protected speech. They explicitly exempt works of political commentary, criticism, satire or parody. And they provide a safe harbor for digitally manipulated media that includes a clear disclosure that the content is synthetic. These are the kinds of narrowly tailored legislative updates we need to combat discrete deepfake harms without chilling legitimate expression.

At the same time, these laws alone are not a panacea. To fully address the deepfakes challenge, we also need to equip law enforcement with the expertise and resources to pursue cases involving malicious synthetic media under existing legal frameworks. But by strategically closing loopholes while avoiding rushed, overbroad bans, we can mitigate the worst abuses of deepfakes without stifling innovation.

The Dangers of Imprecise Definitions for AI in Legislation

As legislators grapple with the rapid advancements in AI and its potential impact on society, it is crucial to approach the regulation of this technology with care and precision. Imprecise definitions and overly broad language in AI-related legislation can lead to unintended consequences, stifling innovation and infringing upon free speech rights.

One particularly concerning example is the attempt to require disclosures on political ads that utilize AI technology. This is something we are seeing across the country as several states have enacted what may seem to be important disclosures, but due to imprecise definitions, have dangerous consequences for trust.

Take, for example, House File 2549, introduced in the Iowa General Assembly. This bill, very similar to laws already enacted in states like Michigan, Texas, and Washington, mandates that any published material designed to expressly advocate for or against a candidate or ballot issue must include a disclaimer if it was generated using AI. While the intention behind this requirement may be to promote transparency, the vague definition of AI in the bill could lead to absurd outcomes.

Under the bill's broad definition, AI encompasses any "machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments." This could potentially include even the most basic photo editing tools, such as auto color correction or cropping. As a result, a political ad featuring a candidate standing in front of a green screen or a picture that has been automatically cropped to fit a specific aspect ratio could be subject to the disclosure requirement. This would lead to a proliferation of disclaimers which would render an otherwise truthful political ad labeled with a self-declaration of "fake." This will cause confusion among voters and undermine the effectiveness of political communication.

Several new state laws would require a "false" label on a political ad featuring a candidate standing in front of a green screen.

Moreover, the bill's penalties for non-compliance are severe, with violators facing up to 90 days in jail and a fine of up to \$1,000. This means that individuals or organizations could potentially face criminal charges for minor modifications to images, even if these changes have no material impact on the message being conveyed. Such disproportionate consequences could have a chilling effect on political speech, as campaigns and advocates may be hesitant to use even the most basic digital tools for fear of running afoul of the law.

The issues with imprecise AI definitions extend beyond the political realm. Consider Tennessee's "Ensuring Likeness, Voice, and Image Security Act of 2024" (ELVIS Act), which seeks to protect individuals' rights to their name, voice, and likeness in the digital era. The original bill's language is so broad that it assumes any use of another person's photograph, voice, or likeness without authorization is subject to civil action. This could lead to unintended consequences, such as holding individuals liable for posting a photograph of a celebrity taken at a concert or sharing a video recording of an artist's performance with a friend via text message.

Furthermore, the ELVIS Act's First Amendment defense is a rebuttable one, meaning that even if individuals believe their actions are protected under free speech, they would still have to defend themselves in court. This places an undue burden on innocent citizens and could lead to a chilling effect on free expression.

The overly broad language in the ELVIS Act could also restrict the use of AI-powered creative tools, such as those used for generating art, music, or writing. If the legislation fails to clearly distinguish between AI systems that simply assist human creators and those that operate autonomously, it could stifle artistic innovation and limit the ways in which individuals can express themselves.

Fortunately, the lawmakers in Tennessee realized the error of their ways. They moved in a way to include a high mens rea. In addition, the defendant must also be misappropriating the likeness to further a commercial interest. By adding the necessary bad actions, the Tennessee legislature was able to mitigate many of the harms from the overly broad definition of AI.

To avoid these unintended consequences, legislators must work closely with AI experts, industry stakeholders, and civil society groups to craft precise, technology-neutral definitions that focus on specific behaviors and outcomes rather than broad categories of tools. This approach will ensure that the law can adapt to the rapidly evolving AI landscape while still protecting the rights and interests of individuals and society as a whole.

Imprecise definitions can lead to a host of unintended consequences, from chilling political speech to stifling innovation and creativity.

The regulation of AI is a complex and delicate task that requires careful consideration and precise language. Imprecise definitions can lead to a host of unintended consequences, from chilling political speech to stifling innovation and creativity. As we navigate the challenges and opportunities presented by AI, it is essential that our laws strike a balance between protecting the public interest and fostering the responsible development and deployment of this transformative technology. By learning from the examples set by other states, such as Tennessee's amendments to its proposed ELVIS Act, legislators can work towards crafting more thoughtful and effective AI regulations that minimize the potential for legal overreach and unintended consequences.

New federal laws regarding AI can only come from Congress, not the Executive Branch

President Biden's recent executive order on AI⁸ is not only a violation of the Constitution but also a misguided attempt to regulate a rapidly evolving technology that holds vast potential to improve people's lives. By attempting to govern AI development through an executive order, the President is effectively usurping the role of Congress, which is the only branch of government constitutionally authorized to create such rules and regulations.

⁸ White House, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023).

This unilateral action by the executive branch sets a dangerous precedent that undermines the fundamental principles of separation of powers and checks and balances enshrined in our Constitution. It is the responsibility of Congress, not the President, to carefully consider and debate the complex issues surrounding AI regulation and to craft well-balanced legislation that addresses both the challenges and opportunities presented by this transformative technology.

Moreover, the restrictive regulatory approach outlined in the executive order threatens to stifle innovation and hinder the competitiveness of the American AI industry. The introduction of burdensome and complex regulations, without proper congressional oversight, will likely discourage investment in AI research and development, as companies face increased uncertainty and compliance costs. This could lead to a slowdown in innovation, allowing other nations, such as China, to surpass the United States in the global race for AI supremacy.

The White House Executive Order on AI is an unconstitutional violation of the major questions doctrine.

The executive order's broad regulatory measures will result in stifling new companies and competitors from entering the marketplace, effectively consolidating power in the hands of a few large tech giants. This not only limits consumer choice but also significantly expands the power of the federal government over American innovation.

The order puts any investment in AI at risk of being shut down at the whims of government bureaucrats, which is a dangerous approach for our global standing as the leading technological innovators.

It is important to note that there are already many regulations in place that govern AI. Instead of examining how these existing rules can be applied to address modern challenges, President Biden has chosen to further increase the complexity and burden of the federal code. This approach is not only unnecessary but also counterproductive to the responsible development of AI technology.

Only Congress can craft legislation addressing the challenges and opportunities presented by AI. It is crucial that we do not allow fears to hold the United States back from realizing the vast potential of this technology to improve people's lives. It is the responsibility of Congress to ensure that any regulatory framework strikes the right balance between promoting innovation and protecting the public interest, not the executive branch.

The Promise of AI in Education

As an educator myself, I've seen firsthand how AI is transforming the classroom in overwhelmingly positive ways. This year marks an inflection point, as students gained access to powerful generative AI tools that can assist with tasks like essay outlining, open-ended math problems, and code debugging. While this has stoked understandable fears about cheating and plagiarism, I believe AI can be an invaluable teaching aid if properly managed.

*In my own classes, I allow the use of AI assistants,
but not as a crutch.*

In my own classes, I allow the use of AI assistants, but not as a crutch. Students must still demonstrate mastery of the material through thoughtful analysis and their own words. AI can help brainstorm and structure ideas, but it's no substitute for human reasoning, creativity and original expression. By requiring students to cite when they've used AI and reflect on how it contributed to their work, I'm teaching them to use these tools productively while thinking critically about the outputs.

Other AI-powered educational technologies are enabling personalized learning at an unprecedented scale. Intelligent tutoring systems can provide each student with customized feedback and recommendations based on their unique strengths, challenges and learning styles. AI can also automate rote tasks like grading, freeing up teachers to provide more individualized support. And data-driven AI insights are helping schools identify at-risk students early and intervene with targeted resources.

By proactively integrating AI into curricula, we can equip students with the skills to harness these technologies effectively in their academic, personal and eventually professional lives. Attempting to ban AI from the classroom would only leave students woefully unprepared for a future in which these tools are ubiquitous. Instead, we should embrace AI's educational potential while teaching students to be savvy, critical consumers of AI-generated content.

Principles for Trustworthy AI Development

To fully realize AI's positive potential across domains, we must proactively mitigate serious but avoidable negative impacts. But we can do this without heavy-handed government control that could jeopardize America's position as a global leader in AI innovation.

Instead of rushing to restrict AI development itself, policymakers should establish guidelines and incentives for the trustworthy development and deployment of AI systems, focused on three core principles:

1. Transparency

Organizations should commit to disclosing when AI is being used and for what purposes, empowering individuals to make informed decisions about engaging with AI systems. Where AI materially shapes outcomes for consumers, additional context about the key factors influencing the AI's decisions may be warranted.

2. Accountability

AI should be subject to the same rules and liability structures as any other tool. Existing laws, from non-discrimination statutes to product liability and privacy frameworks, already provide robust accountability mechanisms. The key is ensuring these laws are vigorously enforced in the AI context.

3. Security

Rigorous safeguards should be in place to protect the sensitive personal data used to train AI systems from breach or misuse. AI developers must employ state-of-the-art cybersecurity and data governance practices to preserve privacy and prevent AI from amplifying societal biases.



Other Actions for Congress

As an overarching priority, Congress should advance comprehensive federal privacy legislation that enshrines individual data rights, mandates reasonable security practices, and preempts the current patchwork of state laws. By enabling responsible data-driven innovation while protecting consumer privacy across sectors, such a law would provide a much-needed foundation for trustworthy AI development.

At the same time, we must remain vigilant against cynical attempts to control AI for ideological or political purposes. Some efforts to "root out bias," however well-intentioned, risk enshrining a particular partisan worldview and chilling AI's ability to generate the full scope of perspectives present in society.

The best remedy for concerns around subjective bias or "woke AI" is to ensure a vibrant, competitive marketplace of AI products and services. With a diversity of AI models to choose from, reflecting a range of viewpoints and value systems, consumers will be empowered to select the tools that best align with their individual preferences and needs. But sustaining this flourishing AI ecosystem requires a light-touch regulatory approach that leaves ample room for responsible innovation.

Conclusion

We believe the key to addressing deepfakes and unlocking AI's full potential is to pursue a balanced, multi-stakeholder approach. We should strategically update existing legal frameworks for the digital age, empower educators to integrate AI tools thoughtfully into their pedagogy, and encourage voluntary industry initiatives around transparency, accountability and security.

By advancing targeted legislative solutions like the *Stop Deepfake CSAM Act* and the *Stop Non-Consensual Distribution of Intimate Deepfake Media Act*, we can combat the most egregious abuses of synthetic media without impinging on free expression or technological progress. And by establishing clear principles for trustworthy AI development, we can mitigate foreseeable risks while preserving the flexibility for transformative innovation.

AI is not a force to be feared, but a tool to be harnessed wisely in service of human values and aspirations. With the right governance frameworks and social norms in place, the United States can and must retain our global leadership in this critical technological domain. Ceding the AI race to less open societies would not only forfeit the profound benefits for American consumers and businesses, but leave the future trajectory of this powerful technology in the hands of authoritarian regimes.

The choices we make today about how to approach AI governance will shape the fabric of American competitiveness, security and liberty for generations to come. I urge the members of this Subcommittee to reject reactive, heavy-handed proposals that would stymie our capacity to lead the AI revolution, and to instead advance pragmatic, forward-thinking solutions to maximize this technology's positive impact while mitigating its avoidable harms.

Thank you again for the opportunity to share my perspective on these critical issues. We look forward to your questions.

Legislative Language to Address AI Deepfakes

Stop Deepfake CSAM Act

Section 1. Title - This Act may be cited as the Stop Deepfake CSAM Act.

Section 2. Definitions

“Deepfake” means any visual media created, altered, or otherwise manipulated in a manner that would falsely appear to a reasonable observer to be an authentic record of the individual’s actual speech, conduct, or likeness.

“Distribute” means to publish or disseminate, including but not limited to: advertising, exhibiting, exchanging, promoting, or selling deepfake material.

“Minor” means any natural person under eighteen years of age.

“Natural person” means a human being with legal personality as distinguished from a person created by digital means or by operation of law.

“Possess” means [as defined elsewhere in state law].

“Recognizable physical characteristics” means an actual minor’s face or likeness.

“Sexual conduct” means unlawful nudity [as defined under state law] or any sexual activity, whether actual or simulated.

Section 3. Prohibitions

The criminal code 18 U.S. Code § 2252 shall be amended in the appropriate place as follows:

(A) Any person who, with knowledge that the material is a deepfake depicting a minor, knowingly possesses or distributes material that depicts a minor engaging in sexual conduct shall be punished by [insert sentencing guidelines].

(B) Any person who, with knowledge that the material is a deepfake depicting a minor, knowingly distributes, advertises, exhibits, exchanges with, promotes, or sells any material that depicts a minor engaging in sexual conduct shall be punished by [insert sentencing guidelines].

(C) Nothing in this Act shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f), for information provided by another information content provider.

(D) The provisions of this Act shall not preclude prosecution under any other statute.

Section 4. Severability Clause

If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 5. Effective date

Stop Non-Consensual Distribution Of Intimate Deepfake Media Act

Section 1. Title - This Act may be cited as the Stop Non-Consensual Distribution of Intimate Deepfake Media Act.

Section 2. Definitions

“Deepfake” means any visual media created, altered, or otherwise manipulated in a manner that would falsely appear to a reasonable observer to be an authentic record of a natural person’s speech, conduct, or likeness.

“Distribute” means to publish or disseminate, including but not limited to: advertising, exhibiting, exchanging, promoting, or selling deepfake material.

“Natural person” means a human being with legal personality as distinguished from a person created by digital means or by operation of law.

“Non-consensual” means without the voluntary agreement of the natural person whose face is involved.

“Sexual conduct” means actual or simulated sexual intercourse, outercourse, masturbation, bestiality, or sexual sadism.

Section 3. Prohibitions

The civil code of the United States shall be amended in the appropriate place as follows:

Unlawful dissemination or sale of images of another; penalty.

A person commits the unlawful dissemination or sale of images of another if the person:

A. intentionally or knowingly distributes a deepfake with a deepfake with the face of a natural person

Depicting that person engaging in sexual conduct that the actual person did not actually engage in;

with intent to coerce, harass, or intimidate;

where the distributor knows or has reason to know that the distribution was not consented to by the natural person whose face is depicted in the deepfake.

B. Nothing in this Act shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f), for information provided by another information content provider.

C. The provisions of this Act shall not preclude prosecution under any other statute

Section 4. Rule of Construction

“Deepfake” shall not be interpreted to include any constitutionally protected speech, including works of political, artistic, or newsworthy value, including commentary, criticism, satire, or parody.

Section 5. Safe Harbor

It shall not be a violation of this Act to publish digitally manipulated media that includes a clear disclosure that would cause a reasonable person to understand that the visual media is not a record of a real event.

Section 6. Severability Clause

If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 7. Enforcement

An individual may bring an action under this Act to recover actual or statutory damages, whichever is greater. Juries may consider punitive damages. Statutory damages shall not exceed [suggested limit of \$10,000].

IMPROVING TEXAS' RESPONSE TO CRIMES AGAINST CHILDREN

Children's advocacy centers (CACs) provide a safe, child-friendly environment that facilitates access to safety, justice, and healing for Texas children impacted by abuse and violence. CACs provide a multidisciplinary team (MDT) approach that improves the response to these crimes while supporting the emotional well-being of children and caregivers impacted by trauma.

CACs and their MDT partners, including law enforcement, local district and county attorneys, the Texas Department of Family and Protective Services (DFPS), medical and mental health professionals, and victim and family advocates, collectively work towards a unified and coordinated response on behalf of children. The CAC MDT approach provides case coordinators, forensic interviews, medical evaluations, mental health treatment, case review, and victim support and advocacy.

The network of Texas CACs brings together:



OVER 1,500
dedicated CAC
staff members



OVER 1,100
law enforcement
jurisdictions



MORE THAN 230
district and
county attorneys



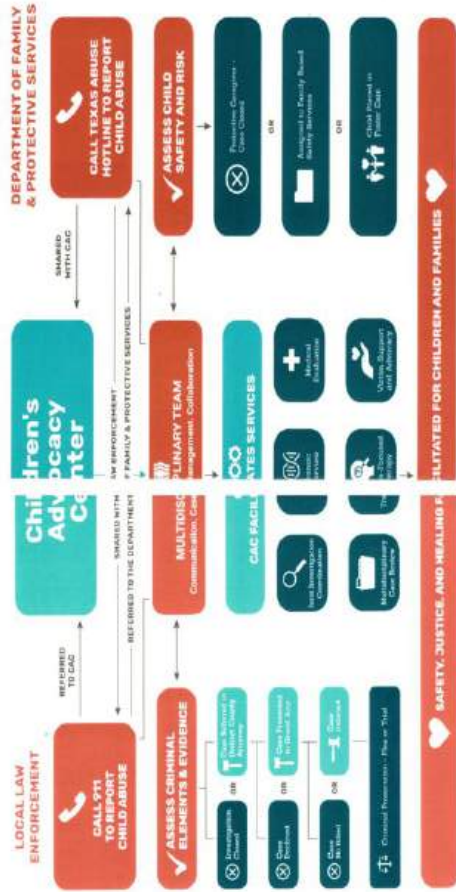
MORE THAN 300
medical and mental
health professionals



EVERY DFPS REGION
IN THE STATE

Including Child Protective
Investigations, Child Abuse
and Neglect, Child Adult
Protective Services

HOW THE CHILDREN'S ADVOCACY CENTER MODEL WORKS



WHY CHILDREN'S ADVOCACY CENTERS MATTER

CACs provide quality, trauma-informed services in the most effective, efficient, and consistent manner to help child victims of abuse and crime and their caregivers recover. Each CAC provides a safe environment that allows a child to tell their story, an opportunity for early intervention, and a path to healing.

CACs have strengthened mental health services provided by training clinicians in various evidence-based practices to broaden the range of treatment modalities available, such as Trauma-Focused Cognitive Behavioral Therapy and Family Traumatic Stress Intervention and Trauma-Focused Cognitive Behavioral Therapy. As a result, CACs are better equipped to address the specific needs of all clients.

WHO CHILDREN'S ADVOCACY CENTERS SERVE

64,938 children received critical services at a Texas CAC in 2023.¹



TYPES OF ABUSE:

- 65% sexual abuse
- 17% physical abuse
- 7% neglect
- 6% child witness to crime
- 2% sexual & physical abuse
- 2% other victimization
- <1% child fatalities

732 children were victims of sex trafficking

98% of child victims knew their alleged perpetrator

20% of alleged perpetrators were juveniles

FY23 CAC MENTAL HEALTH SERVICES

25,953 children provided with mental health services

134,922 child mental health sessions provided to children

Charge No. 2

Bail Reform: Examine “charitable bail organizations” that pay bail for defendants, thereby relieving them of any financial incentive to appear in court. Study the operations and funding sources of these organizations. Make recommendations to ensure accountability for “charitable bail organizations” that provide free bond for arrested individuals that reoffend while out on bond; further restrict these organizations’ ability to post bail for violent individuals; and promote transparency.

Witnesses

Testifying ON

Alycia Castillo, Senior Advocacy Manager Texas Civil Rights Project, Austin TX

Erin George, National Director of Policy, The Bail Project, The Bail Project, Philadelphia PA

Ken W. Good, The Professional Bondsmen of Texas, Bullard TX

Aaron Johnson, President, Texas Association of Pretrial Services, Galveston TX

Megan LaVoie, Administrative Director, Office of Court Administration, Austin TX

Natalie Michailides, Executive Director Harris County Pretrial Services, Houston TX

Background

Charitable bail organizations have continued to attract legislative attention in Texas since the rules governing their operation were changed by a bail-reform measure in 2021 (Senate Bill 6, 87th Legislature 2nd Special Session). By early 2022, the political advocacy group Texas Organizing Project (TOP) was under fire for bailing a violent criminal out of jail, 21 months before he killed six people in separate shootings in San Antonio and Austin. Two peace officers and a bystander were also wounded.

Charitable organizations in Texas raise money to pay bail bonds to obtain the release of defendants from jails. More than eight hundred defendants were released on bonds posted by charitable organizations, which were subjected to additional public disclosure filings as required by Senate Bill 6.

By April 2024, only TOP reported to still be providing bail for defendants in Texas — but only in Bexar County, according to disclosure reports filed. State officials estimate that as many as eight other charitable organizations may be offering bond services online. None are registered as required by Senate Bill 6.

Proponents of charitable bail organizations insist they are a welcome respite to keep indigent defendants from being stuck behind bars awaiting trial. Proponents allege jails are housing many defendants who should no longer be there. Opponents counter that charitable bail organizations are not accountable or

transparent enough about their funding sources or their operations to ensure public safety. (See case mentioned above as Exhibit A). Opponents maintain public safety should not be compromised by letting violent-crime suspects out of jail while they await trial.

Testimony & Discussion

The Office of Court Administration (OCA) is charged with tracking and reporting certain information relating to charitable bail bonds. OCA reported to the Committee that the decline of charitable bail bonds in Texas indicates most people (84 percent) are released from jail on a cash or surety bond. Regardless, monitoring charitable bail organizations is important and the Legislature should consider changes to current law to require more information about the individuals being bailed out, the crimes charged and whether scheduled court appearances are met. Only limited information such as names and case numbers are now required.

The Committee received testimony about several criminal defendants released from jail on a charitable-bail bond on felony charges and then rearrested on new more-serious charges, including murder. The Committee inquired about needed changes in the settings and releases on all bail bonds, to help increase public safety.

Suggestions made by witnesses before the Committee included making public the names of donors of charitable bond organizations and requiring them to file copies of Internal Revenue Service tax disclosure filings with more detailed information about their activities. Another suggestion was to ensure magistrates and judges making bail decisions have more information about a defendant's criminal history before they release defendants charged with serious crimes.

Other witnesses argued that charitable bond organizations' services provide a path out of jail for defendants who are held on less-serious charges and cannot afford to post a cash bond. These witnesses maintained the organizations provide a service that is otherwise not available, and the lack of charitable bail bonds will keep more people in jail.

Committee members' focus on tweaking the charitable-bond rules in the upcoming session is to protect public safety and ensure violent-crime defendants are not freed from jail, creating new dangers on bond while they await trial. Another focus of the Committee is to amend the list of crimes where judges can deny bail in the Texas Constitution.

Recommendations

- Consider requiring additional details from charitable bond organizations, such as funding sources and more detail about the defendants who are being bonded out.
- Ensure that all charitable bail organizations follow the law.
- Consider limiting the number of bonds the charitable bail organizations can post in a year, or whether they should be limited just to misdemeanor cases.

- Adding additional serious offenses to the list of crimes where judges can deny bail in the Texas Constitution, enhancing public safety.

Related Documents Follow

SENATE COMMITTEE ON CRIMINAL JUSTICE

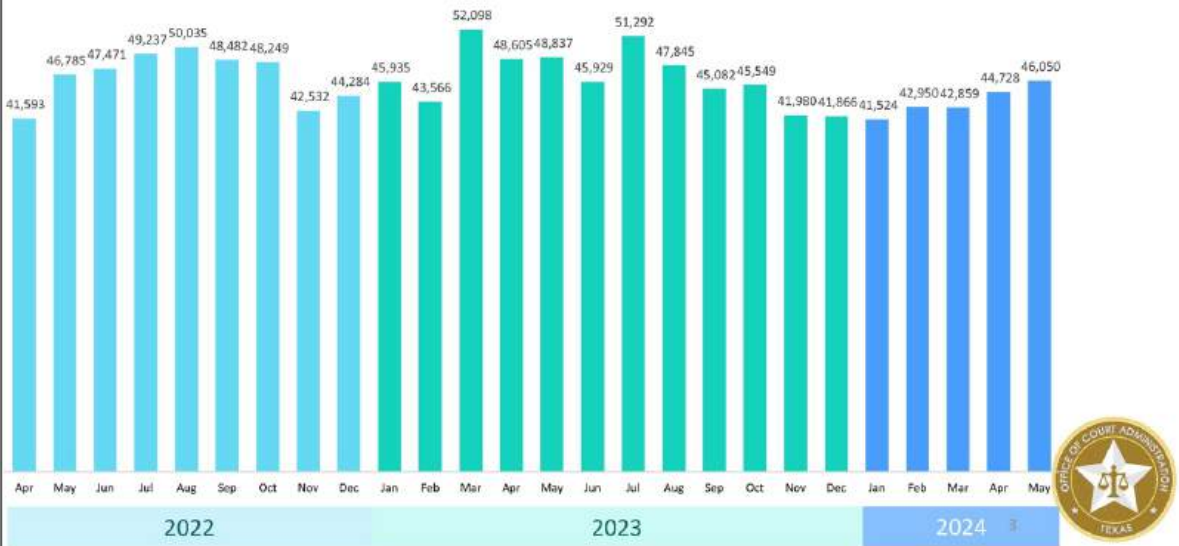
THE PUBLIC SAFETY REPORT &
CHARITABLE BAIL ORGANIZATIONS



TEXAS OFFICE OF COURT ADMINISTRATION
MEGAN LAVOIE, ADMINISTRATIVE DIRECTOR
JUNE 5, 2024

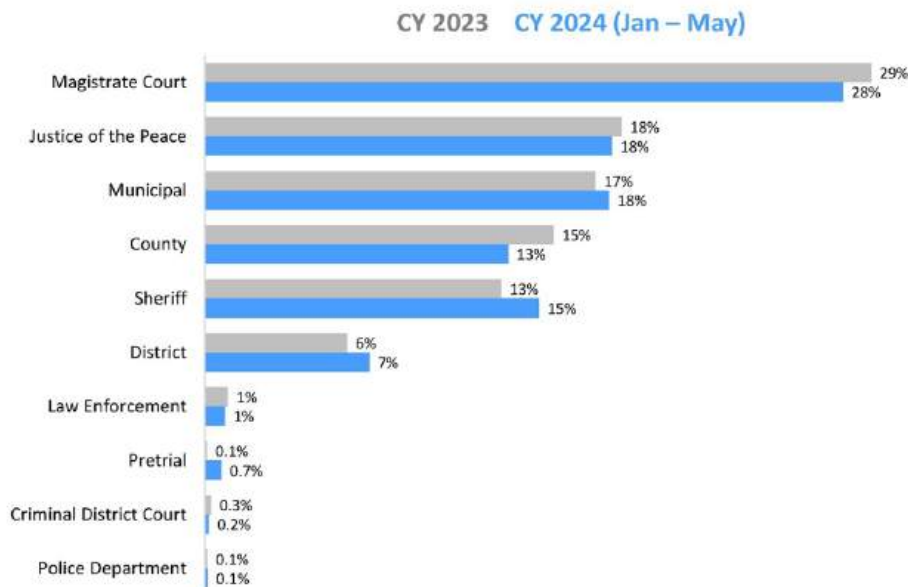


COMPLETED BAIL FORMS



X

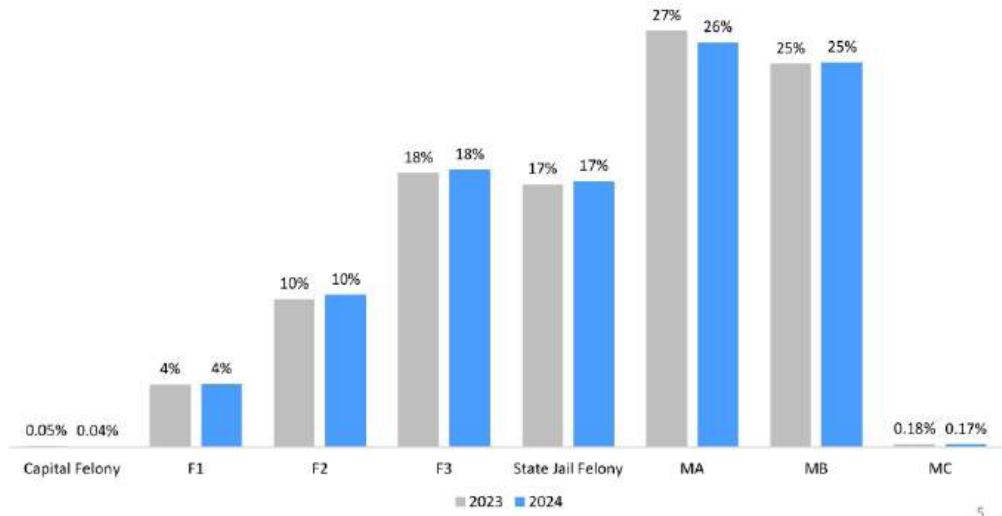
COMPLETED FORMS BY LOCATION



4

OFFENSE LEVELS

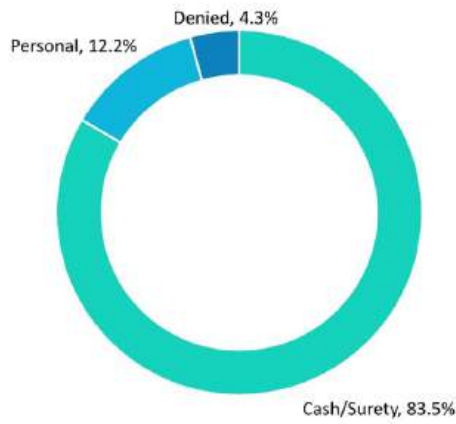
CY 2023 CY 2024 (Jan-May)



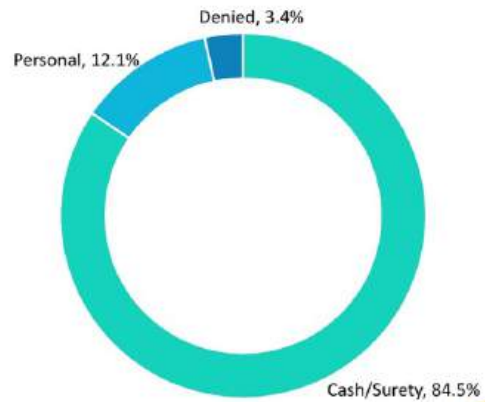
5

BAIL TYPES

CY 2023



CY 2024 (Jan-May)



6

*Bail is given by offense in the system so one Bail Form can have more than one bail type.

BAIL DASHBOARD



CHARITABLE BAIL ORGANIZATIONS

DEFINITIONS & REQUIREMENTS

Code of Criminal Procedure Art. 17.071:

“A person who accepts and uses donations from the public to deposit money with a court in the amount of a defendant’s bail bond.”

Does NOT Include:

- A person collecting/accepting on behalf of a family member
- Nonprofit organized for religious purpose
- Organization who pays bail bond for less than 3 defendants in 180 days

Must:

- Be a nonprofit organization under 501(a) IRS Code
- Obtain a Charitable Bail Organization from County Clerk
 - Clerk checks nonprofit designation
 - Current with IRS filings
 - An affidavit designating the individuals authorized to pay bonds



9

SAMPLE CERTIFICATE & AFFIDAVIT

LUCY ADAME-CLARK
COUNTY CLERK BEXAR COUNTY

BEXAR COUNTY COURTHOUSE
600 DOLOROSA, SUITE 134
SAN ANTONIO, TEXAS 78205

CERTIFICATE

STATE OF TEXAS §
COUNTY OF BEXAR §

I, LUCY ADAME-CLARK, County Clerk of Bexar County, Texas, have been provided an affidavit from Michelle Tremblay, making the Texas Organizing Project Education Fund:

- (1) meets the definition of a "charitable bail organization" in Texas Code of Criminal Procedure Article 17.071(a);
- (2) is a nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code; and
- (3) is current on all filings required by the Internal Revenue Code.

Based on the provided affidavit, I certify that Texas Organizing Project Education Fund is a charitable bail organization pursuant to Texas Code of Criminal Procedure Article 17.071 that is authorized to pay bail bonds in Bexar County, Texas.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, in the City of San Antonio, County of Bexar, State of Texas, on this 22nd day of January 2022.

Lucy Adame-Clark
 County Clerk
 Bexar County, Texas

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF BEXAR §

I, Michelle Tremblay, Executive Director and fiscal representative of Texas Organizing Project Education Fund, 501 Dolorosa St., San Antonio, Texas 78207 and an English language learner, number of 27-041891 who, after being by me duly sworn, depose and swear as follows:

"I am over the age of eighteen (18) years and have never been convicted of a felony or a crime of moral turpitude. I am of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are true and correct."

I am requesting that Lucy Adame-Clark, the County Clerk of Bexar County, Texas, issue a certificate pursuant to Texas Code of Criminal Procedure Article 17.071(a) authorizing Neighbors Organized to pay bail bonds in Bexar County, Texas. In furtherance of obtaining the affidavit, I name the Neighbors Organization:

- (1) meets the definition of a "charitable bail organization" in Texas Code of Criminal Procedure Article 17.071(a);
- (2) is a nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code (see Texas Code of Criminal Procedure Article 17.071(c)(3) and 501(c)(3)); and
- (3) is current on all filings required by the Internal Revenue Code (see Texas Code of Criminal Procedure Article 17.071(c)(2)).

Pursuant to Texas Code of Criminal Procedure Article 17.071(c), Neighbors Organization designates the following individuals as authorized to pay bonds on its behalf:



10

REPORTING REQUIREMENTS

Charitable Bail Report to Sheriff:

- Defendant(s) Name
- Defendant(s) Cause Number(s)
- County where charge pending
- Any date defendant failed to appear on charge which the bail bond was paid

Sheriff Report to OCA:

- Provide copy of Charitable Bail Report to Sheriff to OCA
- Notify OCA of suspensions of Charitable Bail Organizations

11



CHARITABLE BAIL ORGANIZATIONS

Texas Organizing Project

Bail Project

Counties of Operation:

- Bexar (Last report was April 2024)
- Harris (Last report was July 2023)
- Hays (Last report was July 2023)
- Travis (Last report was February 2023)

12



EXAMPLE APRIL 2024 TEXAS ORGANIZING PROJECT REPORT

Name: Texas Organizing Project SID # 438494 Reporting Month: April 2024 County: Bexar County Current Sheriff: Javier Salazar				
Date	First Name	Last Name	Cause	Date of Failure to Appear
4/3/2024	JAELYN TREZON			None
4/3/2024	DANIEL JACOB			None
4/3/2024	SALLY MARIE			None
4/10/2024	Kevin DeJuan	Redacted	Redacted	None
4/15/2024	Ryelsha			None
4/17/2024	Yvette			None
4/17/2024	Yvette			None
4/17/2024	John			None

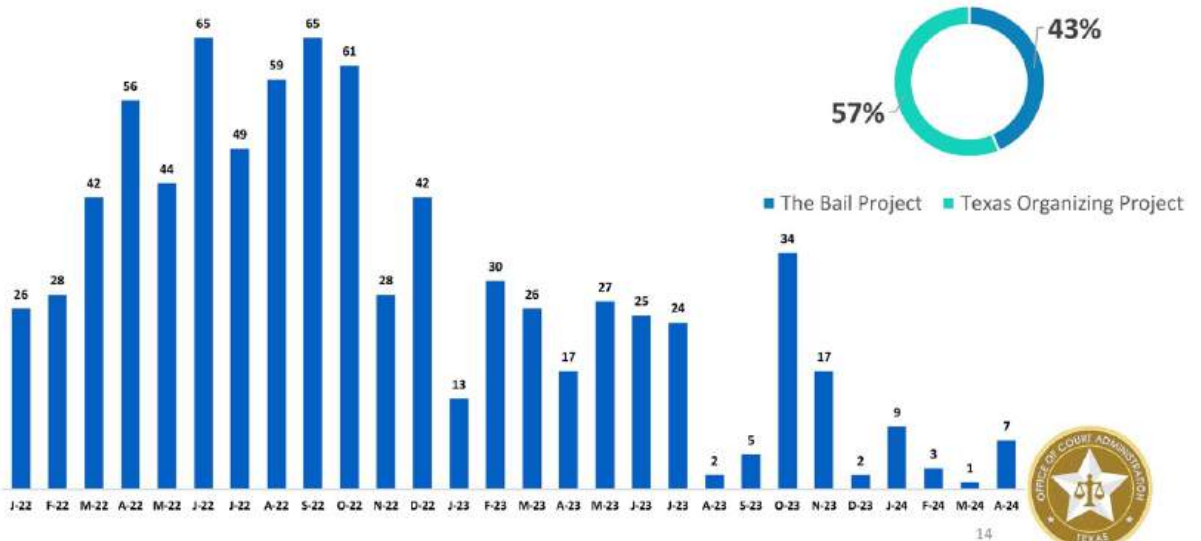


13

CHARITABLE BAIL ORGANIZATIONS

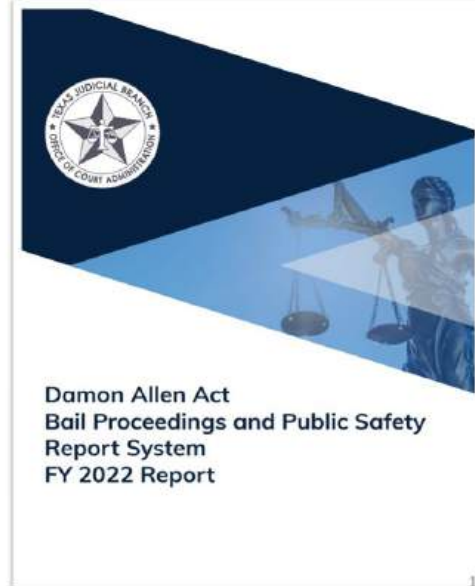
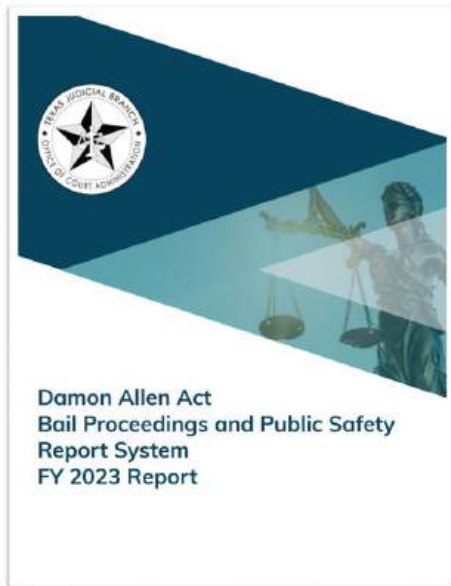
Number of Defendants whom Bail was Paid

Organization Breakdown



14

ANNUAL REPORTS



BAIL AND THE PUBLIC SAFETY REPORT SYSTEM



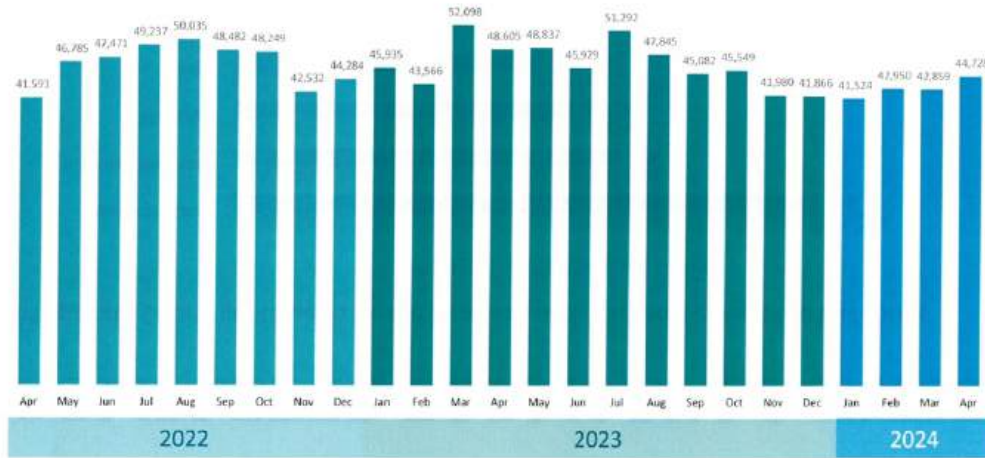
TEXAS OFFICE OF COURT ADMINISTRATION
DATA FROM JANUARY 2023 TO APRIL 2024

A photograph of a desk with various items including a pen, a stethoscope, and papers with charts and graphs. The text "BAIL DATA" is overlaid in the center.

BAIL DATA

COMPLETED BAIL FORMS

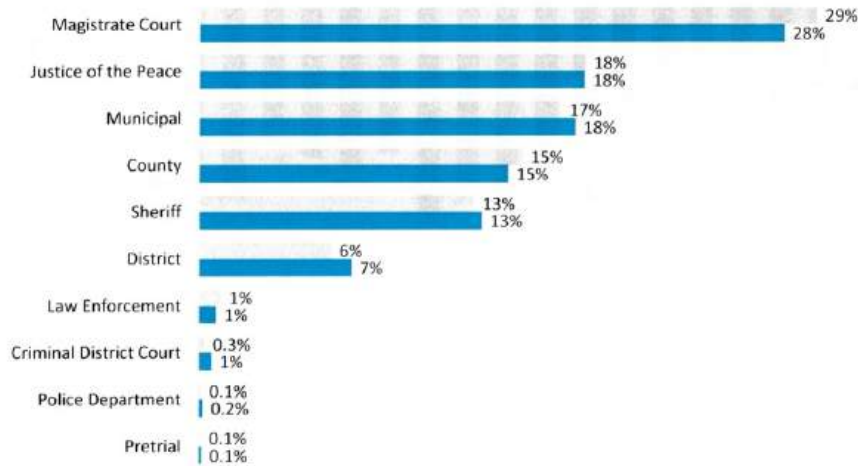
Since April 1, 2022 every month has had over 40,000 completed bail forms with an average of 46,000. The highest months with over 50,000 bail forms have been August 2022, March 2023, and July 2023.



COMPLETED FORMS BY LOCATION

Magistrate Courts continue to be the locations with the most completed bail forms

CY 2023 CY 2024 (Jan – Apr)



W-17-18

TEXAS ASSOCIATION OF PRETRIAL SERVICES

Mike Ward
Director, Senate Committee on Criminal Justice
Room SHB 470
PO BOX 12068
Austin, TX 78711

05/07/24

Dear Mike Ward

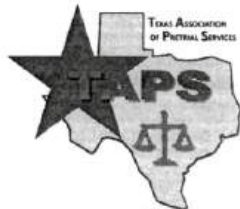
Enclosed you will find the Texas Association of Pretrial Services legislative agenda for the 89th Legislative Session.

We would appreciate the courtesy of addressing yourself and other members of the Criminal Justice Committee to discuss these agenda items.

Sincerely,

Aaron Johnson

Aaron Johnson
TAPS President
(409) 770-5437



Correctional Management
Institute of Texas
Huntsville, TX 77341

PHONE 936-294-1640
EMAIL asemar@shsu.edu
WEBSITE www.texaspretrial.org

Legislative Priority 1: Cite and Release should move to a "shall unless" instead of the current "may" language.

Description: According to the Public Safety Report System (PSRS) data provided by the Office of Court Administration as required by SB 6 (87th Leg), charges eligible for cite and release under Article 14.06 make up 10-15% of all arrests for the State of Texas. These charges are currently eligible for a citation, but are arrested, booked, Magistrated and potentially detained in/released from custody on money bonds. This is inappropriate at best and unnecessarily occupies local law enforcement and Sheriff/Jailers time and resources.

Policy Recommendation: Change article 14.06 language to the following:

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, ~~may~~ shall instead of taking the person before a magistrate, issue a citation to the person unless proper contact information cannot be determined that contains:



Street Address

Correctional
Management
Institute of Texas
Huntsville, TX
77341
Country

PHONE 936-294-1640
FAX Enter fax
EMAIL asemar@shsu.edu
WEBSITE www.texaspretrial.org

Legislative Priority 2: Personal Bond utilization should be encouraged and expanded in the State of Texas, not further restricted.

Description: According to the Office of Court Administration PSRS, more than 60% of all arrests in the State of Texas are eligible for release under Article 17.42 Personal Bond. However, this same data shows Personal Bond utilization is less than 11% across the State (as computed by dividing the number of personal bonds granted out of all bonds). Personal Bond was introduced to help alleviate jail overcrowding for lower level defendants. Research has shown SB 6 (87th Leg) had the consequence of increasing many local jail populations by 10-15% without the funding to accommodate the work and further restrictions for who could be released through the Personal Bond process would be inappropriate at this time when it is already underutilized across the state.

Policy Recommendation: HB 4398 (88th Leg) was introduced last session to help expand the role of the Personal Bond statute as well as introduce "Pretrial" into the language of the Texas Statutes, but was not passed. We would ask similar language in order to clarify what role the Personal Bond and Pretrial Supervision Office should have. As stated in the bill, this include:

Art. 17.42. PERSONAL BOND OR PERSONAL BOND AND PRETRIAL SUPERVISION OFFICE.

- (1) indigent legal services monitoring, including:
 - (A) assisting defendants in filing applications for indigent legal services;
 - (B) reviewing applications and documentation to



Street Address
Correctional
Management
Institute of Texas
Huntsville, TX
77341
Country

PHONE 936-294-1640
FAX Enter fax
EMAIL asemar@shsu.edu
WEBSITE www.texaspretrial.org

assist the court in determining eligibility for indigent legal services; and

(C) coordinating with appointed attorneys to ensure sufficient legal services are provided;

(2) pretrial rehabilitative services, including:

(A) determining what rehabilitative services are available to a defendant;

(B) making recommendations to this state, to defense counsel, and to the court on rehabilitative services; and

(C) monitoring the placement of defendants in rehabilitative services;

(3) coordination of mental health services, including:

(A) recommending mental health testing;

(B) assisting defense counsel in meeting mental health testing requirements;

(C) monitoring compliance with mental health testing dates; and

(D) assisting magistrates with mental health orders and testing; and

(4) other services as are required to fulfill the goals of pretrial bond supervision.

Larger Counties have already adopted/updated their Personal Bond Offices with bond conditions and supervision aspects. This expansion of duties and responsibilities would recognize them as such and provide for other Counties to be able to do the same. Research has shown higher utilization of Personal Bonds and a high functioning Personal Bond Office can lead to lower local jail populations and lower arrests/rearrests overall.



Street Address
 Correctional
 Management
 Institute of Texas
 Huntsville, TX
 77341
 Country

PHONE 936-294-1640
 FAX Enter fax
 EMAIL asemar@shsu.edu
 WEBSITE www.texaspretrial.org

Legislative Priority 3: Surety Bond forfeiture reporting for public safety

Description: Surety Agents are backed by large insurance companies throughout the State of Texas. These agencies have no public reporting requirements for their fee scheme, public safety rates, or actual forfeiture amounts and amounts actually paid/collected by the Counties they operate in. This lack of transparency presents a public safety danger and lack of financial responsibility to the State since a surety agent bond cannot be forfeited when an individual commit's a new law violation – which is a significant public safety risk since those eligible for surety bonds include all "**violent**" charges by state statute.

Policy Recommendation: SB 6 (87th Leg) created new reporting requirements for the entire state in regards to the offenses being arrested, the types of bonds set, when bail is denied, and the bail amounts by type. At minimum, one additional element should be added to this report as shown below. The PSRS already shows the billions of dollars in bond issued yearly in Texas; however, this additional stat would show how much is recovered by the counties for forfeiture of surety bonds related to failures to appear in court.

Add the following:

Art. 17.021. PUBLIC SAFETY REPORT SYSTEM.

(e)...

(4) The total amount collected by county for surety forfeiture



Street Address

Correctional
Management
Institute of Texas
Huntsville, TX
77341
Country

PHONE 936-294-1640
FAX Enter fax
EMAIL asemar@shsu.edu
WEBSITE www.texaspretrial.org

Legislative Priority 4: Preventive Detention Updates

Description: The Texas Constitution (Article 1 Section 11) already allows for pretrial preventive detention in limited circumstances as well as new situations under SB 6 (Art 17.027). Specifically, preventive detention is authorized by 18 U.S. Code § 3142 - (e)(f)(g).

Policy Recommendation: Anything brought before the legislature for consideration should follow the Federal Statute regarding preventive detention (e), providing for a detention hearing(f), and all the factors to be considered (g) and should not be more restrictive. Denial of bail for this specific statute or any further expansion should be reported independently through the PSRS/OCA system as a new category so outright bail denial determinations can be publicly available.



Street Address
Correctional
Management
Institute of Texas
Huntsville, TX
77341
Country

PHONE 936-294-1640
FAX Enter fax
EMAIL asemar@shsu.edu
WEBSITE www.texaspretrial.org

Legislative Priority 5: Surety Bond Fee Minimum Fee and Refunds

Description: Anyone utilizing a surety agent to post bond pay a significant fee in order to do so. These fees are not set or regulated at this time and can range widely depending on the agency. These fees are also non-refundable, regardless of the outcome of an individual's case.

Policy Recommendation: These fees should be set by statute at 10% and should be refundable if the individual's case is not filed/dismisssed/declined or a person is found not guilty (outside of a plea agreement) as the only reason they had to post bond in the first place was based upon a probable cause arrest, not under clear and convincing evidence and their case is now moot. This would include any type of payment plan or leverage used against property to secure an individual release from custody in which their case was not filed/dismisssed/declined or a person is found not guilty (outside of a plea agreement).

Add the following:

Art. 17.53. PROCEDURES AND FORMS RELATED TO MONETARY BOND

- (1) the refund of any cash funds paid toward a monetary bond, with an emphasis on refunding those funds to the person in whose name the receipt described by Article 17.02 was issued; and
- (2) the refund of any fee or all funds/property used to pay towards monetary bond in which a person's case is not filed/dismisssed/declined to prosecute or found not guilty (outside of a plea agreement); and
- (3) the application of those cash funds to the defendant's outstanding court costs, fines, and fees.



Street Address
Correctional Management Institute of Texas
Huntsville, TX 77341 Country

PHONE	936-294-1640
FAX	Enter fax
EMAIL	asemar@shsu.edu
WEBSITE	www.texaspretrial.org

Charge No. 3

Monitoring: Monitor the implementation of legislation addressed by the Senate Committee on Criminal Justice passed by the 88th Legislature, as well as relevant agencies and programs under the committee's jurisdiction. Specifically, make recommendations for any legislation needed to improve, enhance or complete the implementation of the following: Senate Bill 1004, relating to the criminal offense of tampering with an electronic monitoring device and to certain consequences on the conviction of that offense.

Witnesses

Testifying ON

Alycia Castillo, Senior Advocacy Manager, Texas Civil Rights Project, Austin, TX
Bryan Collier, Executive Director, Texas Department of Criminal Justice, Huntsville TX
David Gutierrez, Chairman, Texas Board of Pardons and Paroles, Austin TX
Aaron Johnson, President, Texas Association of Pretrial Services, Galveston, TX
Andy Kahan, Crime Stoppers, Houston TX
Cris Love, Inspector General, Texas Board of Criminal Justice, Austin TX
Tim McDonnell, Chief of Staff, Texas Board of Pardons and Paroles, Austin TX
Marci Simmons, Community Outreach, Lioness Justice Impacted Women's Alliance, Weatherford TX

Registering ON, but not testifying

Rene Hinojosa, Rene Parole Director, Texas Department of Criminal Justice, Austin TX
Tim McDonnell, Chief of Staff, Texas Board of Pardons and Paroles, Austin TX

Providing written testimony ON

Marci Simmons, Community Outreach Coordinator,
Lioness Justice Impacted Women's Alliance, Weatherford TX

Background

Senate Bill 1004, enacted into law during the 88th Session, created an offense for removing or disabling, or causing another person to remove or disable an electronic monitoring device that is required as a condition of house arrest, community supervision, parole, mandatory supervision, or release on bail. The offense is a state jail felony, except that it would be a third-degree felony if the individual is in the Texas Department of Criminal Justice's Super Intensive Supervision Program.

The law was passed to address an increasing number of cases where parolees were cutting off or removing their monitoring bracelets in various jurisdictions across Texas, and then committing new crimes. In one case during November 2022, a parolee with an ankle monitor fatally shot a nurse and a social worker at a Dallas hospital. Two weeks later, another parolee with an ankle monitor gunned down a man in Lake Highlands. In December 2021, two women charged in the slaying of a 23-year-old woman removed their monitors while out on bond and fled to Cambodia.

Electronic monitoring devices were designed to increase public safety and promote accountability upon the release of defendants on house arrest or as a condition of community supervision, parole, mandatory supervision, or release on bail. At the time of the murders, Dallas County District Attorney John Creuzot said while the majority of people comply with electronic monitoring, "we have also seen far too many times someone cut off their monitor and proceed to break the law."

Prior to the passage of Senate Bill 1004, it was not considered a violation of the law to tamper or destroy an ankle monitor. The consequences to a parolee for removing a monitoring bracelet were only administrative sanctions. Law enforcement, prosecutors, victims' advocates, and parole officials said more was needed to curb the growing problem of violent-crime offenders free on the streets without any way to monitor their location. The Legislature agreed and enacted the new law.

Testimony & Discussion

The Parole Division testified about the two types of technology they use to electronically monitor offenders: Global Positioning System (GPS) technology which is used to monitor all serious-crime offenders with the Special Condition Super-Intensive Supervision Program (SISP), and Special Condition Electronic Monitoring (EM) that is used to monitor sex offenders.

GPS technology allows the Division to track the highest risk offenders' movements throughout the community and monitor the offenders' compliance with a pre-approved travel schedule. On average, there are 2,900 offenders tracked with GPS technology. The second type of technology is Radio Frequency (RF), which is primarily used to monitor an offender's compliance with a pre-approved curfew schedule. On average, there are 1,800 offenders monitored with RF technology.

Since the new law took effect, special tracking teams have made 233 arrests for the removal of monitor bracelets. Thirty-nine parolees have been convicted of an enhanced state jail felony or third-degree felony charge carrying a penalty of between 30 days in jail and 25 years in a state prison.

TDCJ officials testified that the number of warrants issued statewide for tamper alert violations have dropped by 69 percent, from 1,955 tampering alerts recorded between September 2022 and April 2023 to 598 between September 2023 and April 2024. Officials attributed the drop to the tougher penalties imposed by Senate Bill 1004. TDCJ officials testified that education efforts for parolees already on supervision, and for convicts likely to be paroled, have proven effective in curbing bracelet tampering.

The Office of Inspector General for the Texas Board of Criminal Justice testified about information on the task force network of investigators deployed throughout the state. With the passage of the new law, the prison and parole agencies updated their policies, procedures, and protocols necessary for implementing and reporting on the effects of the statutory change. The Board of Pardons and Paroles testified that it has provided training for offenders, district attorneys and agency staff and commissioners.

Since the effective date of the legislation, 291 warrants have been referred by the TDCJ parole division, resulting in 233 arrests, and 39 convictions, with imposed punishments ranging from 30 days to 25 years, and 40 parole revocations. Law enforcement, prosecutors, victims, victims' rights advocates, and the public testified the new law has proven to be an extremely effective tool.

On a separate issue, the Committee heard testimony about continuing issues with the reliability of internet connections and device communication reliability in areas that has resulted in programming disruptions for parolees. TDCJ and parole officials said they are working to upgrade technology to resolve those issues, but acknowledged that in some remote areas of Texas, equipment issues continue.

Recommendations

- Testimony from all witnesses report the enhanced electronic monitoring technology is effective and works well to curb violations. No further action appears to be needed at this time. The Committee will continue monitoring official statistics and reports to ensure that new problems or trends do not develop.
- Issues with the reliability of internet and monitoring devices are being addressed by parole officials. The Committee will monitor their progress and address any continuing problems.

Related Documents Follow

The Senate Committee on Criminal Justice

Senate Bill 1004
June 5, 2024



BRYAN COLLIER | Executive Director

Before and After SB 1004 (88R)



Pre-SB 1004 Consequences

- Limited to Administrative Penalties

Post-SB 1004 Consequences

- New Criminal Offense | Penal Code 38.112
- State Jail Felony or Third-Degree Felony



Tampering with Electronic Monitoring Devices

Educating Parolees and Inmates

Informational Video on Digital Platforms

- Social Media & Inmate Tablets

Posters at Every Parole Office

Signed Acknowledgment Forms

- Active Parole Clients
- Inmates during the Release Process



Tampering with Electronic Monitoring Devices

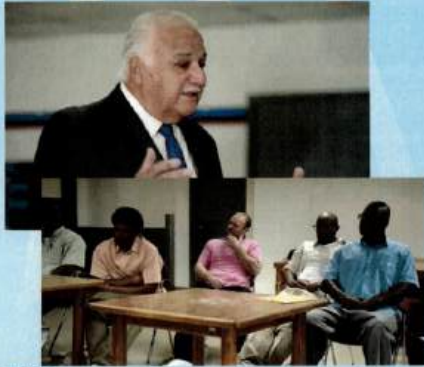
The Senate Committee on Criminal Justice

Senate Bill 1004
June 5, 2024



DAVID GUTIERRÉZ | PRESIDING OFFICER

EDUCATION



JOINT VIDEO FOR OFFENDERS

DISTRICT ATTORNEYS

BOARD MEMBERS AND PAROLE COMMISSIONERS



Tampering with Electronic Monitoring Devices

ELECTRONIC MONITORING CONDITION

DISCRETION TO IMPOSE

MINIMIZE THREAT TO THE COMMUNITY

OPPORTUNITY TO HAVE CONDITION WITHDRAWN

SUCCESSFUL TOOL



Tampering with Electronic Monitoring Devices

PAROLE REVOCATIONS

TOTAL REVOCATIONS 40



Tampering with Electronic Monitoring Devices

The Senate Committee on Criminal Justice

Senate Bill 1004 (88R)
June 5, 2024



CRIS LOVE | Inspector General

SB 1004 | The Task Force



Coverage Across the State

8 Metro Areas

Dedicated FTEs

12 Investigators

Additional Operational Support

12 Fugitive Investigators

Priority Mission Response

7 Days a Week



Tampering with Electronic Monitoring Devices

Results | Convictions

39 Convictions

Section 38.112, Penal Code

Imposed Punishment Range

Between **30** Days County Jail and **25** Years TDCJ-ID



Arrested 09/17/2023
Lamar Co.
Sentenced 11/03/2023
25 Years TDCJ-ID



Arrested 02/13/2024
Montgomery Co.
Sentenced 04/17/2024
12 Years TDCJ-ID



Tampering with Electronic Monitoring Devices

Results | Warrants and Arrests

291 Warrants Referred by
TDCJ Parole Division

233 Resulting Arrests



Tampering with Electronic Monitoring Devices

Charge No. 4

Supporting Victims of Sexual Assault: Examine the collection and processing of “rape kits” by law enforcement agencies and testing laboratories. Make recommendations to ensure that forensic evidence collected from victims of sexual assault is processed in a timely manner.

Witnesses

Testifying ON

Brady Mills, Chief, Crime Laboratory Division, Department of Public Safety, Austin TX

Samantha Durand Pisik, Policy Adviser, Texas Association Against Sexual Assault, Pflugerville TX

Dr. Peter Stout, President and CEO, Houston Forensic Science Center, Houston TX

Dr. Sarah Kerrigan, Director of the Institute for Forensic Research at Sam Houston State University
(Member of the Texas Forensic Science Commission), Huntsville TX

Dr. Michael Coble, Associate Director of the Center for Human Identification at the University of North
Texas Health Science Center (Member of the Texas Forensic Science Commission), Fort Worth TX

Background

Rape kits face a myriad of challenges that slow or stall the testing process. These challenges can create backlogs that adversely affect efficient and timely criminal investigations. The percentage of testing has exponentially improved in recent years, but backlogs continue to exist. Forensic labs in Texas face staffing shortages and resource issues that contribute to delays. Some police departments face delays in submitting the kits for testing, for a variety of reasons.

In the early 2000s, an investigation discovered a backlog of 20,000 untested kits. The majority of the untested kits were from Fort Worth and Houston despite their receipt of grant funding to allow more timely processing of the kits. The investigation led the Texas Legislature to pass Senate Bill 1636, in 2011, which created new timelines to reduce the backlog and ensure that kits were submitted and tested in a timely manner.

During the last two decades, Texas law enforcement agencies have made significant progress in the collection and testing of kits. The DPS report shown below reflects that progress. In 2019, House Bill 8 was passed to require new timelines for evidence collection and analysis. House Bill 8 required law enforcement agencies to take possession of the evidence within seven days of being notified by a healthcare facility, or within 14 days if the agency is located more than one hundred miles from the health

facility. Additional statistical reporting by the Texas Department of Public Safety is required to monitor the status of testing the kits in Texas.

While the overall data shows improvement in the state's ability to collect and test kits in a timely manner, some labs continue to face backlogs.

September 1, 2019 - November 27, 2023	
Total Number of Kits	42,561
Unsubmitted Kits Within Statutory Time Frame	358
Unsubmitted Kits Past Due to Lab	293
Total Number of Unsubmitted Kits	651
Unanalyzed Kits Within Statutory Time Frame	1,919
Unanalyzed Kits Over 90 Days	2,011
Total Number of Unanalyzed Kits	3,930

Testimony & Discussion

In testimony before the committee, forensic scientists emphasized their needs for their crime labs to operate at higher levels and ensure the remaining backlog of kits is erased within the next two years.

Dr. Michael Coble, a professor at the University of North Texas Health Science Center in Fort Worth, testified that 85 percent of the criminal casework processed at the Center for Human Identification is sexual-assault kit testing. The high volume of testing creates a high demand for forensic scientists available to work in crime labs.

In August, a report by the U.S. Bureau of Labor Statistics predicted that "employment for forensic science technicians is projected to grow 14 percent over the next decade." Of that percentage, the Texas Labor Market projects that the growth for forensic science technicians will be 22 percent in the state. Most labs, including those in Texas, operate with roughly a 10 percent vacancy rate. To meet the labor demand, the panel of doctors supported an apprenticeship program as proposed by the Texas Association of Crime Lab Directors (TACLD).

Coble highlighted difficulties that arise during the complex training cycle of new forensic scientists, and explained to the Committee how the Texas Forensic Science Commission could help improve the infrastructure with improvements in educational resources. Dr. Sarah Kerrigan, director of the Institute for Forensic Research, Training, and Innovation at Sam Houston State University (SHSU), testified about

the vital role universities could play in supplying the forensic workforce. She cited a 2009 report from the National Academy of Science (NAS) which highlighted the many gaps in the profession. She testified about the need for institutes of higher education to play a more active role in the classroom, the crime lab and in the courtroom. Additionally, Kerrigan provided data that suggests among the 15,000 forensic scientists nationwide, vacancy rates are estimated to be roughly 10 percent.

Dr. Peter Stout, president and CEO of the Houston Forensic Science Center and president of TACLD, testified the national shortage of forensic scientists is almost 900, and most labs including those in Texas have roughly a 10 percent vacancy rate. The witnesses discussed with the Committee the creation of the apprentice program to provide much needed relief to publicly funded crime labs across the state. Sam Houston State University could deliver the specialized training that is required to meet workforce needs. The employment rate for SHSU's more than 250 graduates with Masters and Doctoral degrees is approaching 100 percent, with 78 percent of them remaining to work in Texas.

There was discussion about creating a new system of training apprenticeships involving multiple organizations that could fundamentally alter the labor challenges facing forensic labs and also ensure faster test results for sexual-assault kits.

The witnesses proposed a forgivable loan structure for examiners who remain in the state for five years to help keep most of the qualified examiners in Texas. There was discussion about how the new program might be established, including the financial costs.

Recommendations

- Consider allocating funding for universities to launch new training programs.
- Consider whether new funding is needed to resolve the full backlog that now exists.
- Consider how to effectively enforce current submission deadlines of sexual assault kits from local law enforcement agencies.
- Enhance training mandates for law enforcement agencies stressing the importance of timely submittal of the sexual assault kits for testing.

Related Documents Follow

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001
512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
DIRECTOR
WALT GOODSON
FREEMAN F. MARTIN
DWIGHT D. MATHIS
DEPUTY DIRECTORS



COMMISSION
STEVEN P. MACH, CHAIRMAN
NELDA L. BLAIR
LARRY B. LONG
STEVE H. STODGHILL
DALE WAINWRIGHT

Statewide Electronic Tracking System Report December 1, 2023

Texas Government Code 420.034 (h) requires the Department to publish the "Statewide Electronic Tracking System Report" by December 1st of each year. The report will use Track-Kit data to identify the number of kits that have not yet been submitted for laboratory analysis or for which laboratory analysis has not yet been completed. **Track-Kit only tracks evidence kits collected on or after September 1, 2019.**

The information below represents data available in Track-Kit.

September 1, 2019 - November 27, 2023	
Total Number of Kits	42,561
Unsubmitted Kits Within Statutory Time Frame	358
Unsubmitted Kits Past Due to Lab	293
Total Number of Unsubmitted Kits	651
Unanalyzed Kits Within Statutory Time Frame	1,919
Unanalyzed Kits Over 90 Days	2,011
Total Number of Unanalyzed Kits	3,930

Of the 2,011 kits which have been submitted and are beyond 90 days, 0 are in DPS inventory.

Definitions/Statutory Time Frames

- *Unsubmitted Kits* - Kit that has not yet been submitted for laboratory analysis.
- *Unsubmitted Kits Past Due to Lab* - Kit that a law enforcement agency failed to receive or has received and has had over 30 days but has not yet submitted for laboratory analysis.
- *Unanalyzed Kits* - Kit that has been received by a laboratory but the laboratory has not completed analysis.
- *Unanalyzed Kits Over 90 Days* - Kit that a laboratory received and has had over 90 days but has not completed analysis.

*Please Note: Lab analysis is not considered complete until the data has been reviewed and, if applicable, a profile is uploaded to CODIS.

EQUAL OPPORTUNITY EMPLOYER
COURTESY • SERVICE • PROTECTION

Statewide Electronic Tracking System Report
 Date: 09/01/19 - 10/03/24

Unsubmitted Kits Past Due to Lab by LEA*	353	Unanalyzed Kits Over 90 Days By Lab	1,130
Ablene Police Department	3	Bexar County Criminal Investigation Laboratory	155
Addison Police Department	1	DPS Crime Lab - Austin	42
Alamo Heights Police Department	3	DPS Crime Lab - Capitol Area	0
Alice Police Department	3	DPS Crime Lab - Corpus Christi	0
Alton Police Department	1	DPS Crime Lab - El Paso	0
Amarillo Police Department	6	DPS Crime Lab - Garland	0
Andrews County Sheriff's Office	1	DPS Crime Lab - Houston	0
Aubrey Police Department	1	DPS Crime Lab - Laredo	0
Austin Police Department	7	DPS Crime Lab - Lubbock	0
Balcones Heights Police Department	1	DPS Crime Lab - Waco	0
Bandera County Sheriff's Office	3	DPS Crime Lab - Weslaco	0
Baytown Police Department	1	Fort Worth Police Department Crime Laboratory	901
Beaumont ISD Police Department	1	Harris County Institute of Forensic Sciences	0
Bee Cave Police Department	1	Houston Forensic Science Center	32
Bexar County Sheriff's Office	1	Southwestern Institute of Forensic Sciences	0
Boyd Police Department	1	Tarrant County Medical Examiner Crime Laboratory	0
Brazoria Police Department	1	UNT Center for Human Identification	0
Brenham Police Department	2		
Brewster County Sheriff's Office	1	Unanalyzed Kits Within Statutory Time Frame By Lab	2,057
Bridgeport Police Department	1	Bexar County Criminal Investigation Laboratory	132
Brooks County Sheriff's Office	2	DPS Crime Lab - Austin	131
Brookshire Police Department	1	DPS Crime Lab - Capitol Area	2
Brown County Sheriff's Office	6	DPS Crime Lab - Corpus Christi	87
Brownsville ISD Police Department	1	DPS Crime Lab - El Paso	50
Brownsville Police Department	1	DPS Crime Lab - Garland	291
Burlinson County Sheriff's Office	2	DPS Crime Lab - Houston	234
Calhoun County Sheriff's Office	1	DPS Crime Lab - Laredo	47
Calvert Police Department	1	DPS Crime Lab - Lubbock	142
Cameron County Park Ranger Division	1	DPS Crime Lab - Waco	94
		DPS Crime Lab - Weslaco	79

Celina Police Department	2			
Center Police Department	1		Fort Worth Police Department Crime Laboratory	90
Charlotte Police Department	1		Harris County Institute of Forensic Sciences	146
Childress Police Department	1		Houston Forensic Science Center	287
Cleburne Police Department	1		Southwestern Institute of Forensic Sciences	105
Cleveland Police Department	1		Tarrant County Medical Examiner Crime Laboratory	24
Clyde Police Department	2		UNT Center for Human Identification	116
Collingsworth County Sheriff's Office	1			
Combes Police Department	2			
Commerce Police Department	1			
Corpus Christi Police Department	1			
Corrigan Police Department	1			
Corsicana Police Department	2			
Cuero Police Department	1			
Dallas Police Department	2			
Dekalb Police Department	1			
Del Valle ISD Police Department	1			
Devine Police Department	2			
Donna Police Department	1			
Dumas Police Department	1			
Duncanville Police Department	1			
Duval County Sheriff's Office	2			
Eagle Lake Police Department	1			
Eagle Mountain-Saginaw ISD Police Department	2			
Eagle Pass Police Department	5			
East Tawakoni Police Department	1			
Edcouch Police Department	3			
Edinburg Police Department	1			
El Paso County Sheriff's Office	2			
Elsa Police Department	6			
Eules Police Department	1			
Falls County Sheriff's Office	1			
Fannin County Sheriff's Office	1			
Federal Bureau of Prisons (FCI La Tuna)	1			

Missouri City Police Department	1								
Monahans, Wickett, Pyole ISD Police Department	1								
Naples Police Department	1								
Needville Police Department	1								
New Boston Police Department	1								
New Caney ISD Police Department	1								
New London Police Department	1								
Nolan County Sheriff's Office	2								
Nolanville Police Department	5								
Non-Participating Law Enforcement Agency	13								
North Richland Hills Police Department	1								
Olton Police Department	1								
Overton Police Department	1								
Palmer Police Department	1								
Patton Village Police Department	1								
Pearsall Police Department	2								
Pentas Police Department	2								
Pinehurst Police Department	1								
Pineland Police Department	2								
Port Aransas Police Department	1								
Pottsboro Police Department	1								
Ranger Police Department	1								
Rio Grande City Police Department	1								
Robstown Police Department	1								
Roman Forest Police Department	1								
Round Rock Police Department	1								
Rowlett Police Department	1								
Royse City Police Department	2								
Rusk County Sheriff's Office	1								
Rusk Police Department	2								
San Antonio ISD Police Department	1								
San Juan Police Department	1								
San Saba Police Department	1								
Sandy Oaks Marshal's Office	1								
		Santa Anna Police Department	1						
		Santa Rosa Police Department	2						
		Shelby County Sheriff's Office	3						
		Silsbee ISD Police Department	1						
		Smith County Sheriff's Office	1						
		South San Antonio ISD Police Department	1						
		South Texas College Police Department	1						
		Splendora Police Department	1						
		Starr County Sheriff's Office	3						
		Sweetwater Police Department	1						
		Tahoka Police Department	2						
		Tarrant County Hospital District Police Department	1						
		Tarrant County Sheriff's Office	1						
		Tatum Police Department	2						
		Taylor County Sheriff's Office	1						
		Teague Police Department	1						
		Temple Police Department	10						
		Terrell Police Department	1						
		Town of Indian Lake Police Department	1						
		University Park Police Department	1						
		Uvalde County Sheriff's Office	1						
		Valley Mills Police Department	1						
		Vernon Police Department	1						
		Waller County Sheriff's Office	1						
		Webb County Sheriff's Office	1						
		Weimar Police Department	1						
		Westlaco Police Department	1						
		West Orange Police Department	1						
		Wharton County Sheriff's Office	1						
		White Settlement Police Department	1						
		Whitesboro ISD Police Department	1						
		Wichita Falls Police Department	1						
		Woodville Police Department	3						
		Wortham Police Department	1						

Yoakum Police Department	1
Young County Sheriff's Office	1
Zapata County Sheriff's Office	1

- * 203 LEAs are responsible for the 353 past due kit
 - 141 LEAs have 1 kit past due
 - 51 LEAs have between 2-5 kits past due
 - 11 LEAs have between 6-10 kits past due

Invited Testimony:

Michael D. Coble, PhD | Executive Director
UNTHSC Center for Human Identification (CHI)
Associate Professor, School of Biomedical Sciences
3500 Camp Bowie Blvd., CBH-629, Fort Worth, TX 76107
817.735.0228
michael.coble@unthsc.edu

Good afternoon,

I am Dr. Michael Coble and I am a Professor at the University of North Texas Health Science Center at Fort Worth and also the Executive Director of the Center for Human Identification (CHI) at HSC.

The CHI is truly unique in that we are an accredited crime lab that performs DNA testing and is housed on the campus of an academic institution. To my knowledge, we are the only academic institution in the United States that has access to CODIS, our national DNA database

Over 85% of the criminal casework that we process at the CHI is sexual assault kit testing. The casework testing that we provide for the state of Texas can be categorized as a one of three major types. First, we provide DNA testing for local law-enforcement agencies in the North Texas region. Second, we assist Texas DPS with taking sexual assault kits that they receive for DNA testing. The benefit to Texas DPS is that unlike sending this evidence to a private lab, which then has to be reviewed and checked by analysts at DPS before those profiles can be uploaded CODIS, we take ownership of those cases and work them from start to finish, including uploading profiles in CODIS, and eventually, testifying on the testing we performed at trial. The third type of testing that we provide for the state is that we perform statewide testing of criminal paternity cases where we apply specialized statistical analyses to determine relatedness.

As Dr. Kerrigan has pointed out, the apprenticeship proposal by the Texas Association of crime lab directors would have a huge benefit for our crime lab and all other labs across the state.. It takes a huge investment of time and resources to properly train a new analyst in an accredited public lab once a new analyst is hired. It can take an average of six months to a year potentially up to two years before an analyst can perform all of their casework duties independently.

Senate Committee on Criminal Justice

Thursday, October 10, 2024 10:00 a.m.

Invited Testimony

Dr. Sarah Kerrigan

Director, Institute for Forensic Research, Training and Innovation

Sam Houston State University

sarah.kerrigan@shsu.edu

713 817 2229

Good afternoon. My name is Dr. Sarah Kerrigan, and I am the Director of the Institute for Forensic Research Training and Innovation at Sam Houston State University. I was asked to be here today to address the workforce development initiative proposed by the Texas Association of Crime Lab Directors.

The College of Criminal Justice at SHSU is one of the oldest and most respected Criminal Justice colleges in the US. During my nineteen years at SHSU as a professor and former department chair, we developed the first FEPAC accredited MS program in forensic science in Texas, and the first PhD in forensic science in the United States. We are recognized as a leader in forensic science education nationally.

My passion for forensic science education stems from my experience as a forensic practitioner, former state crime laboratory director, and director of an independent accredited crime laboratory. I am not just here as an academic. I have walked in the shoes of the crime lab directors that are requesting a formal apprenticeship program in Texas. I am connected to the community that brings you this proposal because I understand the pressures faced by examiners, management, and the administration. I have walked in their shoes, and I can tell you they are not always comfortable.

The demands of the profession are extraordinary. We operate an exceptionally unforgiving environment with grim rewards and few positive outcomes. Our work does not always make for good supper time conversation with our kids. New recruits need to be adequately trained, but also realistically prepared for what lies ahead. Training gaps or a workforce that is not sufficiently prepared, can have dire courtroom consequences, that impact lives.

My experience as both an educator and practitioner, have provided me with valuable insight regarding the needs of the forensic science service providers, and the opportunity for institutes of higher education like SHSU to provide relief, and contribute positively to the criminal justice system.

In 2009 the National Academy of Science published its landmark report– Strengthening FS in the US: A Path Forward. The report highlighted many gaps in our profession - in the classroom, in the crime lab, and in the courtroom. Importantly, it highlighted the need for institutes of higher education to play a more active role in the advancement of our profession.

The institute at SHSU was created shortly thereafter, to address those gaps. For more than a decade we have been supporting forensic scientists across the state, and working collaboratively with crime labs, federal agencies, and industry, to support a culture of science, and a forward-looking profession.

Since the publication of the NAS Report, tremendous progress has been made. Federal reform efforts and the development of forensic science standards are now having positive impacts in crime laboratories across the entire US. However, some of these standards actually *increase* the burden and expectation on labs that are already struggling.

Among the 15,000 forensic scientists nationwide, vacancy rates are estimated to be 10%. It can take two to four years to train an examiner after graduation, at an estimated investment of 300 to \$500,000 per examiner. The apprenticeship program being proposed by the Texas Association of Crime Lab Directors would have significant impact, and provide much needed relief to publicly funded crime labs across our state.

October 10, 2024

The Honorable Pete Flores
P.O. Box 12068
Capitol Station
Austin, TX 78711



TACLD

Texas Association of
Crime Laboratory
Directors



**HOUSTON FORENSIC
SCIENCE CENTER**

500 Jefferson Street, 13th Floor
Houston, Texas 77002
(713) 929-6760

Chairman Flores, Vice Chairman King, and
distinguished Committee Members,

As a matter of reintroduction to the committee, my name is Dr. Peter Stout, and I am the President and CEO of the Houston Forensic Science Center, the lab that serves Houston. I am also the president of the Texas Association of Crime Lab Directors. The Nerds' Nerd.

Y'all have heard me speak to you many times before as a crime lab director. Yes, I am here partly in that capacity but, as the old ad line goes, I not only run a crime lab – I am a client. I am also here to share my personal story to add a less common face of what victims of sexual assault look like and what I hope is critical perspective on this issue. I am a survivor of sexual assault and there are countless others like me.

I am made of violence. Buckle up, there's nothing easy about me.

I first met Murder at age three. Our neighbor, Skip Laguardia, a mafia lieutenant to the Smaldone family, had taken to running his own gambling racket. Standing in his front yard, he took two shotgun blasts to the face from a Smaldone family hitman.

At four, Murder visited again when Pauline Smaldone was shot in her front yard a couple doors down while she tried to escape her house which was bombed in retaliation.

While playing on the front steps, Murder surprised me one afternoon when our neighbor Mr. Fuller sailed over the bushes to burst on the brick wall next to me. I struggled to comprehend the smells and sights of what remained of Mr. Fuller as the car that launched him passed inches over my head. The smells of motor oil, burning brakes and rubber put me right back on those steps. Auto shops are on the long list of things that make me uncomfortable.

For me, blood, police lights and body parts were fixtures of kindergarten, just like nap time and snacks.

Now a familiar house guest, Murder came again at age seven. A man burglarizing my grandparents' West Lake Hills home here in Austin beat my grandfather to death and my grandmother to near death. The probable assailant, Kenneth Felder had a decades-long violent

Workforce Development for Forensic Sciences

Numerous studies point to a nationwide shortage of trained and experienced analysts for forensic laboratories.

Forensics, like other fields, is facing historical attrition rates. The most recent Census of Publicly Funded Crime Labs¹ demonstrates that forensics is a very small employee market with only about 15,000 employees nationwide in publicly funded crime labs. In these data, it is also clear that labs have a roughly 10% vacancy rate. This compounds the problem highlighted by the 2019 NIJ Report to Congress, Forensic Needs Assessment.²

It takes 2-4 years of training at the lab beyond a degree to train analysts able to produce casework and testify independently. We lose staff regularly to other private sector industries that pay better and offer less stress.

A system of training fellowships could fundamentally alter the challenge – A system where new grads have a salary and benefits covered for 2 years through a state funded forgivable loan would dramatically help offset costs of training in labs.

Moreover, a program like this could be used to incentivize professionals to make a career in Texas and motivate labs to incorporate best practices. We estimate there is a statewide need for 100-200 new analysts per year across all disciplines. A pilot scale of this program from the 89th legislative session of 20-50 fellowships could prove out this concept.

This program would be a multiple-organization approach.

This program could be managed jointly by one of the major forensic programs and the Texas Forensic Science Commission with an application process. Students could be employees of the University with salary and benefits managed through the University for the period of the Fellowship. TFSC could help manage expectations of the forensic agency and rule making to govern the overall program.

For Forensic agencies to participate and be eligible for placement of a Fellow, TFSC could create rules that agencies must be accredited (any discipline) and are actively endeavoring to incorporate national best practices. Additionally, TFSC in collaboration with professional group could help determine the number of fellows needed in each discipline to help balance the needs with future supply.

For Fellows, the program could be a forgivable loan structure.

If a Fellow remains in a Texas public laboratory for 5 years after their fellowship, the loan would be forgiven. If they choose to go elsewhere in the country some or all of the loan could be structured for repayment.

This fellowship structure would help address needs in the highly varied disciplines in forensics. It could help drive better practice in agencies and the supply of trained analysts. It would leverage existing world class resources in Texas universities and the Texas Commission to manage the program. It would create incentives for highly trained forensic professionals to remain in Texas communities.

900 Professionals

The annual nationwide DEFICIT JUST to keep up with demand.

\$300-\$500K

The investment needed to train an analyst to the point of doing case work.

2 Major Texas Forensic Academic Programs

University of North Texas Health Science Center

Sam Houston State University

¹ Census of Publicly Funded Crime Labs, 2020 <https://bjs.ojp.gov/document/pffcl20.pdf>

² US DOJ Report to Congress, 2019 Needs Assessment of Forensic Laboratories and Medical Examiner/Coroner Offices <https://www.ojp.gov/pdffiles1/nij/253626.pdf>



Toxicology Evidence – Storage and Retention Issues

Currently, due to resource shortages and ambiguity in code, evidence without evidentiary value remains within storage facilities, incurring significant storage and maintenance expenses.

Storage of toxicology evidence is governed by CCP 38.50. In 2015, the legislature enacted legislation that created separate retention and preservation procedures for toxicological evidence from other biological evidence. This was intended to address concerns regarding evidence rooms with blood and urine samples that no longer had any evidentiary value but could not be legally disposed of.

The law was ambiguous as to whether the court may issue the notice if the retention period has already expired. This meant that if the entity did not request the notice before the retention period expires, it may have to store toxicological evidence indefinitely.

Subsequently, section 1 paragraph (h) of 87(R)S.B. 335 has created an unintended requirement for the storing agency to seek written authorization from the relevant DA's office before disposing of this evidence. Due to the lack of resources in DA office and storage facilities statewide, the requests rarely occur and have resulted in significant storage costs by agencies having to retain toxicology samples long past expiration periods or when samples have any scientific value.

Updating the controlling state codes on evidence storage to account for modern needs and capabilities will reduce costs of storage and improve capacity to protect essential evidence.

For toxicology evidence the solution is the simple removal of paragraph (h):

(h) A prosecutor's office may require that an entity or individual charged with storing toxicological evidence seek written approval from the prosecutor's office before destroying toxicological evidence subject to the retention period under Subsection (c) (2) or (c) (3) for cases in which the prosecutor's office presented the indictment, information, or petition.

This would not change any of the requirements for retention or notification previously clarified by S.B. 335 while eliminating the unintended demand that DA offices provide written consent.

The process could be improved still further by **statutorily allowing the summary disposal of misdemeanor blood DUI samples after the prescribed date in the code.** This time is long after any statute of limitations plus any sentence that may be dependent on that evidence.

An explicit **authorization in the code allowing agencies to store tubes at room temperature after the lab result is reported** would allow agencies to help control expanding costs of storage.

Even estimating storage cost at \$1/sample/year means minimally hundreds of thousands of dollars per year in storage costs.

No agency has resources to manage the many hundreds of thousands of legacy tubes statewide that are long past any legal usefulness. Nor does the exercise in this authorization reduce the risk of a miscarriage of justice. In fact, the resources consumed in wasted storage costs and administrative overhead are then not available to better care for evidence that does risk case outcomes for victims and defendants alike.

150,000+

The number of DUI blood samples being held by just DPS, HPD and IFS, just in Harris County

70%

The percentage of those samples more than 4 years old

Majority of samples are from misdemeanor cases with a 2-year statute of limitations. Even with allowances for delays in court, samples over 4 years from the offense date will almost always have exceeded any storage requirement.

7 Years

The longest scientific stability studies. Showing significant decline in concentrations

35 Years

The oldest of samples in storage

20+year-old blood sample



Charge No. 5

Retail Theft: Study the effects of organized retail crime in Texas and in other states. Evaluate the reporting and legislative suggestions from the Organized Retail Theft Task Force. Make recommendations to protect the safety of retail employees and business owners in Texas.

Witnesses

Testifying ON

Korry Castillo, Associate Deputy Comptroller for Operations,
Texas Comptroller of Public Accounts, Austin TX

Shawn Hallett, Captain, Texas DPS Criminal Investigations Division, Austin TX

Will Johnson, Chief Special Agent, BNSF Railway Police Department, and Vice President of
the Texas Police Chiefs Association, Fort Worth TX

Jennifer Tharp, Comal County Criminal District Attorney, New Braunfels TX

John McCord, Executive Director, Texas Retailers Association, Austin TX

Barry Conlon, CEO, Overhaul, Leander TX

Hector Leal, Texas Organized Retail Crime Association, The Colony TX

Jamie Bourne, Organized Retail Crime Manager, The Home Depot, Frisco TX

Chris Schkade, Major Crimes Investigations Manager, Walgreens/Gulf Coast Criminal
Investigators Association, Houston TX

Chris Walden, Senior Investigations Manager, Amazon, South Jordan UT

Background

Organized Retail Theft (ORT), also known as Organized Retail Crime (ORC), has drastically escalated in Texas and nationwide during the past four years. The expanding criminal activity fractures community safety and stability, imposes financial devastation on business owners and consumers, traumatizes crime victims, and drives consumer inflation, sometimes referred to as “crime-flation.”

ORT often involves international and domestic criminal gangs and intersects with organized cargo crime, bulk fuel and oil thefts, shoplifting booster gangs and equipment rental scams, among others. The proliferation of ORT is compounding the devastating and costly impact on victims, consumers, and the economy. The National Retail Federation reports that ORC costs retailers an average of \$720,000 per \$1

billion in sales. Houston is currently ranked third nationwide in ORC rates, trailing only Los Angeles and San Francisco. Dallas ranked ninth. Cargo thefts increased by 46 percent during the first quarter of 2024, with similar increases in each remaining quarter. The losses represent lost jobs, large and small retailers forced out of business, compromised public safety and rising consumer costs as businesses are forced to raise their prices to offset growing losses.

In Texas, businesses' losses from all forms of retail crime were estimated at \$3.9 billion in 2019. Texas is also estimated to have lost at least \$21 million in state tax revenue and more than 4,700 jobs.

The 88th Legislature required the Comptroller of Public Accounts to create a statewide ORT task force to define, disrupt and dismantle organized retail crime networks in Texas by developing new and innovative ways to expand existing investigative networks in partnerships with local, state and federal law enforcement agencies.

Testimony & Discussion

The testimony and written comments received by the Committee presented the incredibly large and expansive scope of the problem. Noted retail theft issues include violent and frequent offenders,; large and small retail victims, cargo thefts from trucks, trains, and warehouses, and fuel and crude oil thefts. Despite the size of the growing problem, and increased enforcement by business and law enforcement, conviction rates remain surprisingly low because of jurisdictional issues and complexities in prosecuting current law.

The Texas Comptroller's office testified on the status of their task force, along with their review of laws and regulations addressing ORC in other jurisdictions, ORC's long-term economic impact as well as the impacts on sales tax collections for the State.

Data collection and victim aggregation remain outstanding challenges. Theft occurs at any time and any locations involving any and every product imaginable, and not just high-value items. Sophisticated distribution networks coordinate the resale of stolen merchandise, through online marketplaces or other avenues. Investigations have proven that many ORC networks are associated with other illicit schemes and scams, including drugs, auto and cargo theft, and weapon offenses. There is a growing nexus and evidence of involvement of transnational crime syndicates, including some who are specifically training criminals on how to carry out these theft schemes.

Investigators provided testimony to the Committee detailing how organized criminal gangs steal drugs and personal-care products from pharmacies worth thousands of dollars in just a few minutes by using gangs of shoplifters to sweep shelves clean. Convenience store employees have been beaten and injured during these organized theft attacks. Cargo thieves are stealing hundreds of thousands of dollars in goods from semi-trailer trucks as they stop to refuel. Cargo theft from trains and warehouses is continuing to occur more frequently.

Testimony to the Committee suggested Texas' current ORT (Texas Penal Code 31.16) be amended to make it easier for prosecutors to file charges, as a more effective deterrent to thieves. Additionally, the State should consider expanding the special enforcement task force at the Texas Department of Public

Safety to assist local police in investigations. Enhanced data collection and tracking should be established to assist in evaluating the scope of the problem.

Recommendations

- Texas Penal Code 31.16 (the ORT statute) should be re-written and enhanced to address all forms of retail theft and ensure law enforcement, prosecutors and the judiciary have the tools needed for effective enforcement. Threshold levels for certain crimes should be lowered, and sentences enhanced for various ORT offenses. Multi-jurisdiction crimes and aggregation of offenses should also be addressed.
- Designate an ORT task force within DPS, including expansion of current regional support and resources.
- Enhanced data tracking and collection of statistics regarding ORT in Texas.
- Create an ORT grant program to further enhance law enforcement and prosecution efforts and continue funding the SB 22 grant program.
- Establish statewide ORT education programs for law enforcement, prosecutors, and the judiciary, and improve coordination between manufacturers, retailers, police, investigators, and prosecutors.

Related Documents Follow

Implementation of HB 1826: Establishment of Organized Retail Theft Task Force

Presentation to Senate Criminal Justice Committee
October 10, 2024



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Background

- House Committee on Business and Industry studied effects of organized retail theft on Texas Businesses (interim charge)
 - Noted the sharp increase in incidence and intensity of organized retail theft across the state and throughout the nation.
 - Identified that a key difficulty in combatting organized retail theft is its multi-jurisdictional nature.
 - Identified another challenge is the rising phenomena of fencing stolen property through online marketplaces.
 - Suggested that improved communications and cooperation between law enforcement organizations across jurisdictional boundaries will be vital to fighting organized retail theft.
- HB 1826 (88th Legislature, RS) requires the Texas Comptroller of Public Accounts to appoint and administer a statewide Organized Retail Theft Task Force.



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

2

Organized Retail Theft Task Force Objectives

- To define, disrupt, and dismantle Organized Retail Crime (ORC) networks throughout the State of Texas by:
 - Encouraging members to meet regularly and share high level intelligence with one another to resolve organized criminal activity within their respective jurisdictions.
 - Developing new and innovative ways to expand our investigative networks.
 - Supporting groups like the National Retail Federation and the Retail Industry Leaders Association, which advocate to strengthen laws, will assist our efforts to combat ORC.
 - Uniting businesses, city officials, and law enforcement in a plan to reduce crime and build awareness, to create safer areas to live, work, and shop.



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

3

Powers of the Task Force

- Consult with any organization, governmental entity, or person the task force considers necessary.
- Collaborate and share information relating to an active criminal investigation with one another regardless of whether the information would otherwise be confidential and not subject to disclosure under Chapter 552 (Public Information).



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

4

Duties of Task Force

- Must conduct an ongoing study of organized retail theft in the state to:
 - review laws and regulations addressing organized retail theft in other jurisdictions, including international political and economic organizations.
 - analyze the impact of:
 - organized retail theft on the collection of sales tax;
 - the long-term economic impacts of organized retail theft; and
 - the advantages and disadvantages of taking various actions to reduce organized retail theft.
 - make recommendations regarding:
 - organized retail theft outreach and prevention programs, including coordination among stakeholders, including local, state, and federal law enforcement agencies; and
 - training for law enforcement officers and prosecutors on effective strategies for combating organized retail theft.



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

5

Duties of the Task Force

- Must prepare and submit a report or study by Dec. 1 of each even-numbered year. (First due Dec. 1, 2024)
- Report should include recommendations to:
 - increase transparency
 - improve security
 - enhance consumer protections
 - prevent organized retail theft
 - address the long-term economic impact of organized retail theft.



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

6

Implementation Efforts

- Appointed a 10-members to ORT Task Force
- Held four Task Force meetings (additional planned)
- Conducted 8 site visits (additional planned)
- Shared draft report with Task Force



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

7

Task Force Membership

Name	Organization	Representative Group
Adam Colby	Texas Financial Crimes Intelligence Center	Law Enforcement
Carly Richter	Criminal Investigation Division, CPA	Law Enforcement
Tiana Sanford	Montgomery County District Attorney's Office	Prosecutor
Chris Walden	Amazon	Online Retailer
Christian Hardman	eBay	Online Retailer
Adam Mendoza	Target	Physical Location Retailer
Darrell S. Taylor	HEB	Physical Location Retailer
Corey Yates	JC Penney	Physical Location Retailer
Art Lazio	7-11 Eleven	Physical Location Retailer
Joyce Beebe	Baker Institute, Rice University	Researcher



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

8

Implementation Timeline

Milestone	Date Completed or Anticipated
HB 1826 Effective Date	Sept. 1, 2023
Task Force Members Appointed	Sept. 1, 2023
Task Force Meeting (Organizational)	Oct. 10, 2023
Task Force Meeting (Retailer Perspective)	Jan. 16, 2024
Task Force Meeting (Law Enforcement Perspective)	Apr. 16, 2024
Task Force Meeting (Prosecutor Perspective)	July 16, 2024
Task Force Meeting (Draft Report Review)	Oct. 15, 2024
Report Publication	Dec. 1, 2024



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

9

Initial Observations – Economic Impact

- Limited availability of statewide data specific to ORT makes it difficult to quantify its impact
 - TxORCA estimated annual cost of \$422 million, resulting in more than \$21 million in lost state tax revenue (2022)
 - Actual impact to state taxes unknown



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

10

Initial Observations – Other Impacts

- Retailers concerned about impact to staff and customers, citing safety, convenience and inventory
- Law enforcement concerned about broader impacts of ORT; connection to other criminal activities
- Prosecutors concerned about hurdle in establishing intentionality in ORT cases; often charge as simple theft



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

11

Task Force Contact

Russell Gallahan
Manager, Local Government & Transparency
Russell.Gallahan@cpa.texas.gov
(512) 463-6073



GLENN HEGAR, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

12

November 2024



Glenn Hegar
Texas Comptroller of Public Accounts

A Study on Organized Retail Theft in Texas

Texas Organized Retail Theft Task Force



November 25, 2024

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Dade Phelan, Speaker of the House of Representatives
The Honorable Pete Flores, Chair, Senate Committee on Criminal Justice
The Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

Gentlemen:

On behalf of the members of the Texas Organized Retail Theft (ORT) Task Force, I am pleased to submit this report as required by the Texas Government Code, Section 403.0302. This analysis reflects the findings of the Task Force and includes recommendations developed from numerous meetings, interviews and site visits with experts and stakeholders.

The coordinated efforts of those committing organized retail thefts across multiple jurisdictions warrant an equally coordinated effort between law enforcement, prosecutors, retailers and online marketplaces. This task force sought to coordinate a response among stakeholders in combating ORT.

These thefts pose a major societal issue for all Texans, and I would like to thank the members of the Task Force and the other project participants for their time and contributions in helping to fight against ORT perpetrators.

Sincerely,



Glenn Hegar
Texas Comptroller of Public Accounts

cc: Texas Organized Retail Theft Task Force members:
Joyce Beebe, Rice University (Baker Institute)
Adam Colby, Texas Financial Crimes Intelligence Center
Christian Hardman, eBay
Faith Kohler, Amazon
Art Lazo, 7-Eleven
Adam Mendoza, Target
Carly Richter, Texas Comptroller of Public Accounts (Criminal Investigation Division)
Tiana Sanford, Montgomery County District Attorney's Office
Darrell S. Taylor, H-E-B
Chris Walden, Amazon
Corey Yates, JCPenney



Comptroller.Texas.Gov 512-463-4444
P.O. Box 13528 Toll Free: 1-800-531-5441 ext: 3-4444
Austin, Texas 78711-3528 Fax: 512-463-4902

Executive Summary

Organized Retail Theft (ORT), the large-scale theft and reselling of merchandise, is a growing problem, according to Texas retailers. In 2023, the Texas Legislature created a special task force led by Texas Comptroller of Public Accounts Glenn Hegar to analyze and develop strategies for combatting ORT.

The ORT Task Force, which includes law enforcement, retailers and policy experts, conducted research, listened to expert testimony and conducted site visits as part of its study. The following report represents the findings of the Task Force and offers recommendations for further action.

Summary of Findings and Recommendations

As the Task Force listened to expert testimony and Comptroller staff visited retailer sites, ORT Task Force members noted three recurrent themes: a lack of ORT data, a need for coordination among ORT stakeholders and a need for consistency in the application of ORT laws.

Finding 1

Statewide data relating specifically to ORT are not collected in Texas, which makes it difficult to quantify the extent and cost of ORT, pinpoint where crimes are happening and dedicate sufficient resources to combat ORT. Retailers are reluctant to share certain proprietary data with their competitors.

Recommendations

- Develop a statewide repository to collect ORT data that can be aggregated and analyzed.
- Work with retailers to categorize and mask their confidential data in a manner that doesn't expose proprietary information while still allowing analysts to estimate the cost of ORT and detect trends.
- If ORT trends indicate a need, consider creating an organization to combat ORT modeled after or housed under the Texas Financial Crimes Intelligence Center.

Finding 2

Thefts conducted by perpetrators who target multiple types of merchandise or who operate in more than one law enforcement jurisdiction may be difficult to identify as ORT. Improved transparency, interaction and communication among all stakeholders—retailers, law enforcement and prosecutors—have yielded positive results in some cities.

Recommendations

- Continue support for the Texas Department of Public Safety's Organized Retail Theft Prevention Unit and consider increasing the total number of FTEs for the unit.

- Identify an existing state agency to serve as both an information clearinghouse and a facilitator to help local law enforcement departments develop and improve ORT coordination, cooperation and knowledge sharing with other jurisdictions so that potential links to related cases may be identified and shared.
- San Antonio's Businesses Against Theft Network (BAT-NET) program could serve as a model for other cities to improve communication, transparency and collaboration among stakeholders.
- Establish a store walk-through program. Retailers can launch a store walk-through program inviting law enforcement agencies and prosecutors' offices to get a better understanding of the ORT issue. This can also help foster a stronger relationship between retailers and law enforcement.
- Incorporate training on ORT in new officer training classes and as part of a continuing education class for law enforcement and prosecutors.
 - One-hour presentation to new academy classes.
 - Quarterly and annual meeting/certification by Texas Organized Retail Crime Association (TXORCA) or similar association.

Finding 3

Prosecuting ORT can be time and resource intensive, and prosecutors sometimes apply ORT charges inconsistently (e.g., charging an ORT crime as simple theft, which may take less time and be easier to prove). Prosecutors find the requirement to prove intentionality in ORT cases to be an obstacle in the pursuit of charges under the ORT statute.

Other state laws may inadvertently make it difficult for ORT crimes to be prosecuted. Retailers, for example, are required by law to wait 10 days before reporting the theft of certain rental items. Although normally this provision likely would be in a consumer's best interest, it is a barrier when the retailer becomes aware that the items are being resold before the retailer is allowed to report the theft.

Recommendation

- Form a committee of prosecutors to review the ORT statute's requirements, including proof of intentionality, and other statutes that are barriers to ORT prosecution, such as the waiting period on reporting stolen rental items. The committee should seek input from retailers and law enforcement during its review. The committee will present its suggestions to the ORT Task Force before the next legislative session.
- Develop training on ORT as a continuing education course, such as a one-hour presentation on the key steps for prosecuting an ORT case.

Products preparing to ship at an Amazon distribution facility in Pflugerville.



Comptroller Glenn Hegar tours an Academy Sports + Outdoors in Katy.

Report of the Texas Task Force on Organized Retail Theft

Introduction

Organized retail theft, also referred to as organized retail crime (ORC), is the coordinated theft of merchandise by individuals and groups for the purpose of reselling those goods.¹

Homeland Security Investigations (HSI) defines ORC as “the association of two or more persons engaged in illegally obtaining items of value from retail establishments, through theft and/or fraud, as part of a criminal enterprise.” In detailing ORC, the U.S. Department of Homeland Security (DHS) states plainly that “ORC is not shoplifting and that these crimes are not victimless.” HSI cites the growing number of thefts that turn violent, the financial burden to businesses and consumers and local communities that bear the cost of these crimes among the greatest concerns with ORT.²

While shoplifters typically act alone and steal items for their personal use, ORT usually involves a criminal network of thieves who steal large quantities of merchandise from multiple stores and use a fencing operation to sell the stolen goods for cash—often by using online marketplaces and other internet sites. The Association of Certified Anti-Money Laundering Specialists (ACAMS) connects the low-cost, high-reward ORT to criminal activities such as drug trafficking and human smuggling due to its appeal for criminals to conduct ORT activities to further fund other criminal activities.³

To establish strategies for addressing ORT in Texas and to determine the costs and extent of the problem, the 88th Texas Legislature in 2023 directed the Texas Comptroller of Public Accounts to appoint a task force to study and make recommendations regarding ORT (Appendix 1). This Task Force held quarterly meetings and numerous site visits during which they met and listened to Texas retailers, prosecutors,

law enforcement and other experts to learn how ORT affects them and to hear their suggestions on what the state can do to address the problem (Appendix 2).

ORT Roles

Generally, an ORT group may be broken down into the following roles:

Boosters: professional thieves who steal merchandise from retail stores or while goods are in transit and earn a fraction of the retail price from the fences to whom they sell these items.

Fences: “go-betweens” who purchase stolen merchandise and either resell it to other fences or to witting or unwitting consumers or businesses. There are low-level fences, who typically handle small volumes of stolen goods and resell to higher-level fences. Mid-level fences use their own fencing operations to resell stolen goods to the public or to higher-level fences. High-level fences typically operate legitimate businesses, like pawn shops, secondhand stores, convenience stores and salvage yards that can handle large volumes of stolen goods.

Cleaners: remove security equipment from stolen merchandise to give the appearance that the goods originated from the manufacturer.

Money Launderers: process illicit funds and transactions designed to “clean” the funds, so they appear to be associated with legal activities. Skilled money launderers conceal the identity of parties involved in a transaction as well as the source and destination of the funds.

Ringleaders: direct ORT activities, like the development of merchandise lists and target locations for boosters, booster payout amounts and resale pricing.

A highly sophisticated ORT group might employ persons in all these roles, whereas the management of a less sophisticated ORT group might end with a high-level fence.

Source: National Retail Federation and K2 Integrity

ORT Study Data Limitation

This Task Force heard testimony from numerous stakeholders who explained that ORT is a costly and growing problem in Texas. This is evident based on the investigation results of HSI's Operation Boiling Point, and the investigations conducted by and arrests made by the Texas Department of Public Safety's (DPS) newly created Organized Retail Theft Prevention Unit. However, data to identify and quantify ORT trends are not readily available. Furthermore, the data that are available come mainly from retailer organizations and are estimates based on a limited number of survey responses. Data from prosecutors' offices on the number of cases prosecuted under the ORT statute, Texas Penal Code Section 31.16, may be misleading as prosecutors are more likely to use other sections of the theft statute and organized crime statutes. This lack of available and reliable data hampered the Task Force's efforts to quantify the extent and cost of ORT in Texas. (It is important to note that some retailers may be reluctant to share ORT and other sales- or revenue-related data that constitutes proprietary information.)

Financial Impact

According to a 2021 analysis prepared for the Retail Industry Leaders Association (RILA) and the Buy Safe America Coalition (a national consumer protection group), using 2019 data, Texas retailers' losses from all retail crime (which includes ORT but also other offenses such as shoplifting and fraud) were an estimated \$3.9 billion—about 0.95 percent of the total sales in the state's five largest retail categories: pharmaceutical and health care products, clothing, alcohol and tobacco products, household goods, and office equipment and computers.⁴

The study, which was an econometric analysis based on a survey of large retailers and excluded automobile sales and online markets, found total 2019 U.S. retail crime losses (also referred to as "shrink") to be \$68.9 billion, nearly 3.1 percent of the retail sales examined. Sixty-seven percent of the responders reported a moderate to "considerable" increase in ORT, and 80 percent predicted ORT would continue to grow.⁵

Another estimate, provided to the task force by the Texas Organized Retail Crime Association (TXORCA), estimated the annual cost of ORT in Texas was more than \$442 million in 2022. According to TXORCA, these losses resulted in more than \$21 million in lost state tax revenue and 4,700 Texas jobs.

The difference between the estimates above illustrates one of the fundamental problems faced by the Task Force when trying to quantify the impact of ORT on retailers and the state: consistent and reliable statistics are not readily available. Retail loss data are not collected or reported in a uniform manner, so the Task Force was able to ascertain neither the financial losses incurred by Texas retailers nor the amount of foregone state and local tax revenue. There also are no data enumerating the cases of ORT committed in Texas or the percentage of retail losses attributable to ORT.

Even at the national level, data specific to ORT are unavailable. Although the Federal Bureau of Justice Statistics is a large federal repository of criminal data, it does not collect or publish ORT-specific data.

Effect on Tax Revenue

In addition to the losses incurred by retailers from the theft of merchandise, the economic impact of ORT may result in a decrease in state and local tax revenue, increased consumer prices and lower wages for retail employees. The RILA/BSAC report, for example, estimated ORT in the U.S. had a total economic impact of \$125.7 billion in 2021 and was responsible for a reduction of up to 658,000 full-time equivalent jobs.⁶ ORT affects state and local tax revenue. The RILA/BSAC analysis estimated a decrease of nearly \$15 billion in tax and fee revenue because of ORT in the U.S.

While there is presently no comprehensive structure for reporting ORT data, the significance of sales tax revenue to the state of Texas cannot be ignored. Sales taxes are the state's largest single source of tax revenue, bringing in \$46.6 billion in fiscal 2023, according

to the 2023 State of Texas Annual Cash Report. The State of Texas Annual Cash Report shows revenue and expenditure details for all funds in the Texas Treasury.

Exhibit 1: Texas Sales Tax Collection, Fiscal Years 2019-2023

Fiscal Year	Sales Tax Revenue
2019	\$ 34,023,916,225
2020	\$ 34,099,115,139
2021	\$ 36,019,605,414
2022	\$ 42,971,903,533
2023	\$ 46,581,071,515

Source: Texas Comptroller of Public Accounts, The State of Texas Annual Cash Report

Texas imposes a 6.25 percent sales tax on retail sales, leases and rental of most goods and taxable services. Local taxing jurisdictions (cities, counties, special purpose districts and transit authorities) can also impose up to 2 percent sales and use tax for a maximum combined rate of 8.25 percent. The local portion of these taxes contributes to funding a variety of programs for crime control, economic development, road and street maintenance and emergency services, and the state portion of these taxes funds many functions of state government. Consequently, a loss in tax revenue, as a result of ORT, is effectively lost funding for public services for Texas residents, because taxes are only collected from purchasers and remitted to the state when sellers follow the tax laws. When a taxable item is stolen, no taxes are collected and remitted because no sale was made. When it comes to ORT,

when stolen items are sold, it is likely that in many cases, they are sold by or to individuals or businesses not adhering to tax laws.

ORT Burden on Retailers

The most glaring implication to retailers from ORT is lower net profit margins due to inventory shrink. Retail shrink refers to the difference between the amount of merchandise (or inventory) that the retail company owns on its books, and the results of a physical count of the merchandise. Causes of retail shrink include operational errors, internal issues and external losses.

- Operational errors can involve paperwork issues and other operational missteps. These incidents typically occur when processing a transaction, receiving merchandise, shipping merchandise or taking inventory.
- External losses can involve theft by customers, issues involving vendors or other incidents that pertain to those not working for the company.
- Internal losses are the result of incidents that involve store associates and other company employees.

“We lock one item up, and they just go on to the next products.”

Texas retailers, many of whom already struggle to optimize operations and maintain profitability, report that they have been forced to invest in expensive security measures, such as advanced loss prevention technology and hiring loss prevention staff because of ORT. Texans shopping in large retail stores may have noticed an increasingly strong security presence—guards, cameras, glass cases and locks placed around merchandise. These measures are expensive and place a financial strain on small retailers, in particular.

While these measures may help prevent thieves from stealing the products retailers are protecting, it is likely that thieves will simply change their target to merchandise located in a different area of the store where products are not locked up. As one Loss Prevention officer told the Task Force during a store walkthrough, “We lock one item up, and they just go on to the next products.”

Security camera surveillance sign at a Walmart in Midland.



Retailers advised the Task Force that the type of merchandise most often lost to ORT varies based on the sophistication of a theft ring—some thieves target specific high-dollar or high-demand items, while others may simply fill trash bags or carts full of random merchandise and walk out of the store. As one retailer explained, “Categories will move to whatever items have the most value.”

“I have been in retail for 30 years and I’ve never seen them as bold and brazen as they have been these past few years.”

Retailers have expressed that organized retail thefts have become more blatant in recent years, with perpetrators being more aggressive and bolder in carrying out retail thefts. A loss prevention staff interviewed by the Task Force stated, “I’ve been in retail for 30 years and I’ve never seen them as bold and brazen as they have been these past few years.”

Influence on Consumers

ORT can negatively impact consumer spending—and, thus, state tax revenue—due to price increases that retailers may be forced to make to remain profitable. ORT also may raise safety concerns among both retail employees and shoppers, which could ultimately result in reduced store hours and even store closures.

In addition to the financial burden imposed on businesses, consumers and local communities by rising prices related to ORT, the DHS reported concerns over the growing number of thefts that turn violent.⁷ ORT creates a potential safety risk for both employees and customers who may interact with or confront shoplifters.

Some retail products, such as over-the-counter medications, baby formula and beauty products, can pose a risk to the consumer if not handled, transported and stored properly. When ORT goods are resold, the buyer has no idea if the product has been opened, tampered with or exposed to unsafe temperatures.

Consumers may find certain theft deterrents used by retail stores—locked merchandise, security cameras, armed guards, etc.—to be inconvenient, invasive or even intimidating. Retailers must weigh the efficacy of these security measures against the desire to provide a positive shopping experience for their customers. While store security measures can be a strong theft deterrent, they can also scare away customers who may perceive them as an inconvenience or an indication of danger.

Prosecution of ORT

There are many Texas laws pertaining to theft, but [Texas Penal Code, Section 31.16](#) specifically addresses ORT, which differs from simple theft when there is a coordinated action to steal goods from targeted retail establishments. According to the statute, an ORT offense occurs when a person “intentionally conducts, promotes or facilitates an activity in which the person receives, possesses, conceals, stores, barter[s], sells or disposes of stolen retail merchandise.”⁸

Criminal charges for ORT range from a Class C misdemeanor to a first-degree felony, depending on the value of the merchandise stolen:

- Less than \$100 – Class C misdemeanor
- \$100-\$749 – Class B misdemeanor
- \$750-\$2,499 – Class A misdemeanor
- \$2,500-\$29,999 – State jail felony
- \$30,000-\$149,999 – Third degree felony
- \$150,000-\$299,999 – Second degree felony
- \$300,000 or more – First degree felony

Under certain circumstances, such as when the perpetrator holds a leadership position within the crime ring or when they activate or deactivate a fire exit alarm during the theft, the criminal charges increase to the next higher level.

ORT cases are prosecuted at the local or federal level, depending on the circumstances. Law enforcement entities generally submit ORT cases to the DA, but the DA decides whether to file charges. Retailers and law enforcement reported some reluctance among DAs to pursue ORT charges, often pursuing simple theft convictions instead. Charging ORT as simple theft, however, skews crime data and undermines efforts to address ORT comprehensively. Law enforcement

officers told the ORT Task Force that legislation may be needed to better enable prosecutors to charge perpetrators with ORT instead of simple theft.

At the local level, retailers generally partner with local law enforcement to apprehend ORT perpetrators. With many police departments facing staffing shortages, however, other crimes are often prioritized over retail theft. In meetings with the Task Force, some retailers expressed their frustration regarding delayed responses by law enforcement—or sometimes no response at all—when they called to report retail crimes. They were also dissatisfied with the speed at which some perpetrators were arrested and charged only to be released, whereupon they committed the crime again.

Retailers and DAs observed that suburban counties have been the most successful in remedying ORT. They attributed this to detectives in those counties being more able and eager to pursue ORT because they are not overwhelmed by the volume of higher-priority crimes that occur in highly populated counties.

Local, State and Federal Initiatives

ORT may involve several different stores and cross the jurisdiction of several cities, counties or even states, so collaborative efforts are needed to coordinate investigations and share information.

During ORT Task Force discussions, some participants noted that law enforcement entities, DAs and retailers sometimes have conflicting notions regarding what defines a crime as ORT. They recommended more collaboration among retailers, law enforcement, DAs and community members to help develop a more consistent understanding of ORT, which would facilitate investigations and prosecutions.

Business Against Theft Network

One such collaboration is Businesses Against Theft Network (BAT-NET), a business crime alert program created 27 years ago by the San Antonio Police Department to address shoplifting and internal theft. (The program has since been expanded to include all crimes related to businesses, including ORT.) The ORT Task Force's staff members attended a BAT-NET meeting in August 2024 during which law enforcement personnel and retailers exchanged information

related to ORT and listened to a presentation by criminal intelligence analysts about suspicious activities reports.⁹

BAT-NET operates out of the Southwest Texas Fusion Center, which is supported by the DHS and provides a central point of contact for receiving, analyzing, gathering and sharing threat information among local, state, federal and private sector partners. Although Fusion Centers are owned and operated by each state, DHS has created the National Network of Fusion Centers that serves as a high-level hub for the state and local Fusion Centers.

Texas ORT Prevention Unit

DPS' newly created Organized Retail Theft Prevention Unit is a group of seven law enforcement officers assigned to ORT from the DPS Criminal Investigations Division. These special agents are strategically placed in areas with the highest number of reports of ORT: three officers in Dallas, three in Houston and one in Austin.

The unit investigates ORT cases reported directly by retailers and collaborates with local law enforcement. The unit does not supersede local law enforcement but works with local agencies, particularly DAs, to ensure the best outcome possible for the investigation. Since its establishment in September 2023, the unit has conducted approximately 80 investigations and, since August 2024, has made 99 arrests.

Retailers speaking to the Task Force expressed their appreciation for the unit, saying it has improved partnerships among different law enforcement departments, particularly when cases involve theft in multiple jurisdictions.

A unit representative spoke to the Task Force and emphasized the importance of accurate ORT reporting and data collection and suggested that a statewide collection and centralization of ORT data could help track, prosecute and ultimately reduce ORT. Some crimes in Texas, such as the theft of catalytic converters, are required to be reported to the state, but there are no such reporting requirements for ORT, which hampers the state's ability to compile comprehensive data.



Comptroller Glenn Hegar tours the Texas Financial Crimes Intelligence Center in Tyler.

The unit representative also recommended that retailers implement employee education programs on how to recognize the signs of organized theft. He also recommended a unified alliance among the state's judicial system, law enforcement and retail industry to foster better communication and coordination and ensure a more robust and effective response to ORT.

Federal Initiatives

Identifying and tracking ORT crime rings nationally is difficult because it requires police departments across a variety of jurisdictions—and a variety of state criminal statutes—to collaborate effectively to make arrests. The DHS's Homeland Security Investigation (HSI) unit has established a program named Operation Boiling Point to counteract ORT activities that target cargo and merchandise in the U.S.

HSI has the authority to investigate illegal border crossings of people, goods, money, technology and other contraband throughout the U.S. In 2021, HSI reported the initiation of 59 ORT investigations, more than three times the number from the year before. Their investigations resulted in 61 criminal arrests and the seizure of \$9.3 million in assets.¹⁰

Online marketplaces and social media give ORT resellers the anonymity needed to elude law enforcement while selling stolen merchandise on a large scale. The Integrity, Notification and Fairness for Online Retail Marketplaces (INFORM) Consumers Act was enacted

by Congress to provide transparency to online sales transactions.¹¹ The INFORM Consumers Act addresses the varying prosecution and felony thresholds across the states and applies to all online marketplaces. It uses a multi-faceted verification process and includes steep penalties for failure to comply.

The Federal Bureau of Investigation (FBI) partners with local law enforcement and retailers to identify ORT cases that have been initiated at the local level and raise them to the federal level if they meet the federal prosecution threshold.¹²

Marketplaces

A marketplace is a physical or electronic store, internet website, software application or catalog that marketplace sellers use to make sales. A marketplace provider is an entity that owns or operates a marketplace and processes sales or payments for marketplace sellers. Examples include Amazon, eBay, Walmart Marketplace and Etsy.

In Texas, a marketplace provider is required to collect, report and remit state and local sales tax on all sales made through a marketplace, meaning it is possible that providers have collected sales tax on stolen goods.

However, marketplace providers develop policies to monitor for and remove stolen goods from their platforms and provide tools for consumers to report suspicious activity. For instance:

- [Report Suspicious Activity – Amazon Customer Service](#)
- [What to do if you see a stolen item on Facebook Marketplace – Facebook Help Center](#)
- [Stolen property policy – eBay](#)
- [Report Marketplace Seller Activity – Walmart.com](#)

Additionally, as part of the new laws in California, their residents can report suspected stolen goods to the California Office of the Attorney General.

Transnational ORT

ORT knows no borders, and transnational criminal networks commit crimes globally, both physically and online. The International Criminal Police Organization (INTERPOL), an intergovernmental police force representing 196 member countries, focuses on crimes that cross international borders.³ INTERPOL provides a variety of expertise, information and services to its member countries to assist in stopping criminal activities, including ORT. INTERPOL helps coordinate information and resources from countries that may not have the resources or manpower on their own to track down and apprehend ORT perpetrators within their jurisdictions.

ORT Task Force Findings and Recommendations

ORT Task Force members noted three recurrent themes: a lack of ORT data, a need for coordination among ORT stakeholders and a need for consistency in the application of ORT and other theft-related laws. Below are the findings and recommendations of the Task Force.

Finding 1

Statewide data relating specifically to ORT are not collected in Texas, which makes it difficult to quantify the extent and cost of ORT, pinpoint where crimes are happening and dedicate sufficient resources to combat ORT. Retailers are reluctant to share certain proprietary data with their competitors.

Although the Task Force heard testimony and reviewed available evidence indicating that ORT is a growing problem in Texas—causing financial losses to retailers, higher prices and inconvenience to consumers, tax losses to governmental entities, and challenges for law enforcement and prosecutors—data to support the anecdotal evidence are not available for analysis. The Task Force, therefore, was unable to determine the scope and severity of ORT in Texas.

Recommendations

- Develop a statewide repository to collect ORT data that can be aggregated and analyzed.

- Work with retailers to categorize and mask their confidential data in such a way that doesn't expose proprietary information yet still allows analysts to estimate the cost of ORT and detect trends.
- If ORT trends indicate a need, consider creating an organization to combat ORT modeled after or housed under the Texas Financial Crimes Intelligence Center.

Finding 2

Thefts conducted by perpetrators who target multiple types of merchandise or who operate in more than one law enforcement jurisdiction are often difficult to identify as ORT. Although specialized units in some law enforcement departments across the state are well trained in identifying and investigating ORT, effective communication among retailers, law enforcement and prosecutors to define instances of ORT is necessary.

Making the connection that certain theft cases are different in scope and that the same individuals may be involved in thefts of several different retailers in different jurisdictions in the state is not initially clear and requires coordination and communication among stakeholders.

Recommendations

- Continue support for the DPS Organized Retail Theft Prevention Unit and consider increasing the total number of FTEs for the unit.
- Identify an existing DPS or other state agency unit to serve as both an information clearinghouse and a facilitator to help local law enforcement departments develop and improve ORT coordination, cooperation and knowledge sharing with other jurisdictions so that potential links to related cases may be identified and shared.
- San Antonio's BAT-NET program could serve as a model for other cities to improve communication, transparency and collaboration among stakeholders.
- Establish a store walk-through program. Retailers can launch a store walk-through program inviting law enforcement agencies and prosecutors' offices to get a better understanding of the ORT issue. This can also help foster a stronger relationship between retailers and law enforcement.

- Incorporate training on ORT in new officer training classes and as part of a continuing education class for law enforcement and prosecutors.
 - One-hour presentation to new academy classes.
 - Quarterly and annual meeting/certification by TXORCA or similar association.

Finding 3

Prosecuting ORT can be time and resource intensive, and prosecutors sometimes apply ORT charges inconsistently (e.g., charging an ORT crime as simple theft, which may take less time and be easier to prove). Prosecutors find the requirement to prove intentionality in ORT cases to be an obstacle in the pursuit of charges under the ORT statute.

Other state laws may inadvertently make it difficult for ORT crimes to be prosecuted. Retailers, for example, are required by law to wait 10 days before reporting the theft of certain rental items. Although normally this provision likely would be in a consumer's best interest, it is a barrier when the retailer becomes aware that the items are being resold before he is allowed to report the theft.

Recommendations

- Form a committee of prosecutors to review the ORT statute's requirements, including proof of intentionality and other statutes that are considered to be barriers to ORT prosecution, such as the waiting period on reporting stolen rental items. The committee should seek input from retailers and law enforcement during its review. The committee will present its suggestions to the ORT Task Force before the next legislative session.
- Develop training on ORT as a continuing education course, such as a one-hour presentation on the key steps for prosecuting an ORT case.

APPENDIX 1

Texas Government Code, Section 403.0302

Sec. 403.0302. ORGANIZED RETAIL THEFT TASK FORCE.

(a) In this section, "organized retail theft" means conduct constituting an offense under Section 31.16, Penal Code.

(b) The comptroller shall appoint a task force to study and make recommendations related to preventing organized retail theft in this state.

(c) The task force must include:

- (1) at least one representative from a retailer with a physical retail location;
- (2) at least one representative from an online retailer; and
- (3) representatives from local, state, and federal law enforcement agencies.

(d) The comptroller shall designate a member of the task force as the presiding officer.

(e) The task force shall meet at least quarterly at the call of the presiding officer. A task force meeting may be conducted virtually through the Internet.

(f) The task force shall conduct an ongoing study of organized retail theft in this state. In conducting the study the task force shall:

(1) review laws and regulations addressing organized retail theft in other jurisdictions, including international political and economic organizations;

(2) analyze:

- (A) the impact of organized retail theft on the collection of sales tax;
- (B) the long-term economic impacts of organized retail theft; and
- (C) the advantages and disadvantages of taking various actions to reduce organized retail theft; and

(3) make recommendations regarding:

(A) organized retail theft outreach and prevention programs, including coordination among stakeholders, including local, state, and federal law enforcement agencies; and

(B) training for law enforcement officers and prosecutors on effective strategies for combating organized retail theft.

(g) In conducting the study under Subsection (f), the members of the task force may:

(1) consult with any organization, governmental entity, or person the task force considers necessary; and

(2) collaborate and share information relating to an active criminal investigation with one another regardless of whether the information would otherwise be confidential and not subject to disclosure under Chapter 552.

(h) Not later than December 1 of each even-numbered year, the task force shall prepare and submit a report of the study conducted under Subsection (f) to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and each standing committee of the legislature with primary jurisdiction over criminal justice matters.

(i) The report submitted under Subsection (h):

(1) must include legislative and other recommendations to increase transparency, improve security, enhance consumer protections, prevent organized retail theft, and address the long-term economic impact of organized retail theft; and

(2) may be submitted electronically.

(j) Chapter 2110 does not apply to the duration of the task force or to the designation of the task force's presiding officer.

Added by Acts 2023, 88th Leg., R.S., Ch. 426 (H.B. 1826), Sec. 1, eff. September 1, 2023.

APPENDIX 2

Texas Organized Retail Theft Task Force

The Task Force, appointed by the Texas Comptroller, includes representatives from the retail industry—both physical stores and online marketplaces—as well as members of the law enforcement and criminal justice communities.

Task Force Members

- Glenn Hegar, Chair, Texas Comptroller of Public Accounts
- Joyce Beebe, Rice University (Baker Institute)
- Adam Colby, Texas Financial Crimes Intelligence Center
- Christian Hardman, eBay
- Art Lazo, 7-Eleven
- Adam Mendoza, Target
- Carly Richter, Texas Comptroller of Public Accounts (Criminal Investigation Division)
- Tiana Sanford, Montgomery County District Attorney's Office
- Darrell S. Taylor, H-E-B
- Chris Walden/Faith Kohler,* Amazon
- Corey Yates, JCPenney

**Chris Walden succeeded Faith Kohler on Feb. 14, 2024.*

Quarterly Meetings

Following the initial kick-off meeting on Oct. 10, 2023, the Task Force held quarterly meetings in 2024.

- Jan. 16, 2024: Presentation by invited guest, Cory Lowe, Ph.D., Senior Research Scientist with the Loss Prevention Resource Center.
- April 16, 2024: Panel discussion led by Floyd T. Goodwin II, Chief of the Texas DPS Criminal Investigation Division.
- July 16, 2024: Panel discussion with district and county attorneys who discussed challenges faced by their offices and recommendations on how the state can combat ORT.
- Oct. 16, 2024: Discussion and approval of final report.

Site Visits

In addition to the quarterly meetings, Task Force members and/or Task Force staff conducted several site visits to retail and law enforcement locations around Texas.

- April 17, 2024: Retail store walk at Target, Austin
- May 16, 2024: Retail store walk at Home Depot, Austin
- June 19, 2024: Retail store walk at Walgreens, Houston
- Aug. 6, 2024: Meeting with multiple retailers, Austin
- Aug. 15, 2024: Meeting with San Antonio Police Department/Southwest Fusion Center Against Theft Network, San Antonio
- Sept. 12, 2024: Retail store walk at Walmart, Midland
- Sept. 18, 2024: Retail store walk at Academy Sports + Outdoors headquarters and distribution center, Katy
- Oct. 8, 2024: Texas Financial Crimes Intelligence Center, Tyler
- Oct. 28, 2024: Amazon distribution center, Pflugerville

APPENDIX 3

ORT Laws and Regulations in Other States

All states have criminal theft statutes; however, not all have a law that distinguishes between theft of property and organized retail theft or organized retail crimes. States that do not explicitly have an ORT law may have organized crime laws that are used, similar to the federal Racketeer Influenced and Corrupt Organizations Act, which law enforcement officials can pursue organized retail crime rings.

At the beginning of 2024, state lawmakers from 16 states introduced multiple pieces of legislation to increase the penalties for those individuals involved in ORT activities.¹⁶ For example, Oklahoma, in spring 2023, created the Oklahoma Organized Retail Crime Task Force to recommend and report to its legislature information on ORT and the pros and cons of instituting countermeasures to counter retail theft losses within its state's borders. Note that each state's statutes vary in terms of how it defines retail theft and the criminal activity surrounding it.

California recently passed a slew of bipartisan legislative bills to better combat ORT. The legislation is aimed at curtailing ORT in all its stages, from individuals shoplifting items in stores to the online marketplaces where stolen goods are resold by ORT rings. Some of the new laws increase the penalties of the convicted "middlemen" of the ORT operations: those who sell or exchange stolen goods for store credit or full refunds. Additionally, California has increased funding to local communities for more police officers and improved public safety.

In April 2024, the Florida legislature amended its law to stiffen penalties for those who commit ORT within the state by using social media to solicit five or more individuals to commit theft at a retail establishment.¹⁵ Florida has also increased the ability to charge those who steal from more than one retailer within 120 days with a felony rather than within the previous 30 days, expanding the time period for when thefts are committed.

The punishment of theft of retail property varies greatly between states depending on how a theft is classified. The states not listed below do not presently have legislation specifically targeting ORT, but they may utilize other sections of their respective penal codes to prosecute retail theft depending on the value of the stolen merchandise and the circumstance of the crime.

Organized Retail Theft State Requisites

Alabama

A person commits the crime of organized retail theft when the person, in association with one or more individuals, carry out a set of specific actions defined by the ORT statute. Alabama law also aggregates value of items stolen within prescribed lengths of time.

Arizona

ORT can be committed alone or in conjunction with another person to remove merchandise from a retail establishment. Arizona law does not include a prescribed set of actions defined by the ORT statute, nor does it aggregate value of stolen items within a specified time frame.

California

ORT law looks to target theft actors from the boosters to ringleaders, in concert with one or more actors. The legislation puts forth a specified definition for determining whether a person acted in concert with another and aggregates value of items stolen within prescribed lengths of time. However, this statute puts forth verbiage that permits prosecutors not to charge any other co-participant of ORT and is only in effect until January 2026 by its own provisions.

16 — Study on Organized Retail Theft in Texas

Connecticut

ORT is committed in conjunction with one or more individuals. Legislation aggregates value of theft within 180 days and makes a distinction to acts defining a person who is an accessory of ORT.

Delaware

ORT occurs when a series of organized retail crime thefts are committed by a person or group of individuals, with the intent to appropriate or to resell or reenter the merchandise into commerce. Legislation aggregates values into one charge but does not have a specified length of time.

Florida

ORT is committed by at least one individual, or in concert with one or more individuals who coordinate the activities of one or more individuals, in committing theft. This legislation aggregates value of stolen merchandise within prescribed lengths of time.

Georgia

Requires at least one individual to organize, plan, finance, direct, manage or supervise one or more individuals to appropriate stolen retail property from one or more retailers over a 180-day period with a value of at least \$25,000.

Illinois

Requires at least one individual, working in concert with at least one other individual, to knowingly commit retail theft from one or more retailers or recruits, organizes, supervises, finances or manages individuals to commit retail theft; criminal charge depends on value of stolen property.

Kentucky

Requires two or more individuals collaborating to promote or engage in any theft of retail property from a retail store with the purpose of reselling the stolen property.

Louisiana

Requires at least one individual to procure, receive or conceal stolen retail property with the intent to sell, deliver or distribute the stolen retail property on more than one occasion within a 180-day period; criminal charge depends on value of stolen property.

Maine

Requires at least one person committing thefts of two or more retail properties as either a principal or accomplice, in conduct by two or more individuals involving thefts from two or more retailers for the purpose of selling stolen retail property or fraudulently returning the stolen property for value.

Massachusetts

Requires a person acting in concert with two or more individuals, who steal, embezzle, or obtain by fraud or other illegal means, retail property with a value of at least \$2,500 to resell within a 180-day period.

Michigan

Requires at least one person who organizes, supervises, finances or manages another person in committing an organized retail crime; either the theft of retail property or knowingly purchasing/possessing stolen merchandise.

Minnesota

Requires a person to engage in a pattern of retail theft or direct another individual to commit an act of theft involving retail merchandise to sell or return the stolen retail property for value.

Mississippi

Requires a person to conduct, supervise or manage an organized theft or fraud enterprise of two or more individuals who engage in the transfer or sale of stolen merchandise or services or information that has pecuniary value that cause the loss to the victim.

Nevada

Requires three or more individuals who commit theft of retail property against more than one retailer in the state or against one merchant but in more than one location of a retail business of the merchant.

New Hampshire

Requires a person to conspire with others to engage in profit in a scheme or theft.

New Jersey

Requires a person to conspire with others or who organized, supervised, financed or managed another or others in order to profit from the transfer or sale of shoplifted merchandise.

New Mexico

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$2,500 from one or more retailers over the span of one year with the intent to sell, exchange or return the stolen property for value.

North Carolina

Requires a person to conspire with at least one or more individuals to commit theft of retail property with intent to sell that retail property for monetary or other gain, or requires only one individual who organized, supervised, financed or managed another or others in criminal activity over a 90-day period; criminal charge depends on value of stolen property.

Ohio

Theft of retail property with a value of at least \$1,000 or more from one or more retailers with the intent to sell, deliver or transfer that stolen property to a retail property fence.

Oregon

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$5,000 over a 90-day period.

Pennsylvania

A person commits organized retail theft if the person organizes, coordinates, controls, supervises, finances or manages any of the activities of an organized retail theft enterprise. Pennsylvania law does not include a prescribed set of actions defined by the ORT statute, nor does it aggregate value of stolen items withing a specified time frame.

South Dakota

Requires only one individual who organized, supervised, financed or managed another or others in criminal activity; criminal charge depends on value of stolen property.

Tennessee

Requires only one individual acting in concert with at least one other individual to commit theft of property with a value of at least \$1,000.

Texas

Requires only one individual who organized, supervised, financed or managed another or others in criminal activity; criminal charge depends on value of stolen property.

Virginia

Requires at least two individuals, one or more retailers, and a value of at least \$5,000 over a 90-day period.

Washington

Requires at least six individuals and a cumulative value of at least \$750 in stolen property.

Compiled from multiple sources by the Texas Comptroller of Public Accounts.

Endnotes

- ¹ U.S. Chamber of Commerce, "Retail Crime Data Center Highlighting the Serious Impact of Criminal Organizations on American Business and Society" (March 2023), <https://www.uschamber.com/economy/retail-crime-data-center> (Last visited August 30, 2024).
- ² Homeland Security Investigations, "Operation Boiling Point," <https://www.dhs.gov/hsi/insider/op-boiling-point> (Last visited August 30, 2024).
- ³ ACAMS, "Detecting and Reporting the Illicit Financial Flows Tied to Organized Theft Groups (OTG) and Organized Retail Crime (ORC)," <https://www.acams.org/en/media/document/29436> (Last visited August 30, 2024).
- ⁴ Buy Safe America, The impact of Organized Retail Crime & Product Theft in the United States, <https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft> (Last visited August 20, 2024).
- ⁵ Crime & Product Theft in the United States, <https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft> (Last visited August 20, 2024).
- ⁶ Buy Safe America, The impact of Organized Retail Crime & Product Theft in the United States, <https://www.buysafeamerica.org/impact-of-organized-retail-crime-and-product-theft> (Last visited August 20, 2024).
- ⁷ Homeland Security Investigations, "Operation Boiling Point," <https://www.dhs.gov/hsi/insider/op-boiling-point> (Last visited August 30, 2024).
- ⁸ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.31.htm#31.16>
- ⁹ U.S. Department of Homeland Security, "Fusion Center Locations and Contact Information," <https://www.dhs.gov/fusion-center-locations-and-contact-information> (Last visited August 30, 2024).
- ¹⁰ U.S. Immigration and Customs Enforcement, "HSI launches Operation Boiling Point," Oct. 17, 2022, [https://www.ice.gov/news/releases/hsi-launches-operation-boiling-point#:~:text=In%20fiscal%20year%20\(FY\)%202021,and%20%249%2C287%2C757%20in%20assets%20seized](https://www.ice.gov/news/releases/hsi-launches-operation-boiling-point#:~:text=In%20fiscal%20year%20(FY)%202021,and%20%249%2C287%2C757%20in%20assets%20seized) (Last visited August 30, 2024).
- ¹¹ Federal Trade Commission, "Informing Businesses about the INFORM Consumers Act," <https://www.ftc.gov/business-guidance/resources/INFORMAct> (Last visited August 30, 2024).
- ¹² Federal Bureau of Investigation, "Organized Retail Theft," <https://www.fbi.gov/investigate/organized-crime/organized-retail-theft> (Last visited August 30, 2024).
- ¹³ Interpol, "What is INTERPOL?," <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL> (Last visited August 30, 2024).
- ¹⁴ International Council of Shopping Centers, <https://www.icsc.com/news-and-views/icsc-exchange/organized-retail-crime-remains-top-issue-for-state-lawmakers-in-2024> (Last visited May 15, 2024).
- ¹⁵ State of Florida, Committee substitute for H.B. 549 (Organized Retail Crime), (2024), <https://laws.flrules.org/2024/69>

Texas Comptroller of Public Accounts

comptroller.texas.gov

Publication #96-2026
November 2024



TEXAS POLICE CHIEFS ASSOCIATION

P.O. Box 819
Elgin, Texas 78621

Phone: 512-281-5400 • 1-877-7 POLICE • Fax: 512-281-2240
E-Mail: info@texaspolicechiefs.org • Web Page: www.texaspolicechiefs.org

Testimony Key Talking Points

Introduction

Submitted by Will Johnson, Chief Special Agent at BNSF Railway Police Department. Chief Johnson also serves as the first Vice President of the Texas Police Chiefs Association and the fourth Vice President of the International Association of Chiefs of Police.

The Scope of the Problem

Organized retail crime has escalated dramatically, intersecting with organized cargo crime to create a compound financial impact on our economy and Texas families. This criminal activity:

1. Fractures community stability
2. Imposes financial devastation on business owners and consumers
3. Traumatizes crime victims
4. Drives consumer inflation

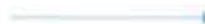
Recent statistics highlight the severity of the issue:

1. The National Retail Federation reports that organized retail crime costs retailers an average of \$720,000 per \$1 billion in sales.
2. Houston ranks third nationwide in organized retail crime rates, trailing only Los Angeles and San Francisco.
3. Cargo theft increased by 46% in Q1 2024 compared to Q1 2023, with this trend continuing throughout the year.
4. Data collection and victim aggregation remain outstanding challenges

Evolving Criminal Tactics

Thieves have become more strategic:

1. Thefts occur at any time, not just during peak seasons or weekends.
2. All products are targeted, not just high-value items.
3. Sophisticated distribution networks coordinate the resale of stolen merchandise.
4. Investigations have proven intersections with other illicit gains, such as drugs, auto theft, cargo theft, and weapon offenses.
5. Growing nexus to transnational crime syndicates





TEXAS POLICE CHIEFS ASSOCIATION

P.O. Box 819
Elgin, Texas 78621

Phone: 512-281-5400 • 1-877-7 POLICE • Fax: 512-281-2240
E-Mail: info@texaspolicechiefs.org • Web Page: www.texaspolicechiefs.org

COMMITTEE: Criminal Justice

TIME & DATE: 10:00 AM, Thursday, October 10, 2024

(arrive by 9 sign in by 9:30 AM, provide 12 copies of any written material or handouts)

PLACE: E1.028 (Hearing Room – Extension downstairs)

CHAIR: Senator Pete Flores

Will Johnson Testimony Narrative

Chairman Flores, esteemed members of the committee, thank you for the opportunity to address you today on the critical issue of organized retail crime. I am Will Johnson, Chief Special Agent at the BNSF Railway Police Department. I also serve as the first Vice President of the Texas Police Chiefs Association and the fourth Vice President of the International Association of Chiefs of Police. I have served the Great State of Texas as a police officer for 30 years.

Today, I come before you to raise awareness of a growing crisis threatening our economy as a state and community stability. I am speaking of the escalation of organized retail crime, organized cargo theft, and attacks on our entire supply chain. As a criminal justice system, our highest obligation is to eliminate victimization in our state, and for many victims impacted by organized crime, the pathway to restoration and justice is obscure, which leads to social frustration and crime fatigue.



TESTIMONY OF

HECTOR A. LEAL

PRESIDENT – TEXAS ORGANIZED RETAIL CRIME ASSOCIATION

SENIOR INVESTIGATOR - ORGANIZED RETAIL CRIME

CVS HEALTH

BEFORE THE TEXAS STATE SENATE COMMITTEE ON
CRIMINAL JUSTICE

HEARING ON
RETAIL THEFT - EFFECTS OF ORT
OCTOBER 10, 2024

OPENING STATEMENT

Hector Leal – President, Texas ORCA

Chairman Flores and members of the Committee. My name is Hector Leal, I am a Senior Investigator - Organized Retail Crime for CVS Health.

I am also serving and speaking to you today, as President of TXORCA, Texas Organized Retail Crime Association. Our organization is comprised of over 3,800 Retail ORC Investigators and Law Enforcement Officers at the local, state, and federal level - partnering together for the sole purpose to protect retailers by dismantling organized retail crime in Texas.

As a Native Texan, thank you for the opportunity to speak today on this growing threat of organized retail theft and the impact it is having on our retailers, employees, and consumers along with the real harm organized retail crime is causing in our communities across this great state.

You may have seen in the media recently, numerous multi-million-dollar Organized Retail Criminal enterprises dismantled in cities and small towns throughout the continental US. These organizations are comprised of networks of professional thieves, illegal fencing operations and illicit online sellers that span across multiple states, including Texas.

Stolen products recovered in some of these cases were directly linked to violent retail thefts throughout the US. This type of organized criminal activity is consistent with what retailers and law enforcement face every day in Texas.

Texas plays a significant part of the national landscape of Organized Retail Crime. These criminal networks have set up in Texas where they warehouse, clean, and repackage stolen merchandise for distribution.

According to Retail Industry Association in 2022, Houston has been deemed as the 3rd largest Organized Retail Crime Hub in the country and Dallas ranking 9th. We have had several multi-million-dollar cases resolved in Texas just this year that support this statistic. In addition to working other large-scale investigations, we also have examples of multiple professional thieves being arrested and sought out daily, many of whom travel to other states using our accessible Texas Interstate corridors for the sole purpose of stealing large quantities of product for the specific purpose of **resale**, -

primarily on popular online marketplaces. Our organization, applauds the introduction of the IMFORM ACT, allowing investigators to obtain information on the suppliers of these identified illegitimate on-line sellers. But now - action is needed for the consequences of this unlawful activity.

In addition, **Transnational criminal organizations** recruit people into this country for the specific purpose of stealing from our Texas Retailers. In addition, ORT has infiltrated our legitimate supply chains and improper handling of this sensitive product is endangering unsuspected Texas consumers daily. From the Criminal to our Texas Families, Law Enforcement agencies in partnership with Retailers across Texas have resolved several of these cases which often involve -guns, drugs, money laundering, global terrorism, and labor trafficking.

These criminal syndicates are growing more sophisticated, more violent, and more entrenched in our communities.

It is not always apparent to see the hidden and growing impact that this criminal activity has on our economy, in which **Public -- Employee --- and Product Protection and cost of incorporating effective security that negatively impacts the customer experience and Texas trade.**

Texas Organized Retail Crime Association, Retailers and Texas Law Enforcement Officers applaud the recent steps taken by numerous State Attorney General's Offices and Governors such as Florida, Oklahoma, and California that are making significant investments to combat organized retail theft, by establishing **ORT TASK FORCES, Changes to ORT Penal Codes and Enhancing Penalties to help reduce the violence, and make it more difficult for these dangerous organizations to operate in their businesses and communities.**

TXORCA offers the same level of support and partnership to the citizens of Texas.

Chairman and Committee Members, here are some recommendations that our association has expressed to the Texas Comptroller's Office:

1st – As mentioned, align Texas to other Federal and State legislation aimed at reducing the ORT by providing the resources for a designated ORT State Task Force.

- We recommend utilizing the TXDPS Special Investigators solely for the purpose of ORT Investigations to be established in each of the major regions of Texas to include Houston, Dallas, Austin (Central Texas), and South Texas
- Recommendation includes modeling the state funded TFCIC - Texas Financial Crimes Intelligence Center – first created to combat skimming devices.
- Each Region/ORT LE Task Force would have analyst(s) support in case entry and assists during real time events with agents and certified Retail ORC Investigators – Similar to Established Texas Fusion Center.
- Interacting Software System for case entry/data collection-reporting /sharing.

2nd Strengthen the ORT Statute for Texas

- Penal Code 31.16 could be enhanced and even re-written. DA's Offices are not charging ORT Engaging in Texas since the charges are equivalent to state theft statutes and penalties thus easier to prosecute. New penal code would also require a charge escalation in ORT / Engaging. Texas has one of the highest felony thresholds set across the country of \$2,500.
- The new proposed Penal Code would be written to stop this revolving door and serve justice to these offenders affecting retailers and consumers in Texas. It should include multiple qualifiers specifically aimed at these offenders – such as 2 or more suspects for engaging opposed to 3 in an incident, the utilization of a rental vehicles, altered or fraudulent license plate or paper plate in the commission of ORT event. An example would be the draft that the OK AGA Office is has created, in which many of the ORC Investigators on our TXORCA Board assisted in drafting.

- Assign State Prosecutors knowledge of ORT to assist each Region of this Task Force region to support and specialize in ORT and Engaging prosecution.

Lastly, Law Enforcement and Prosecutor Training and Education of Organized Retail Theft

- 1 HOUR PRESENTATION TO NEW ACADEMY CLASS
- INTERDICTION COURSE
- Utilization of Texas ORCA Quarterly and Annual Meeting/Certification

*Last Week Texas DPS had a 3 ½ hour Briefing on ORT and the Impact it has on our Communities in Texas . TEXAS ORCA presented the training session on ORT to 175 local, state, and federal officers, and the growing impact to Texans. Many of these officers were State Troopers that make significant stops and teaching them what to seek and what penal codes would help them have the justification for prosecution and product seizure was well received.

These are just some of the examples we wanted to share today.

Chairman Flores and members of the Committee, we appreciate your leadership on this issue and the entire Committee's commitment to addressing organized retail theft.

Thank you again for the opportunity to testify today.

I would be glad to answer any questions.

Organized Retail Crime: Case Recap

TRAVELING PROFESSIONAL BOOSTER CREW

DIVISION: 7

ORC CASE # C-1276

AFFECTED MARKETS: TX

INVOLVED AGENCIES: HCSO/ TX DPS

CASE VALUE: \$137K

CASE STATUS: Closed



- Texas law enforcement arrested 6 professional shoplifters in connection to significant theft events at CVS stores in Houston and Dallas/Fort Worth.

- Police recovered 18 trash bags with nearly 2000 cosmetic and facial care product from the trunk of the rental vehicle totaling over \$37K.

- These arrests were the culmination of an investigation launched by the CVS ORC Team following thefts incidents reported by 43 separate CVS stores in the Dallas and Houston markets.

- The investigation received strong support from the Field AP Team (DAPL, RAPM) that facilitated intelligence from the affected stores.

- The subjects are currently facing felony theft and conspiracy charges as part of a larger ORC criminal network operating in Texas.

- The ORC Team is actively engaged with state and local law enforcement on dismantling the entire network that has caused \$2M in losses to CVS in the last 18 months.

♥CVSHealth

Organized Retail Crime: Case Recap

Houston Level II Traveling Boosters

DIVISION: 7

AFFECTED MARKETS: Texas

CASE VALUE: \$84,312

ORC CASE # 1143

INVOLVED AGENCIES: Harris County Sheriffs

CASE STATUS: **CLOSED**



- On September 17, 2024, CVS ORC in partnership with local and state law enforcement **arrested 2 boosters and recovered over \$4,300 in product in connection to indictments issued in an ongoing e-commerce fence investigation operating in Houston.**
- CVS ORC gathered evidence to supply authorities with information of this prolific traveling crew tied to an identified fence that was targeting **HBA Facial Product.**
- Felony charges include **engaging in organized criminal activity along with conspiracy.**
- CVS ORC is currently working with local and federal law enforcement and currently rounding up over a dozen additional boosters indicted in this investigation.

Case Example 3



CVS Health | Asset Analytics and Insights |
ORGANIZED RETAIL CRIME
Executive Summary
Case ORC #0948 – Houston, TX



EXECUTIVE SUMMARY

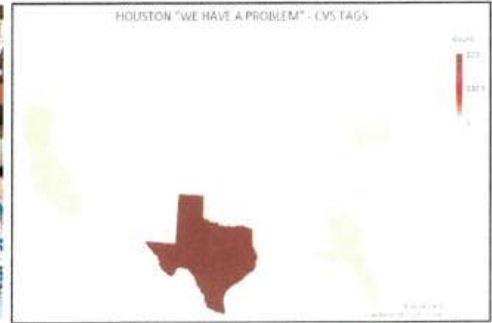
OPERATION: HOUSTON WE HAVE A PROBLEM

CASE VALUE: \$1.6M

On February 27, 2024, a coordinated effort involving United States Homeland Security, Texas Department of Public Safety, and Harris County Sheriff's Office resulted in the execution of four search warrants in Houston, Texas. These warrants targeted two residences, a flea market store front, and an eCommerce fulfillment center. The operation was the culmination of an extensive 10-month investigation conducted by local, state and federal law enforcement agencies, working in collaboration with the **CVS ORC Team**.

The investigation was triggered by the **CVS ORC Team** in May 2023, who had been collaborating with peer retail investigators. As part of their daily surveillance efforts, investigators discovered multiple traveling boosters taking stolen HBA Facial Product and Cosmetics to a fence who was later identified. ORC Investigators presented the case and joined forces with HCSO, Texas DPS, and Homeland Security. **During this investigation, the ORC Team uncovered an additional fence involved in selling stolen product online and at a flea market. This secondary fence was also supplying the primary fence, who, in turn, acted as a supplier to an e-Commerce platform with annual sales of \$2.1M and international trade to Nigeria totaling \$1.1M in 2023.**

The criminal investigation revealed that the suspects operated through various channels, including E-commerce platforms, flea market store fronts, and international trade. As a result of their activities, **23 professional boosters are being arrested and 2 high-level fences are expected to face Federal indictments.** Notably, \$189K was recovered from the two residences and \$44K worth of merchandise was confiscated from the fulfillment center. Furthermore, 226 CVS locations across 29 states were identified from the Anti-Resale tags attached to the recovered stolen product.



© 2024 CVS Health Corporation & Pharmacies





DISCUSSION PURPOSE ONLY. NOT TO BE DISTRIBUTED

Case Example 4

CVS Health | Asset Analytics and Insights | ORGANIZED RETAIL CRIME

Executive Summary
Case ORC #1274 – Arlington, TX



EXECUTIVE SUMMARY

OPERATION: MI VIDA HAIR SALON

CASE VALUE: \$1.3M

On August 19, 2024, a coordinated effort involving Texas Department of Public Safety, Arlington, and Plano Police Departments resulted in the execution of 2 search warrants in Arlington, Texas. These warrants included the residence and business of the fence. The operation was the culmination of an extensive 6-month investigation conducted by local and state law enforcement agencies, working in collaboration with the CVS ORC Team.

The investigation was triggered by the CVS ORC Team in early 2024, who had been collaborating with peer retail investigators. As part of their daily surveillance efforts, investigators discovered multiple traveling boosters taking stolen HBA Facial Product, Pro Salon and Cosmetics to a fence who was later identified. ORC Investigators presented the case and joined forces with special investigators with Texas Department of Public Safety.

The criminal investigation revealed that the fence operated through various channels, including 4 online platforms, merchandise sold at her brick-n-mortar salon in Arlington as well as merchandise going weekly to her store in Mexico. As a result of their activities, 2 fence operators have been arrested with multiple ORC charges. In addition, multiple boosters will be rounded up and charged in this criminal enterprise for Engaging in this Organized Retail Theft. Notably, \$162K in stolen CVS product was recovered from the residences and business. Furthermore, 116 CVS locations across the Dallas/Fort Worth vicinity were identified from the Anti-Resale tags attached to the recovered stolen product.



© 2024 CVS Health. Confidential. All Rights Reserved.



October 10th, 2024

Cargo Theft in Texas: A Growing Challenge to Our Supply Chain Security

Prepared by Team Overhaul

Cargo Crime: A Closer Look

Organized retail theft and cargo theft are two sides of the same coin, often victimizing the same businesses and communities.



US Cargo Crime Rates

49% ↑

Year on Year cargo crime increase. Organized theft groups (OTGs) target cargo at the ports of entry, at truck stops, on freight trains, and anywhere else along the supply chain as the goods are in transit.

Loss Value (Annual)

\$15-35B

OTGs utilize a variety of means to steal cargo including fraudulent pick-ups, false documentation, driver collusion etc. Much of the cargo that targeted is destined for retailers and/or distribution centers, creating significant disruption.

Increase in Risk Events

1.5M

Number of high-risk events managed through Overhaul, \$1.4T value annually. Overhaul's most recent 2024 data identifies the highest risk states as California (45% of total thefts), followed by Texas (14% of total thefts and growing), Tennessee, and Illinois.

About Overhaul

Headquartered in Austin, Overhaul is a global leader in cargo protection and in-transit risk management, using software and control tower operations to protect cargo at risk of theft and spoilage. Overhaul is experienced in law enforcement engagement across the globe.

We serve companies such as **Nike, Under Armor, Microsoft and Dyson**, moving freight globally across industries, including retail and food and beverage, pharmaceutical and healthcare, and technology.

Attention is heightening nationwide as strategic criminal activity spikes

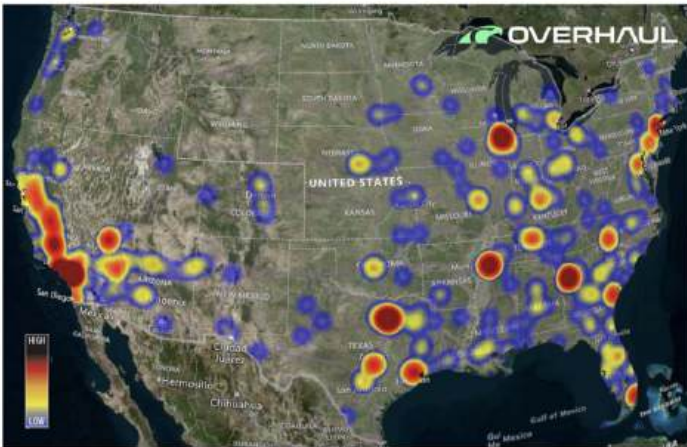
“The logistics and transportation industry is under siege from increasingly sophisticated and organized fraud schemes.” - Transportation Intermediary Association

Surge of cargo theft is 'hitting us like lightning,' experts say - CJJ Digital

Rise in Cargo Thefts Likely to 'Get Worse Before It Gets Better' - Supply Chain Brain

“According to the TIA Fraud Framework, there was a 600% increase in cargo theft between November 2022 and March 2023.” - Transportation Intermediary Association

USA Theft Data Overview January 2022 - January 2024 (24 months)



**Average Loss Value:
\$496,954**

Source: Overhaul Data + Den of Data

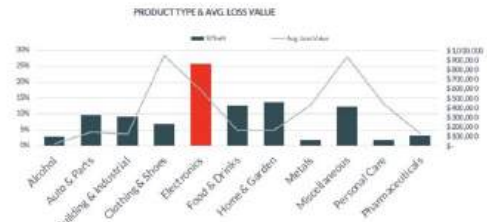
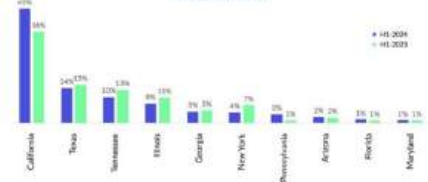


Chart 3: U.S. Cargo Theft by Top 10 States H1-2024 vs H1-2023

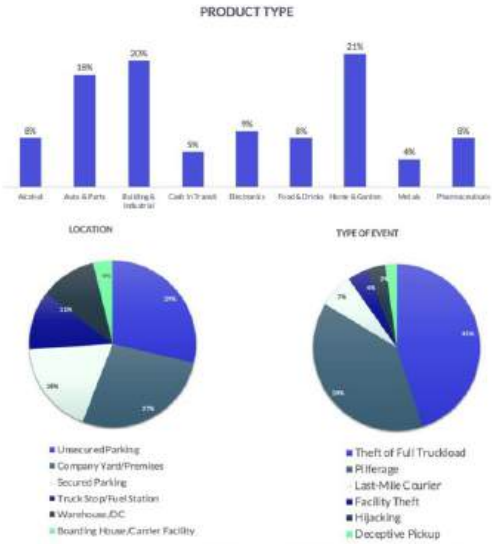
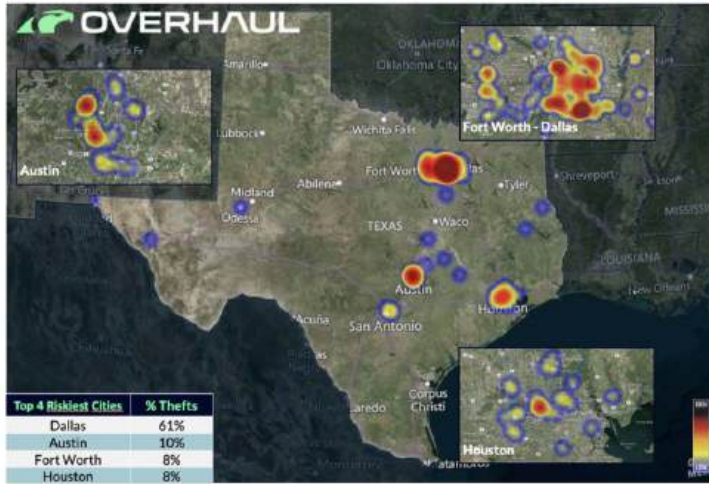




What's at Stake for Texas

November 2022 - October 2024 (24 months)

Source: Overhaul Data + Den of Data



Texas is a top destination for logistics investments
 As more logistics operators choose Texas, this will continue to attract more criminal enterprises.



Recommendations

Enhance penalties to encourage law enforcement and prosecution of cargo crimes.

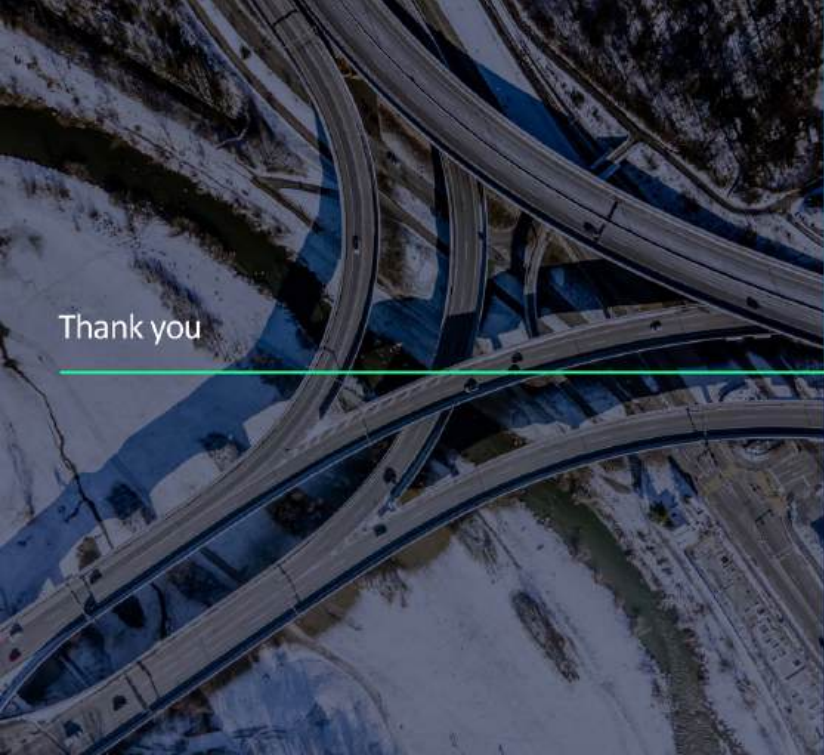
The Legislature's creation of the Organized Retail Theft Task Force and funding for enhanced law enforcement operations at DPS were hugely helpful.

Consider enhancing penalties to encourage police, investigators, and prosecutors to lower the boom on organized retail and cargo crime.

In 2014, the Georgia Legislature passed, and Governor signed House Bill 749, enhancing criminal penalties for cargo theft from trucks, rail, and other vehicles.

Enhanced penalties reduced cargo theft incidents in Georgia and deterred even the hardened criminal crews operating out of South Florida.





Thank you

Barry Conlon

Overhaul, CEO & Founder

barry.conlon@over-haul.com



OUR MISSION

A Company Created to Provide Opportunities for Employees to Grow and Succeed

QUIKTRIP NATIONWIDE

QuikTrip contributes to a vibrant economy with **31,050 employees** across the country within **1,077 stores**.

With our employees at the forefront, QuikTrip has consistently made Forbes' Top 20 and Fortune's 100 best companies to work for lists.



TEXAS



TEXAS

- 6,791 employees in Texas
- 271 stores across the state
- Trusted "Safe Place" partner for at risk children and teens



PHILANTHROPY

- QuikTrip gives back to the communities it serves, donating 5% of net profits to charitable organizations.



www.quiktrip.com

An Act

ENROLLED SENATE
BILL NO. 1735

By: Daniels of the Senate

and

O'Donnell of the House

An Act relating to crimes and punishments; amending 21 O.S. Section 2021, Section 1438, which relates to penalties for unlawful entry without permission; making certain acts unlawful; providing penalties; and providing an effective date.

SUBJECT: Burglary

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1438, is amended to read as follows:

Section 1438. A. Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel, or other structure or erection with intent to commit any felony, larceny, or malicious mischief, is guilty of a misdemeanor.

B. Every person who, without the intention to commit any crime therein, shall willfully and intentionally break and enter into any building, trailer, vessel or other premises used as a dwelling without the permission of the owner or occupant thereof, except in the cases and manner allowed by law, shall be guilty of a misdemeanor.

C. Every person who, with the intent to commit a crime, enters an area of a commercial business that is:

Charge No. 6

Financial Theft: Study the effects of organized retail crime in Texas and in other states. Evaluate the reporting and legislative suggestions from the Organized Retail Theft Task Force. Make recommendations to protect the safety of retail employees and business owners in Texas.

Witnesses

Testifying ON

Adam Colby, Director, Texas Financial Crimes Intelligence Center, Tyler TX

Jason Ernst, Texas Ranger, Texas Department of Public Safety, Austin TX

Jacob Putman, Smith County District Attorney, Tyler TX

Courtney Arbour, Executive Director, Texas Dept of Licensing and Regulation, Austin TX

Stephanie Mace, Assistant Direct of State Advocacy,
American Association of Retired Persons, Austin TX

Paul Hardin, President/CEO, Texas Food & Fuel Association, Austin TX

George Rhyne, Administrator, Texas Anti-Gang Center, Houston TX

Charles Cooper, Commissioner, Texas Department of Banking, Austin TX

Christopher Williston, CEO, President of Independent Bankers Association of Texas, Austin TX

Ray Vitulli, CEO, Stellar Bank and Texas Bankers Association, Houston TX

Hazel Davis, Vice-President, Jefferson Bank, San Antonio TX

Twana Billeaudeau, Chief Operations Officer, The Bank and Trust of Del Rio, Del Rio TX

Background

Financial card skimming, fuel theft, financial and identity fraud schemes are increasing and growing in sophistication, complexity and often involve international gang activity. Many of these criminal activities involve foreign national criminal groups and are not tied to any specific geographic area in Texas or the United States.

In 2021, the 87th Legislature passed House Bill 2106, which created the Financial Crimes Intelligence Center (FCIC) under the Texas Department of Licensing and Regulation (TDLR) to serve as the state's primary agency to detect, prevent, and respond to criminal activities relating to debit, credit and gas card fraud, including credit-card skimming. The center is headquartered in Tyler and has successfully employed new technology to investigate and prosecute an increasing array of sophisticated financial crimes — at a time when reports of those crimes are skyrocketing.

In FY 2022, cumulative losses from financial crimes were estimated at \$14.4 million. In FY 2024, those losses are projected to exceed \$114.2 million — with cumulative losses expected to reach \$265 million. Data collected by the FCIC shows Texas' urban areas are hot spots for the increasing thefts, including Dallas, Houston, San Antonio, Austin, Midland, Amarillo, and Lubbock.

Testimony & Discussion

According to testimony from the FCIC, they have identified more than 900 criminal suspects and “prevented, intercepted and recovered more than \$265 million in losses to Texas' economy.” This comes at a time when criminal organizations are becoming more electronically sophisticated in the ways they steal money and fuel from gas stations, banks, ATMs, and gift cards.

The FCIC and TDLR testified how organizations are constantly evolving and developing new technology to counter law enforcement techniques, and how the FCIC must continuously evolve to fight this expanding area of criminal activity. The FCIC is the only intelligence center of its kind in the United States.

According to testimony, much of the increase in financial fraud activity is driven by the current situation at the Southern Border. Criminal organizations are increasingly taking advantage of the United States' open border policy and Texas' economies are their target.

Testimony shared cases of criminals engaged in money laundering, including crypto, as well as quick-change money schemes, identity fraud and burglary. According to officials, these criminals often have ties with foreign-born groups of Cuban nationals, Romanians, Venezuelans, Chinese, Iranians, with operations throughout the United States.

Cases are typically investigated for years and across multiple jurisdictions. Coordination is often required of multiple law enforcement agencies and prosecutors' offices, as well as state and federal coordination.

Like other forms of theft, bank fraud is also increasing. One small Texas bank sustained a \$42,000 loss in a check scam. Altered checks were blamed for a \$39,000 loss at branch banks in Houston and Southeast Texas. A Corpus Christi bank customer had a check stolen and sold on the dark web, where it was cashed twice for a loss to a bank of \$176,000. Many customers who are targeted by check and bank scams are elderly Texans who may become victims of the sophisticated schemes now being employed by the criminal groups.

Testimony indicated support for possibly expanding the FCIC to better protect Texans against the increasing financial criminal activity.

Recommendations

- Consider additional funding to the FCIC to expand personnel, equipment, facilities, and capabilities to further enhance and expand their ability to stop this criminal activity.
- Increase the penalty for tampering with a gas pump and create an offense for interfering with or manipulating a gas pump payment terminal or meter device.
- Require the FCIC to develop and implement strategies to detect a motor fuel manipulation device.
- Rewrite Texas laws governing financial crimes to enhance penalties for organized crime and recurrent theft activities over multiple jurisdictions.
- Consider legislation enhancing prevention efforts and prosecution of deed fraud and provide a clear path for deed theft victims to have fraudulent deeds voided by a judge.
- Enhanced data tracking and collection of statistics regarding organized financial crimes in Texas.
- Establish statewide organized financial crimes education programs to improve coordination between law enforcement, prosecutors, and the judiciary.
- Prohibit crypto ATMs/kiosks, or, in the alternative, consider regulations that would impose daily transaction limits, and require verifiable transaction records.
- Require warning and education notices on crypto ATM/kiosks and gift card stands in retail stores.

Related Documents Follow



FINANCIAL CRIMES INTELLIGENCE CENTER AT A GLANCE

Overview:

The Financial Crimes Intelligence Center (FCIC) is the statewide fusion center that coordinates law enforcement investigations into various types of financial crimes. The FCIC is staffed by law enforcement officers with extensive experience investigating financial crimes, including organized crime, credit card skimming and shimming.

A skimmer or shimmer is a device that thieves can attach to the inside or outside of the cabinet of a gas pump or an ATM for the purpose of intercepting and recording payment card information when a customer initiates a card transaction.

Credit card skimmers on fuel dispensers (gas pumps) are thought to be responsible for hundreds of millions of dollars in losses each year in Texas.

The FCIC coordinates with local, state, and federal law enforcement agencies as well as financial institutions, credit card and debit card issuers, payment card networks and merchants to stop credit card fraud. The Center also develops and provides training to law enforcement and industry partners on identifying and combating credit card fraud.

The Smith County District Attorney's (DA) office runs day-to-day operations at the FCIC, while Texas Department of Licensing and Regulation (TDLR) reimburses Smith County for operating expenses related to the Center.

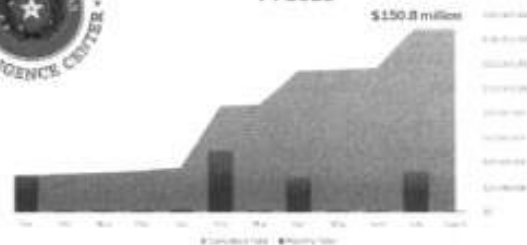
History

The FCIC was created in 2021 by House Bill 2106 (87th Legislature, Regular Session), and it operates as a partnership between the TDLR and the Smith County District Attorney's Office.

- For several years, the Tyler Police Department and Smith County DA have aggressively investigated and prosecuted criminals engaging in credit card fraud related to skimmers placed on gasoline pumps.



**FCIC: TOTAL STOP LOSS & RECOVERY
FY 2023**



- In 2019, TDLR took over the regulation of motor fuel metering and quality, including receiving consumer complaints and merchant reports related to credit card skimmers.

TDLR and Skimmer Investigations

When TDLR receives a complaint or a merchant report of a suspected skimmer, a program specialist is sent to the location to perform a technical inspection on each fuel dispenser to for the presence of skimmers. If a skimmer is found, TDLR works with law enforcement to remove the device.

State law requires service technicians and merchants to take steps to protect consumers through mandatory reporting and disabling of fuel dispensers where a skimmer has been found. TDLR requires service technicians to inspect for skimmers each time a dispenser is opened for repairs or maintenance. When a service technician finds a skimmer, they must report it to the merchant immediately.

Whether a skimmer is found by a service technician or a merchant, the merchant is responsible for notifying law enforcement and disabling each dispenser where a skimmer has been located. The merchant must report the discovery to TDLR within 24 hours using the online webform. Prior to law enforcement or TDLR responding to remove a skimmer, a merchant must take measures to prevent the fuel dispenser from being tampered with prior to the skimmer being removed, including preventing access by the public.

All criminal investigations of skimmer fraud are handled by local law enforcement and/or may be coordinated by the FCIC. TDLR does not handle the investigation or prosecution of criminal cases related to skimmer fraud.

TEXAS FINANCIAL CRIMES INTELLIGENCE CENTER



CARD SKIMMING AND CURRENT TRENDS

DIRECTOR/CHIEF INVESTIGATOR
ADAM COLBY

PARTNERSHIPS



U // LAW ENFORCEMENT SENSITIVE

INVESTIGATION TYPES



- SKIMMERS
 - GAS PUMP
 - POINT OF SALE
 - ATM
- ATM MALWARE/M.I.M. ATTACKS
- FRAUD
 - CREDIT/DEBIT CARD
 - EBT CARD
 - AUTO LOAN
 - IDENTITY THEFT
 - LIVESTOCK
 - CRYPTOCURRENCY
 - GIFT CARD DRAINING
- ORGANIZED CRIME/GANGS
- FUEL THEFT
- DARK WEB TARGETTED ATTACKS (FINANCIAL)
 - DATA BREACHES



U // LAW ENFORCEMENT SENSITIVE

TEXAS FCIC IN STATS



2023
2024 YTD

\$123 M

\$92 M

LOSS PREVENTED

SUSPECTS IDENTIFIED

2023:
363
2024 YTD:
417

CREDIT CARDS RECOVERED

2023: **7,800+**
2024 YTD: **13,533**

SKIMMERS RECOVERED

759

PRIVATE INDUSTRY

LAW ENFORCEMENT

INTEL PRODUCT

2023:
128
2024 YTD:
109

INTEL PRODUCT

2023:
398
2024 YTD:
286

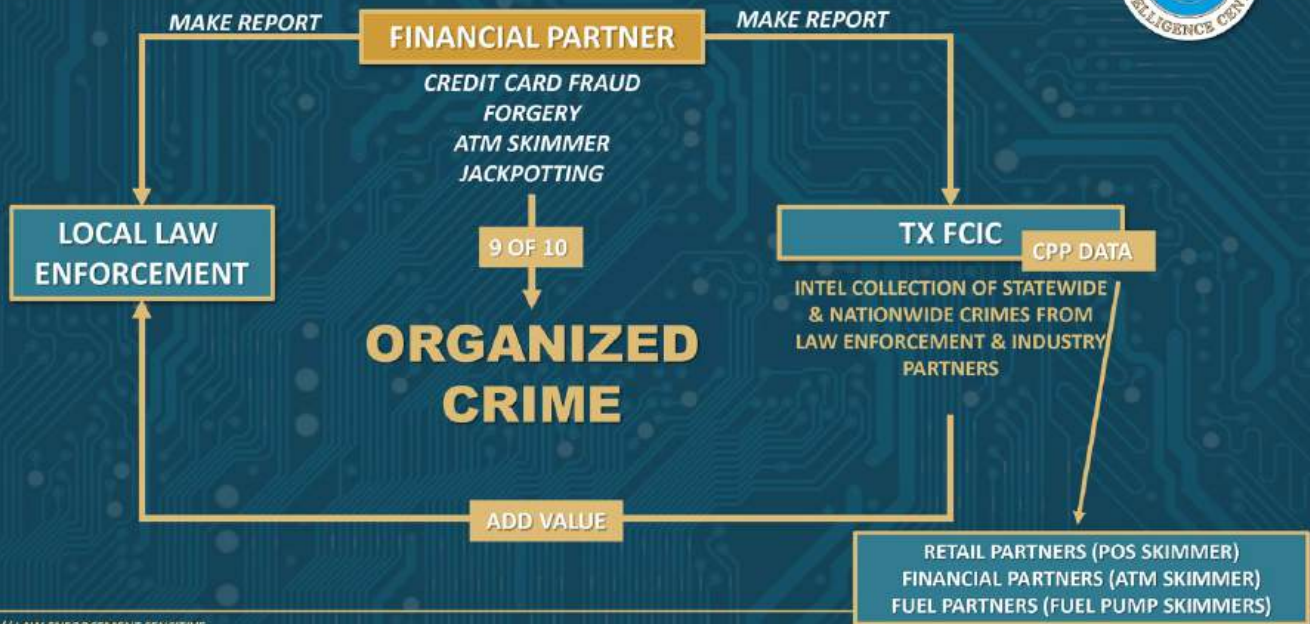
U // LAW ENFORCEMENT SENSITIVE



HOW DO WE WORK TOGETHER?

U // LAW ENFORCEMENT SENSITIVE

FINANCIAL INDUSTRY



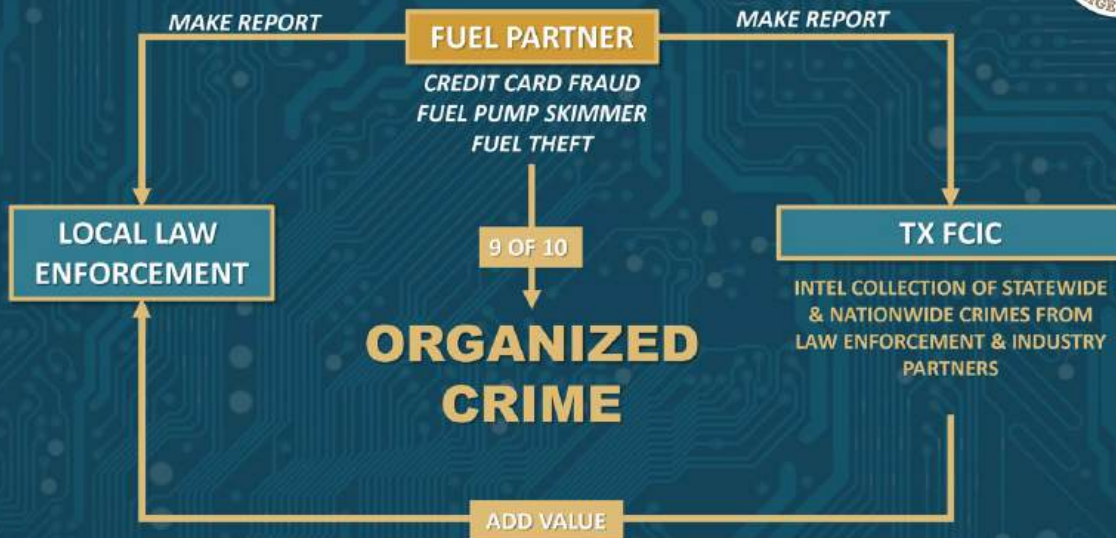
U // LAW ENFORCEMENT SENSITIVE

RETAIL INDUSTRY



U // LAW ENFORCEMENT SENSITIVE

FUEL INDUSTRY



U // LAW ENFORCEMENT SENSITIVE



TEXAS TRENDS 2024

TRANSNATIONAL ORGANIZED CRIME GROUPS

U // LAW ENFORCEMENT SENSITIVE

SECTION: TREND



WHAT

- ATM SKIMMING/POS SKIMMING
- GAS PUMP SKIMMING/FUEL THEFT
- ATM JACKPOTTING
- ASSOCIATED CRIMINAL ACTIVITIES BY GROUP



WHERE

NATIONWIDE



WHO

ROMANIAN, CUBAN, AND SOUTH AMERICAN GANGS

U // LAW ENFORCEMENT SENSITIVE

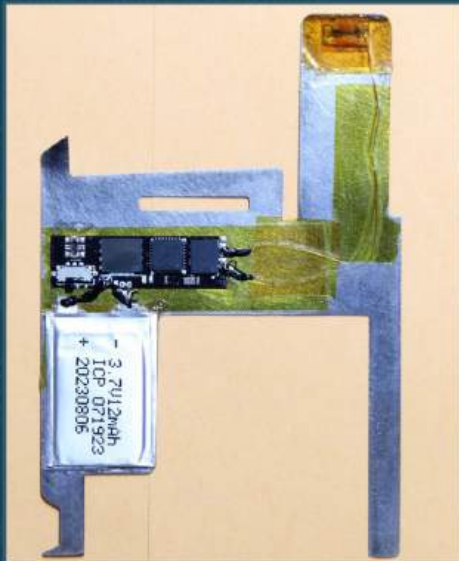


ATM / P.O.S. SKIMMING

MAJOR UPTICK NATIONWIDE

U // LAW ENFORCEMENT SENSITIVE

ATM SKIMMING



U // LAW ENFORCEMENT SENSITIVE

P.O.S OVERLAY SKIMMING



U // LAW ENFORCEMENT SENSITIVE

P.O.S OVERLAY SKIMMING



U // LAW ENFORCEMENT SENSITIVE



P.O.S OVERLAY SKIMMING



U // LAW ENFORCEMENT SENSITIVE



ATM/P.O.S. SKIMMER: SUSPECT M.O.



WHO

- TRANSNATIONAL CRIMINALS
- PREDOMINANTLY ROMANIAN ORGANIZED CRIME



HOW

- USE OF FAKE CREDENTIALS FOR RENTAL CARS AND HOMES.
- CONSISTENTLY TRAVELING STATE-TO-STATE, EXPLOITING LACK OF COMMUNICATION BETWEEN LAW ENFORCEMENT AND INDUSTRY.
- USE SAME MAKE, MODEL, COLOR VEHICLES ACROSS CRIMINAL ORGANIZATION.
- CHANGE PLATES FREQUENTLY. UTILIZE FAKE PAPER PLATES. INTERCHANGE PLATES BETWEEN VEHICLES.

U // LAW ENFORCEMENT SENSITIVE



ATM "JACKPOTTING"

MAJOR UPTICK NATIONWIDE

U // LAW ENFORCEMENT SENSITIVE

WHAT IS JACKPOTTING?



TYPES OF JACKPOTTING
MAN-IN-THE-MIDDLE
HOST SPOOFING/HOST REPLACEMENT
& OTHER MALWARE

"Jackpotting" is a term, generally, used in law enforcement that describes cyber attacks on ATM machines with the ultimate intent to illegally dispense cash from an ATM. A suspect is physically present at the machine.

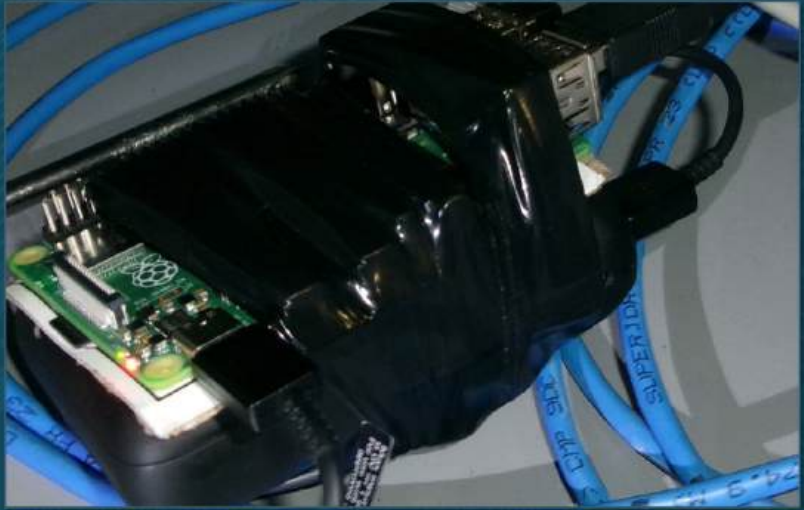
Industry experts continue to advise two ways to successfully combat jackpotting as **TRANSPORT LAYER SECURITY (TLS; encrypting from host to ATM)** and **HARD DISC ENCRYPTION**. Without TLS and hard disc encryption, any model ATM is at risk for this type of attack.

U // LAW ENFORCEMENT SENSITIVE

SUSPECT MO / IMAGES



EVIDENCE
M.I.M. DEVICE



U // LAW ENFORCEMENT SENSITIVE

SUSPECT MO / IMAGES



EVIDENCE
HARD DRIVE REPLACEMENTS

U // LAW ENFORCEMENT SENSITIVE



GAS PUMP SKIMMING AND FUEL THEFT

CHANGING ENVIRONMENT

U // LAW ENFORCEMENT SENSITIVE

DEEP INSERT SKIMMER & PIN PAD OVERLAY

2023 – IRVING, TX



PIN PAD OVERLAY



U // LAW ENFORCEMENT SENSITIVE

OVERVIEW OF PIN PAD OVERLAY



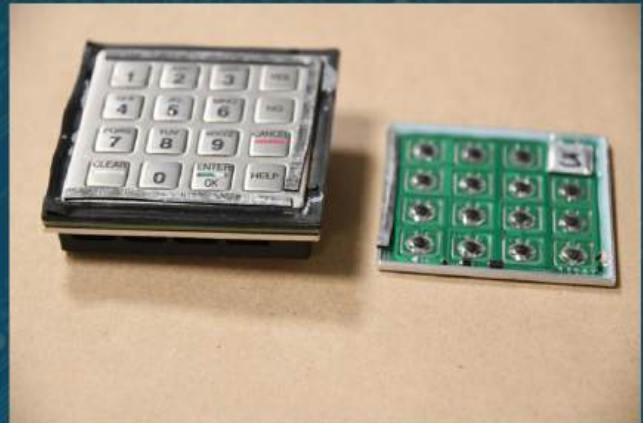
PROCESSOR →



REVERSE PIN PAD OVERLAY

U // LAW ENFORCEMENT SENSITIVE

OVERVIEW OF PIN PAD OVERLAY



U // LAW ENFORCEMENT SENSITIVE

OVERLAY SKIMMER



2023 – DALLAS, TX



EMV Card Reader Overlay Skimmer

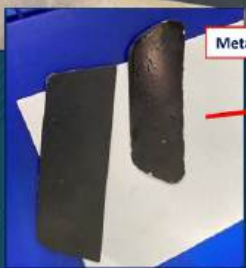


U // LAW ENFORCEMENT SENSITIVE

PINHOLE CAMERA (OVER PINPAD)



In most instances, a pin hole camera is affixed to a metal piece that has been glued above the pin pad. The camera pieces, so far, are not Bluetooth capable, and would have to be retrieved.



Magnets to Affix to Metal Pieces above Keypad

U // LAW ENFORCEMENT SENSITIVE



IF A DEEP INSERT SKIMMER –OR–
OVERLAY SKIMMER IS LOCATED ON A
GAS PUMP OR ATM

THERE WILL BE A SECONDARY DEVICE
INTENDED TO CAPTURE PIN.

EITHER A PIN PAD OVERLAY OR A PIN HOLE CAMERA

NOTE: GENERALLY, WITH A POINT OF SALE (POS) MACHINE OVERLAY, THESE TWO PIECES ARE COMBINED WITHIN THE OVERLAY.

U // LAW ENFORCEMENT SENSITIVE

WHAT IS PULSER TAMPERING?



Pulser tampering involves the **mechanical or electronic manipulation** of the pulser within the gas pump cabinet.

A pulser is part of the motor fuel metering device that counts the fuel flow, determining the amount of fuel flow per penny.



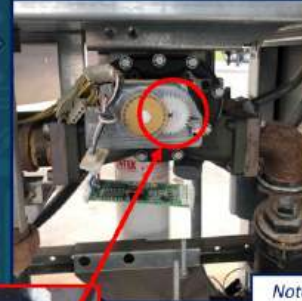
U // LAW ENFORCEMENT SENSITIVE

OEM MECHANICAL PULSER DEVICE

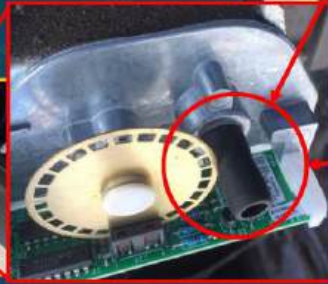


OEM Mechanical pulsers located in the lower cabinet. (Older Pumps)

OEM INSTALLED NON-DIGITAL PULSER



MECHANICAL PULSER MANIPULATION



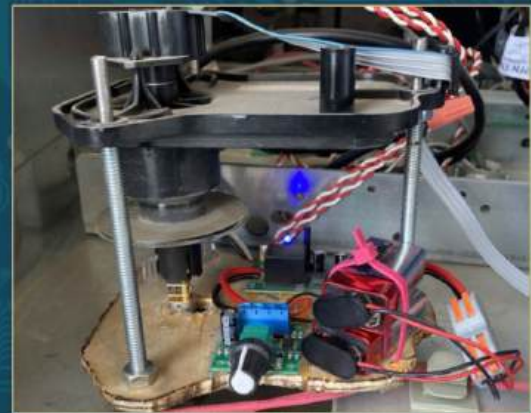
Note: Cover over pulser removed.

Suspect Tampering

Often use the rubber grip of a pen.

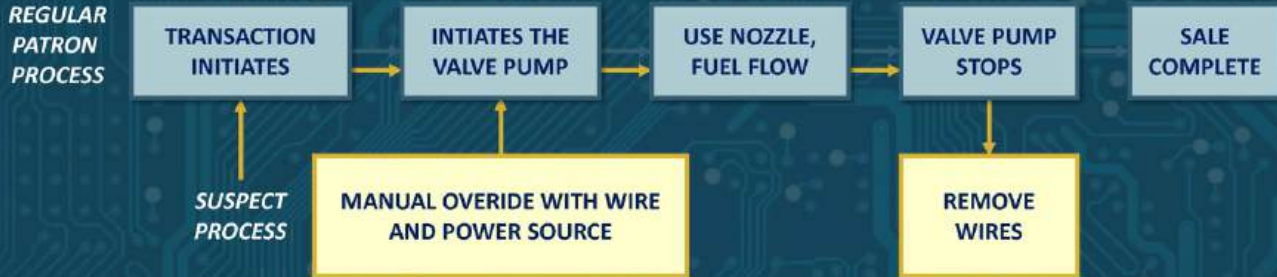
U // LAW ENFORCEMENT SENSITIVE

DIGITAL PULSER MANIPULATION



U // LAW ENFORCEMENT SENSITIVE

SUSPECT WIRE TAPPING

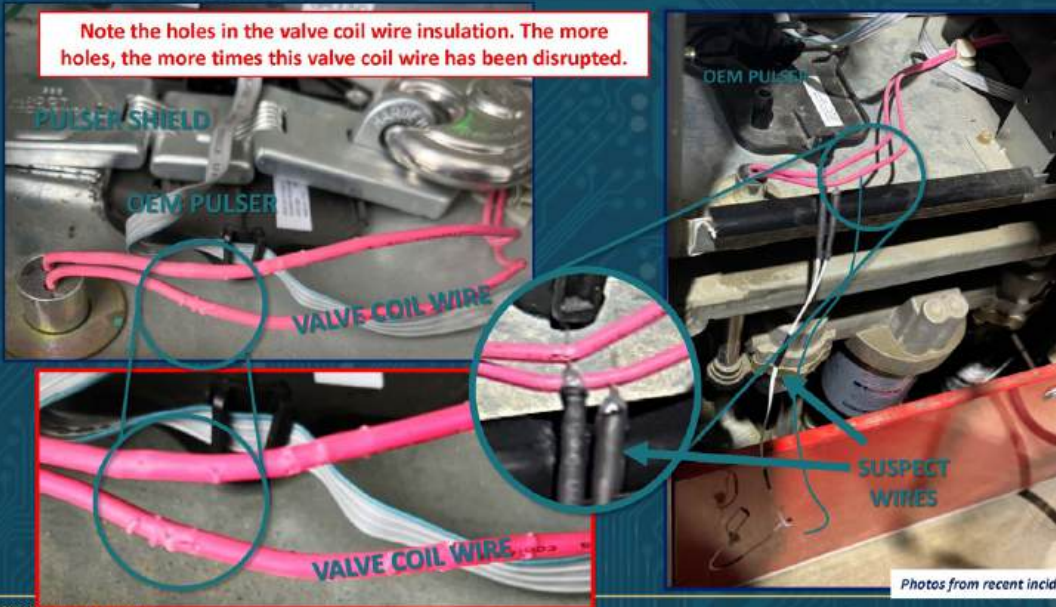


SIMPLIFIED

The suspect's wire disrupts the power of the fuel valve; allowing free flow.

U // LAW ENFORCEMENT SENSITIVE

SUSPECT WIRE TAPPING (CONT)



U // LAW ENFORCEMENT SENSITIVE



SUSPECT WIRE TAPPING (CONT)

SUSPECT DEVICE SEIZED BY LAW ENFORCEMENT



RECHARGABLE BATTERY PACK



U // LAW ENFORCEMENT SENSITIVE



NEW CONTROL VALVE MANIPULATION

2024

This new device is designed to utilize power provided by the dispenser to operate remote-controlled switches that can open the control valve. The new method is more sophisticated, can remain installed on the dispenser, utilizes the power of the dispenser to operate and is controlled via two (2) radio frequency remotes that are operable up to 300-ft away.

1. The suspect uses a connector and wires to tap directly into the control board on the pump.
2. This 110v power then runs to an RF AC power switch (Figure A). <https://a.co/d/ejBR9L>
3. From the AC switch the power runs around and to the door of the dispenser it is routed through the pump handle switch, which runs on 110 but has a built in DC converter.
4. From the pump handle switch DC power then runs into an RF remote DC switch (Figure B). <https://a.co/d/iCETKux>
5. From the DC adapter the power then runs through an Arduino board capable of setting the power to 24V and 5A that then taps into the positive and neutral lines for the control valve (Figure C). <https://a.co/d/9hd7VKc>



U // LAW ENFORCEMENT SENSITIVE



TRACK DATA MANIPULATION

EVOLVING CRIMINAL ORGANIZATIONS

U // LAW ENFORCEMENT SENSITIVE

TRACK DATA MANIPLUATION



- ✓ Purchase made with reencoded card (suspect-programed trac data) at retailer.
- ✓ At retailer, card goes through 3rd party processor, that reads track data with **non-numeric symbol** contained within track 2 data.
- ✓ Processor code reads trac data and encounters suspect-programed error (non-numeric symbol).
- ✓ Purchase pushes through, but as a "stand in/offline transaction".
- ✓ Bank rejects payment, as the track data does not reflect a valid account. Bank issues chargeback, **as the transaction was force posted to the account.**
- ✓ Transactions should always be sent online for approval. **Reject transactions that do not meet card brand specifications.**
- ✓ Review current "Stand In" or "Offline" approval limits and set to ZERO.
- ✓ Review excessive chargebacks. Cross reference trac data associated with the transaction for similar manipulation.
- ✓ Report any criminal activity to the FCIC, as we assist with a nationwide effort among law enforcement.



U // LAW ENFORCEMENT SENSITIVE



FCIC

Financial Crimes
Intelligence Center

U // LAW ENFORCEMENT SENSITIVE



SIGN UP FOR OUR MAILING LIST!

The Texas Financial Crimes Intelligence Center (FCIC) runs a number of mailing lists wherein we provide useful intelligence to subscribed companies.

If your company wishes to sign up for one or more of these lists, please fill out the form below.

Lists I want to subscribe to: Financial Sector Fuel Industry Law Enforcement
*Law Enforcement Agencies only

First name: Last name:

Work Email: Job title:

Work Phone: Mobile Phone: Supervisor Name: Supervisor Phone:

Company: Address:

City: State: Postal code: Country:

U // LAW ENFORCEMENT SENSITIVE



Texas Department of Licensing & Regulation

Courtney Arbour, Executive Director



Update on Financial Crimes Intelligence Center

Senate Committee on Criminal Justice

Sen. Pete Flores, Chair

Sen. Phil King, Vice-Chair

TDLR: 38 Programs with 956k Licensees

TDLR is the primary occupational licensing agency in Texas. We license, certify and regulate a broad range of professions, businesses, facilities, and equipment across the state.

In carrying out our mission, our chief goals are to protect the health and safety of all Texans and ensure they are served by qualified and competent professionals.

We strive to always provide consistent, common-sense guidance to our customers – the people of Texas – while remaining flexible and pragmatic in our approach to regulation.

FY 2024	
Individual	726,586
Business	229,437
TOTAL	956,023

TDLR: Who We Regulate

Building & Mechanical (10)

- Air Conditioning & Refrigeration Contractors
- Architectural Barriers
- Boiler Safety
- Code Enforcement Officers
- Electrical Safety
- Electric Vehicle Charging Stations
- Elevators, Escalators & Related Equipment
- Industrialized Housing & Buildings
- Mold Assessors & Remediators
- Sanitarians

Business & Occupations (10)

- Combative Sports
- Driver Education & Safety
- Licensed Breeders
- **Motor Fuel Metering & Quality**
- Motorcycle & ATV Operator Safety
- Professional Employer Organizations
- Service Contract Providers
- Towing & Vehicle Storage Facilities
- Transportation Network Companies
- Used Automotive Parts Recyclers

Professionals (6)

- Auctioneers
- Barbering & Cosmetology
- Court-Ordered Programs
- Laser Hair Removal
- Property Tax Consultants
- Property Tax Professionals

Medical & Health Professions (10)

- Athletic Trainers
- Behavior Analysts
- Dietitians
- Dyslexia Therapy
- Hearing Instrument Fitters & Dispensers
- Massage Therapists
- Midwives
- Orthotists & Prosthetists
- Podiatry
- Speech-Language Pathologists & Audiologists

Natural Resources (2)

- Water Well Drillers & Pump Installers
- Weather Modification



September 23, 2024

FCIC Update for Senate Criminal Justice

3

Financial Crimes Intelligence Center: Background and Purpose

- In 2019, the 86th Texas Legislature enacted Senate Bill 2119, transferring oversight of the Motor Fuel Metering and Quality program from the Texas Department of Agriculture to TDLR.
- This gave TDLR responsibility for investigating complaints about fuel quality, fuel quantity, fuel pump measurement, advertised price, device registration, and skimmers.
- In 2021, the 87th Legislature enacted House Bill 2106 (87th Legislature, Regular Session), transferred rulemaking authority regarding card skimmers from the Office of the Attorney General to the Texas Commission of Licensing and Regulation and TDLR. The bill established the **Financial Crimes Intelligence Center (FCIC)**, to be overseen by TDLR.
- The purpose of the FCIC is to serve as the state's primary entity for the planning, coordination, and integration of law enforcement agencies and other governmental agencies to detect, prevent, and respond to criminal activities related to card fraud, including skimmers.

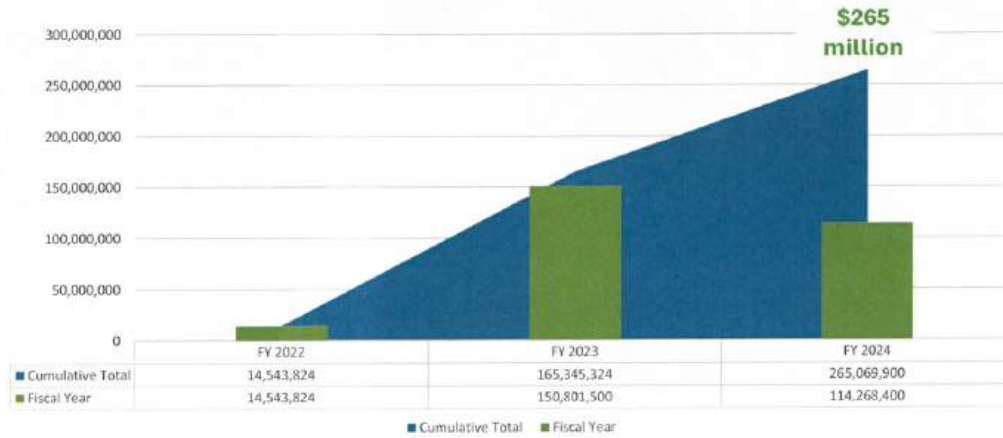


September 23, 2024

FCIC Update for Senate Criminal Justice

4

FCIC TOTAL STOP LOSS & RECOVERY FY 2022 – FY 2024



September 23, 2024

FCIC Update for Senate Criminal Justice

5

**2026-27
Legislative
Appropriations
Request**



FCIC Update for Senate Criminal Justice

September 23, 2024

6

Summary of Exceptional Items Request

Item	FY 2026 Requested	FY 26 FTEs	FY 2027 Requested	FY 27 FTEs	Biennial Total
1. Recruit and Retain Workforce	\$2,399,957	12.0	\$2,328,924	12.0	\$4,728,881
2. Comprehensive Expansion of Cybersecurity	\$781,500	-	\$656,500	-	\$1,438,000
3. Financial Crimes Intelligence Center*	\$10,000,199	-	\$9,698,312	-	\$19,698,511
4. Emergency Stop Orders	\$916,197	10.0	\$811,616	10.0	\$1,727,813
5. Helpdesk System Replacement	\$100,000	-	\$50,000	-	\$150,000
6. PC Scheduled Refresh	\$280,148	-	\$241,920	-	\$522,068
7. Replacement and Expansion of Fleet	\$515,000	-	-	-	\$515,000
8. Artificial Intelligence In Agency Functions	\$250,000	-	\$250,000	-	\$500,000
Total, Exceptional Items Request	\$15,243,001	22.0	\$14,037,272	22.0	\$29,280,274

*Exempted from Special Provision Appropriations Limited to Revenue Collections (ALRC)

September 23, 2024

FOIC Update for Senate Criminal Justice

7

Exceptional Item 3: Expansion and Support for Financial Crimes Intelligence Center



Exceptional Item 3: Expansion and Support for Financial Crimes Intelligence Center

Since launching in January 2022, the FCIC has been at the forefront of investigating criminal activity related to card skimming, fuel theft, and various fraud schemes. Through August 2024, the FCIC has prevented, intercepted, or recovered **\$265,069,900** in loss to the Texas economy, and been responsible for the arrest of 259 members of various organized crime groups, in addition to identifying 950 suspects for allied law enforcement.

Most of these crimes are committed by members of foreign national crime groups that are not tied to any specific geographic area in Texas or the United States. In some instances, these criminal groups are working in concert with, or at the direction of, foreign-based cartels. This makes these crimes exceptionally difficult to investigate, and most traditional law enforcement agencies lack the tools and manpower to effectively counter transnational organized financial crime.

Because criminal organizations are constantly evolving and developing new technology to counter law enforcement techniques and the latest security measures implemented by industry, the FCIC must continuously evolve its technological edge to stay ahead. This requires hiring highly experienced agents and analysts -- the FCIC does not recruit entry level personnel. At the same time, many law enforcement agencies are experiencing personnel shortages, resulting in dramatic increases in law enforcement salaries to attract and retain personnel. It is crucial for the FCIC to compete in this arena and offer highly competitive compensation. Not only is the FCIC in competition against other law enforcement agencies for experienced personnel, but they are also competing against private industry for a very limited number of subject matter experts.

The FCIC is unique among intelligence and law enforcement agencies in the United States and around the world, and in just a few years has become the national clearinghouse for intelligence related to organized financial crime. To protect our fellow Texans and the Texas economy, the FCIC collects, disseminates, and investigates criminal intelligence from all points around the country and the globe, working with local, county, state, federal, and international law enforcement, as well as private industry. Accordingly, it is essential that the FCIC expand its personnel, equipment, facilities, and capabilities to meet the increased threat of international organized crime.

Exceptional Item 3: Expansion and Support for Financial Crimes Intelligence Center

The FCIC is requesting salary raises based on the standardized pay scale for 16 existing Smith County personnel, as well as an additional 25 new employees to supplement internal operations and expand field operations. Some of these new employees will work out of field offices to be located in the **Houston, Dallas, and San Antonio metro areas**. With the addition of these new employees, the FCIC will maintain 27 sworn law enforcement officer positions.

The FCIC is also requesting:

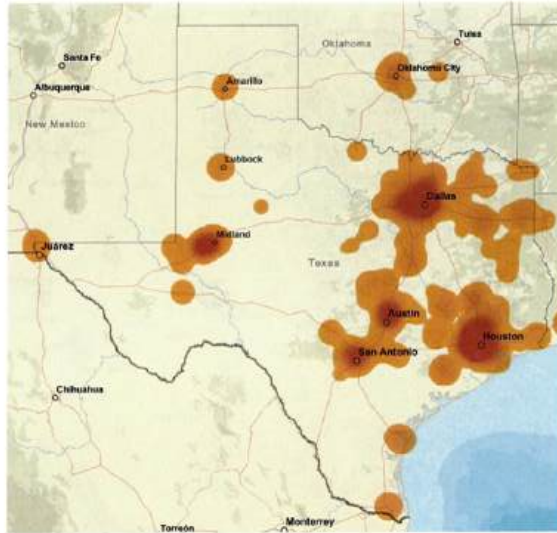
- additional funding for vehicle purchases and leases, upfitting, and maintenance;
- funding for new field operations equipment, software, and intel subscriptions; and
- hardware and software upgrades for the Digital Forensics Laboratory located in Tyler

TDLR is requesting \$10,000,199 in FY 2026 and \$9,698,312 in FY 2027 for the expansion and continued support of the FCIC and their efforts to protect Texans from fraud and theft conducted by international organized crime.

Description	FY 2026	FY 2027	Total Biennium
Expansion and Support for FCIC	\$10,000,199	\$9,698,312	\$19,698,511

FCIC Regional Activity

- The heat spots represent locations of all FCIC incidents/cases/suspects entered in 2024 (through August)
- The FCIC maintains an intelligence distribution list with nearly 500 subscribers that includes law enforcement agencies, the financial sector, and the fuel industry.



September 23, 2024

FCIC Update for Senate Criminal Justice

11

Skimmers Reported by TDLR

- The FCIC collects data on skimmers found that are reported by TDLR. The data includes location, name of retailer, and police agency involved. This data is then used by the FCIC to develop intelligence.
- Skimmer technology is evolving. Previous skimmers were connected to electrical systems on pumps so they could stay in use indefinitely. For the most part, now they can only stay in the pump as long as the battery lasts, and they are being removed by thieves more quickly.

Year	Skimmers
FY 2023	228
FY 2024	145



September 23, 2024

FCIC Update for Senate Criminal Justice

12

TDLR: Contact

Courtney Arbour, Executive Director

Courtney.Arbour@tdlr.texas.gov

(512) 463-3173

Tony Couvillon, Budget & Policy Analyst

Tony.Couvillon@tdlr.texas.gov

(512) 463-7182

Jeff Copas, Government Relations Officer

Jeff.Copas@tdlr.texas.gov

(512) 463-3661





Testimony to the Texas Senate Committee on Criminal Justice

By Stephanie Mace, AARP Texas

October 10, 2024

Good morning, Chair Flores, Vice-Chair King and members of the Committee. My name is Stephanie Mace, Associate State Director of Advocacy, with AARP Texas. I am honored to testify on behalf of AARP's 2.5 million Texas members. Thank you for bringing attention to the harm and prevalence of financial crimes, as this issue - especially fraud - is of deep concern to older adults.

The Fraud Crisis

- Nobody is immune to fraud, as the threat continues to evolve in both scale and sophistication. Most people believe that scams and frauds only happen to older adults.
- The reality is younger people report losing money to fraud more often but when older adults are the victim, they lose so much more. And the impact is often profound and life altering.
- This stands to reason, as older adults are more likely to have accumulated a lifetime of savings and are more likely to have housing wealth. And, too often, the criminals steal everything. The victims are left emotionally and financially ruined, often their families are torn apart, and many are left to rely on already strained local, state and federal safety nets.

AARP's Efforts

- Research shows that if someone hears about a scam, they are 80% less likely to engage with it and, if they do engage, they are 40% less likely to



Testimony to the Texas Senate Committee on Criminal Justice

By Stephanie Mace, AARP Texas

October 10, 2024

fall victim. That is why AARP has put consumer education at the core of its approach to fraud prevention.

- AARP Texas has trained volunteers that give presentations on fraud prevention. And we offer a variety of educational opportunities.
- For example, this year we hosted a teletown hall with the Office of Attorney General about scams, and next month, we are organizing a reverse boiler room to call older Texans about phone scams.
- This summer, we aired PSAs throughout the state warning them about door-to-door sales scams
- And at least twice a year, we host document shred events in Austin, Houston, El Paso, Dallas, and San Antonio to protect older adults from identity theft.
- AARP Texas has also teamed up with a variety of Texas sports teams – including the Astros, Rangers, Spurs, El Paso Chihuahuas, Sugarland Space Cowboys, Round Rock Express – to talk about how to beat scammers at their own game.
- The AARP magazine – which is the largest circulating magazine in the US, reaching tens of millions of Americans - shares tips on how to protect yourself.



Testimony to the Texas Senate Committee on Criminal Justice

By Stephanie Mace, AARP Texas

October 10, 2024

- If you like true crime podcasts, check out AARP's The Perfect Scam, which highlights the impact of these crimes on victims and their families.
- If you know someone that has been a victim of a fraud or scam, direct them to AARP's Fraud Watch helpline. This 800 helpline receives around 500 calls a day from people looking for support and direction in the aftermath of a crime.

Concerning Fraud Trends

- While AARP, law enforcement, and others continue to educate Texans on fraud prevention, education is not enough.
- Scams are getting more and more realistic and hard to detect by even the savviest people. We need policies that further protect people, and partnerships with agencies that work with communities that criminals target.
- Specifically, legislation is needed address these three areas of concern: deed theft, cryptocurrency kiosks, and gift card scams.
- **Deed Theft:** This is where a criminal impersonates an actual property owner to illegally sell real property that the perpetrator does not own. Criminals generally target properties that are not owner-occupied or developed, so it can take months or years for the actual property owner to discover the fraud. There are two victims that are immediately



Testimony to the Texas Senate Committee on Criminal Justice

By Stephanie Mace, AARP Texas

October 10, 2024

impacted when these fraudulent transactions occur - the unsuspecting buyer and the legitimate property owner.

- **Crypto Kiosks:** the use of crypto kiosks has taken a quantum leap in recent years, where it is used both as a form of payment and as the commodity of choice in sophisticated investment schemes. Because these kiosks look similar to regular ATM machines, they seem more legitimate to victims who are directed to them. AARP has heard from countless victims who have been directed to insert thousands of dollars in cash into these machines to address an “urgent” financial matter.
- **Gift Cards Scams:** Criminals like gift cards because they are readily available and most have high load limits. A 2022 AARP survey revealed that a third of adults have been asked to purchase a gift card to pay a debt or obligation (which is always a scam) and nearly a quarter of these individuals followed through with the request.

Solutions

- AARP encourages the legislature address these issues and we have ideas (and some model legislation) on how it could be done, including:
 1. Create a new statute that would make it easier to prosecute deed impersonation,
 2. Allow deed theft victims to have fraudulent deeds acknowledged and voided by a judge through an ex parte process,



Testimony to the Texas Senate Committee on Criminal Justice

By Stephanie Mace, AARP Texas

October 10, 2024

3. Add fraud warning notices on crypto kiosks and gift card stands that are visible and identifies what to do if one thinks they are being scammed.
- Daily transaction limits could be placed on crypto kiosks, as well as requiring these machines to give paper receipts with relevant transactional information to allow law enforcement to investigate immediately.
 - Additional resources should be allocated to law enforcement to:
 1. Strengthen cohesion and coordination between federal, state, and local partners around elder justice, and
 2. to expand their capacity to investigate and prosecute financial crimes.
 - Thank you for your time today. AARP Texas looks forward to working with you to address these important issues.

WHAT IS DEED FRAUD?



THE TERM “DEED FRAUD” APPLIES TO A VARIETY OF CRIMES where a criminal seeks financial gain through various schemes involving real property. Most of these schemes involve impersonating the actual owner and recording fake or forged documents in local land records. In other cases, property owners are deceived or convinced to sign documents related to their property that are not in their best interests. These crimes result in legal costs, reduction in equity or property value or even property loss. According to the FTC, fraud losses in 2023 were over \$10 billion, with nearly \$2.7 billion coming from impostor scams¹. When it comes to real estate, there has been a significant uptick in Owner/Seller Impersonation Fraud. Criminals target the equity in property, so anyone can be a victim, including those in metro or rural areas. In addition to consumers, notaries and real estate professionals are impacted by these costly crimes. Our organizations are committed to providing education and offering solutions to combat these real estate scams.

What Is Owner/Seller Impersonation Fraud?

Criminals are impersonating actual property owners to illegally sell real property the perpetrator does not own. Because criminals are targeting properties that are not owner-occupied or developed, it can take months or years for the actual property owner to discover the fraud. There are two victims that are immediately impacted when these fraudulent transactions occur - the unsuspecting buyer and the legitimate property owner.

What Can Be Done?

Fraud is constantly evolving, and while spontaneous changes to the real estate transfer system are not practical or sustainable, steps can be taken to help combat these crimes without unintentionally harming innocent American property holders.

¹ <https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-takes-efforts-protect-public>



Preventative Measures

► ID verification options for notarizations performed in the physical presence of the notary

State laws should be amended to explicitly allow notaries to utilize the latest identity proofing measures when performing notarizations in the physical presence of the notary and adjust the maximum fee notaries may charge to recover the cost of conducting identity proofing to align these transactions with consumer protections found in remote online notarizations.

► Public record access security

Public land records are essential to the real estate ownership transfer process in the United States and are the backbone of property rights. These records must be accessed and reviewed for any real estate transfer or financing. However, changes must be made to better protect taxpayer information as criminals are leveraging data from publicly accessible online land and tax records to perpetrate their crimes. While access to public records should be prioritized, measures must be put in place to prevent bad actors from using large-scale downloads of data to commit Owner/Seller Impersonation Fraud. These changes can better protect the integrity of the public record while still maintaining access for the public.

► General and professional education

In addition to consumer education efforts, professional continuing education for real estate professionals, title insurance and escrow professionals, as well as mandatory education for notaries, should include best practices to combat deed fraud.

► Protection of the public record

In various types of deed fraud, public officials charged with maintaining the local land records are presented with obviously fraudulent documents for recording, but often are required to record the documents anyway. Local government offices should have the option of reporting these suspected fraudulent documents to local law enforcement. If a document is rejected for recording, to protect property rights, a notice of rejection should be maintained to protect title integrity. Rejection of suspected fraudulent documents should be limited to unknown submitters (excluding trusted submitters such as eRecording vendors, title companies or lenders) and based on objective criteria outlined in state law².



Corrective Measures

► Free property recording notification systems

Local land record offices can offer systems that notify property owners if a document pertaining to their property is recorded. This allows property owners to identify a potentially fraudulent transaction and take swift action if there is fraud. These notification systems can work in tandem with judicial processes to cure a fraudulent transaction³.

► Land record flags to identify fraud

Local land record offices can track information to help law enforcement more easily identify additional fraud victims. For example, indexing notaries or tracking document submitters can be useful for investigations.

► Increased law enforcement resources

Additional law enforcement resources on the local, state, and federal levels are needed to combat this growing threat to property owners. Statewide or federal taskforce coordination can help more easily identify and prosecute criminals. Lawmakers can review current statutory provisions regarding penalties for deed fraud to ensure there are adequate deterrents and property owner protections in state law.

► Establish remedies for victims

States can provide resources⁴ and expedited processes for victims to unwind a fraudulent deed and reestablish title in the legitimate owner's name. Where necessary, states can create a judicial process for victims to seek damages and attorneys' fees.

² Colorado Revised Statutes 38-39-202, Nevada Revised Statutes 247.145, Ohio Revised Code 317.13, North Carolina General Statutes 14-118.6

³ Arizona: <https://agris.azleg.gov/Bills/Status/BillOverview/78707> Florida: <https://www.myfloridahouse.gov/Sections/Bills/BillsDetail.aspx?BillId=78264> Utah: <https://le.utah.gov/~2024/bills/static/SB0165.html>

⁴ <https://www.nccac.org/Real-Estate-Fraud>

Gift Card Payment Scams



Gift cards are popular and convenient...and not just as gifts. Con artists have latched onto gift cards as a convenient form of payment in their scams.

How these scams work:

- You are contacted about an urgent financial matter, and are told the quickest way to address the issue is to buy one or more gift cards – often referred to as “electronic vouchers.”
- You are told to share the numbers on the back of the gift cards either by reading them over the phone or taking and sending a picture.
- The scammer is able to quickly convert the card balance into cash and then disappear.
- This tactic is common in impostor scams – a call from Social Security warns of a problem with your account; a utility company call warns of an imminent shutoff; you’ve won big in a lottery and just need to pay some fees upfront; your grandchild faces a financial emergency.

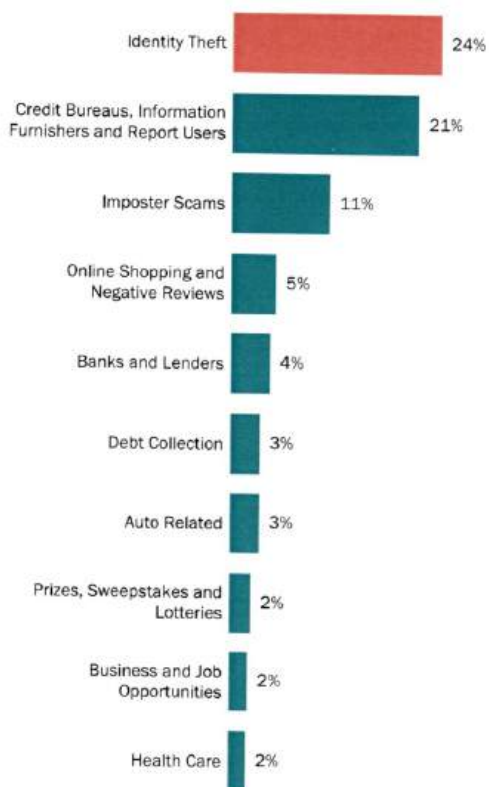
What you should know:

- **ANYTIME** you are directed to pay some fee or obligation by purchasing a gift card and sharing the numbers off the back, **it is a scam.**
- If you are confronted by someone directing you to buy gift cards for some obligation, disengage immediately.
- Report it to the Federal Trade Commission at reportfraud.ftc.gov. The data are used to identify trends and build cases against criminals.

To learn more about gift card payment scams, visit aarp.org/giftcards. For help determining if something is legitimate, or if you have experienced a scam, call the AARP Fraud Watch Network Helpline at **1-877-908-3360**.

Texas

Top Ten Report Categories



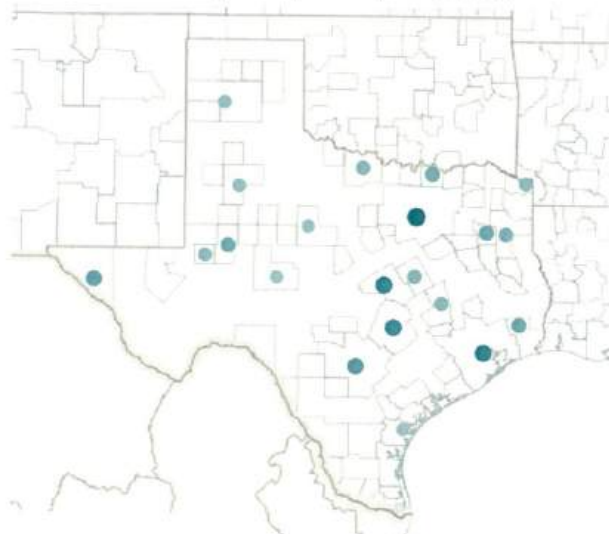
Fraud & Other Reports



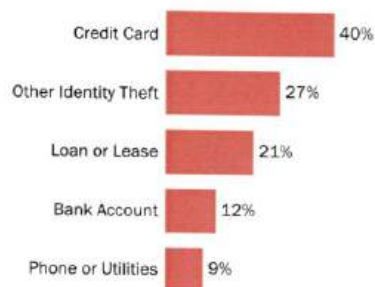
Fraud Losses



Fraud & Other Reports by Metropolitan Area



Top Identity Theft Types



Identity Theft Reports



Reports per 100K Population
372 ● 1,459

Percentages are based on the total number of relevant 2023 reports from Texas consumers, as indicated in the chart title. Consumers can report multiple types of identity theft.
FEDERAL TRADE COMMISSION • ftc.gov/data