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AB-1065 Theft: aggregation: organized retail theft. (2017-2018)

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Date Published: 09/27/2018 09:00 PM

Assembly Bill No. 1065

CHAPTER 803

An act to amend, repeal, and add Sections 853.6 and 978.5 of, to add and repeal Sections 490.4, 786.5, and 1210.6 of, to add and repeal Chapter 2.9D (commencing with Section 1001.81) of Title 6 of Part 2 of, and to add and repeal Chapter 13 (commencing with Section 13899) of Title 6 of Part 4 of, the Penal Code, relating to theft.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1065, Jones-Sawyer. Theft: aggregation: organized retail theft.

(1) Existing law, the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, requires shoplifting, defined as entering a commercial establishment with the intent to commit larceny where the property taken does not exceed \$950, to be punished as a misdemeanor. Proposition 47 requires that the act of shoplifting be charged as shoplifting and prohibits a person who is charged with shoplifting from being charged with burglary or theft of the same property.

This bill would, until January 1, 2021, create the crime of organized retail theft which would be defined as acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value, acting in concert with 2 or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen, acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft, or recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft. The bill would make these crimes punishable as either misdemeanors or felonies, as specified. By creating new crimes, this bill would impose a state-mandated local program.

(2) Under existing law, when a public offense is committed in part in one jurisdictional territory and in part in another jurisdictional territory, or the acts constituting or requisite to the consummation of the offense occur in 2 or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory.

This bill would, until January 1, 2021, additionally establish the jurisdiction of a criminal action for theft, organized retail theft, or receipt of stolen property as including the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. The bill would also, if multiple offenses of theft or other specified crimes all involving the same defendant or defendants and the same merchandise or the same defendant or defendants and the scheme or substantially similar activity occur in multiple jurisdictions, establish that any of those jurisdictions is a proper jurisdiction for all of the offenses.

(3) Existing law generally requires that a person arrested for a misdemeanor be released on written notice to appear in court. Existing law allows a peace officer to retain a person in custody on an arrest for a misdemeanor if, among other reasons, there are one or more outstanding arrest warrants for the person, there is reason to believe the person will not appear in court, or there is a reasonable likelihood that the offense will continue or resume.

This bill would, until January 1, 2021, allow a peace officer to retain a person arrested for a misdemeanor if there are unresolved failures to appear in court on previous misdemeanor citations, if he or she has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months, or if there is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined. By increasing the number of persons subject to detention at the county jail, this bill would create a state-mandated local program.

(4) Existing law authorizes a court to issue a bench warrant whenever a defendant fails to appear in court as required by law, as specified.

This bill would, until January 1, 2021, authorize the issuance of a bench warrant if a defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges in the previous 6 months.

(5) Existing law authorizes a court, with the consent of the defendant and a waiver of the defendant's speedy trial right, to postpone prosecution of a misdemeanor and place the defendant in a pretrial diversion program or a deferred entry of judgment program under specified situations.

This bill would, until January 1, 2021, authorize a city or county prosecuting attorney or a county probation department to create a diversion or deferred entry of judgment program for persons who commit repeat theft offenses, as specified. Under the program, the prosecuting attorney may enter into a written agreement to refrain from or defer prosecution on the offense or offenses if the person completes program requirements such as community service and makes adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen.

(6) Existing law establishes the Board of State and Community Corrections to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system.

This bill would, until January 1, 2021, additionally require the board to, upon appropriation by the Legislature, award funding for a grant program to 4 or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers through the use of risk assessments at sentencing and formal probation. The bill would require the board to develop reporting requirements for each county, as specified, and would require the board to prepare and distribute a report that compiles this information, as specified.

The bill would also, until January 1, 2021, require the Department of the California Highway Patrol to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the Department of the California Highway Patrol as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The bill would require the task force to provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of the California Highway Patrol in consultation with task force members.

(7) The bill would provide that its provisions are severable.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 490.4 is added to the Penal Code, to read:

490.4. (a) A person who commits any of the following acts is guilty of organized retail theft, and shall be punished pursuant to subdivision (b):

(1) Acts in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value.

(2) Acts in concert with two or more persons to receive, purchase, or possess merchandise described in paragraph (1), knowing or believing it to have been stolen.

(3) Acts as an agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft.

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described in paragraph (1) or (2) or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of paragraph (1), (2), or (3) of subdivision (a) are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(2) Any other violation of paragraph (1), (2), or (3) of subdivision (a) that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation of paragraph (4) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(c) For the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

(1) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

(2) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.

(3) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

(d) In a prosecution under this section, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft.

(e) Upon conviction of an offense under this section, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 786.5 is added to the Penal Code, to read:

786.5. (a) The jurisdiction of a criminal action for theft, as defined in subdivision (a) of Section 484, or a violation of Section 490.4 or Section 496, shall also include the county where an offense involving the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of a theft offense or a violation of Section 490.4 or Section 496 or in abetting the parties concerned therein. If multiple offenses of theft or violations of Section 490.4 or Section 496, either all involving the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper jurisdiction for all of the offenses. Jurisdiction also extends to all associated offenses connected together in their commission to the underlying theft offenses or violations of Section 490.4 or Section 496.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 3. Section 853.6 of the Penal Code is amended to read:

853.6. (a) (1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a

magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g). If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

(2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one or more of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

- (1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.
- (2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.
- (3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
- (4) There were one or more outstanding arrest warrants or failures to appear in court on previous misdemeanor citations that have not been resolved for the person.
- (5) The person could not provide satisfactory evidence of personal identification.
- (6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.
- (7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
- (8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
- (9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated. An arrest warrant or failure to appear that is pending at the time of the current offense shall constitute reason to believe that the person would not appear as specified in the notice.

(10) The person was subject to Section 1270.1.

(11) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store or from a vehicle in the previous 6 months.

(12) There is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined in subdivision (a) of Section 490.4.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 4. Section 853.6 is added to the Penal Code, to read:

853.6. (a) (1) In any case in which a person is arrested for an offense declared to be a misdemeanor, including a violation of any city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a

magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee pursuant to subdivision (g). If the person is released, the officer or his or her superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or his or her superior determines that the person should be released, the officer or his or her superior shall prepare a written notice to appear in a court.

(2) In any case in which a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) Nothing in this subdivision shall be construed to affect a defendant's ability to be released on bail or on his or her own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice which shall be retained by the officer, and the officer may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

If the duplicate notice is filed with the prosecuting attorney, he or she, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in his or her judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him or her in the form set forth in Section 815a. The defendant may, prior to the date upon which he or she promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in his or her discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he or she has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) No warrant shall be issued for the arrest of a person who has given a written promise to appear in court, unless and until he or she has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that he or she was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which he or she has taken custody of a person pursuant to Section 847.

(i) Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

- (1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.
- (2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.
- (3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
- (4) There were one or more outstanding arrest warrants for the person.
- (5) The person could not provide satisfactory evidence of personal identification.
- (6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.
- (7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
- (8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
- (9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.
- (10) The person was subject to Section 1270.1.

The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him or her from custody before trial.

(j) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

Under no circumstances shall a personal relationship with any officer, public official, or law enforcement agency be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through his or her local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall become operative January 1, 2021.

SEC. 5. Section 978.5 of the Penal Code is amended to read:

978.5. (a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(7) If a defendant has been cited or arrested for misdemeanor or felony theft from a store or vehicle and has failed to appear in court in connection with that charge or those charges in the previous six months.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

(c) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 6. Section 978.5 is added to the Penal Code, to read:

978.5. (a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

(c) This section shall become operative on January 1, 2021.

SEC. 7. Chapter 2.9D (commencing with Section 1001.81) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9D. Repeat Theft Crimes Diversion or Deferred Entry of Judgment Program

1001.81. (a) The city or county prosecuting attorney or county probation department may create a diversion or deferred entry of judgment program pursuant to this section for persons who commit repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department.

(b) Except as provided in subdivision (e), this chapter does not limit the power of the prosecuting attorney to prosecute repeat theft.

(c) If a county creates a diversion or deferred entry of judgment program for individuals committing repeat theft offenses, on receipt of a case or at arraignment, the prosecuting attorney shall either refer the case to the county probation department to conduct a prefiling investigation report to assess the appropriateness of program placement or, if the prosecuting attorney's office operates the program, determine if the case is one that is appropriate to be referred to the program. In determining whether to refer a case to the program, the probation department or prosecuting attorney shall consider, but is not limited to, all of the following factors:

(1) Any prefiling investigation report conducted by the county probation department or nonprofit contract agency operating the program that evaluates the individual's risk and needs and the appropriateness of program placement.

(2) If the person demonstrates a willingness to engage in community service, restitution, or other mechanisms to repair the harm caused by the criminal activity and address the underlying drivers of the criminal activity.

(3) If a risk and needs assessment identifies underlying substance abuse or mental health needs or other drivers of criminal activity that can be addressed through the diversion or deferred entry of judgment program.

(4) If the person has a violent or serious prior criminal record or has previously been referred to a diversion program and failed that program.

(5) Any relevant information concerning the efficacy of the program in reducing the likelihood of participants committing future offenses.

(d) On referral of a case to the program, a notice shall be provided to or forwarded by mail to the person alleged to have committed the offense with all of the following information:

(1) The date by which the person must contact the diversion program or deferred entry of judgment program in the manner designated by the supervising agency.

(2) A statement of the penalty for the offense or offenses with which that person has been charged.

(e) The prosecuting attorney may enter into a written agreement with the person to refrain from, or defer, prosecution on the offense or offenses on the following conditions:

(1) Completion of the program requirements such as community service or courses reasonably required by the prosecuting attorney.

(2) Making adequate restitution or an appropriate substitute for restitution to the establishment or person from which property was stolen at the face value of the stolen property, if required by the program.

(f) For the purposes of this section, "repeat theft offenses" means being cited or convicted for misdemeanor or felony theft from a store or from a vehicle two or more times in the previous 12 months and failing to appear in court when cited for these crimes or continuing to engage in these crimes after release or after conviction.

1001.82. This chapter shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 8. Section 1210.6 is added to the Penal Code, to read:

1210.6. (a) (1) Upon appropriation by the Legislature, the Board of State and Community Corrections shall award funding for a grant program to four or more county superior courts or county probation departments to create demonstration projects to reduce the recidivism of high-risk misdemeanor probationers.

(2) The demonstration projects shall use risk assessments at sentencing when a misdemeanor conviction results in a term of probation to identify high-risk misdemeanants and to place these misdemeanants on formal probation that combines supervision with individually tailored programs, graduated sanctions, or incentives that address behavioral or treatment needs to achieve rehabilitation and successful completion of probation. The formal probation program may include incentives such as shortening probation terms as probationers complete the individually tailored program or probation requirements.

(3) The demonstration projects shall evaluate the probation completion and recidivism rates for project participants and may compare them to control groups to evaluate program efficacy. The Board of State and Community Corrections shall determine criteria for awarding the grants on a competitive basis that shall take into consideration the ability of a county to conduct a formal misdemeanor probation project for high-risk misdemeanor probationers, including components that align with evidence-based practices in reducing recidivism, including, but not limited to, risk and needs assessment, programming to help with drug or alcohol abuse, mental illness, or housing, and the support of the superior court if the application is from a county probation department.

(b) The Board of State and Community Corrections shall develop reporting requirements for each county receiving a grant to report to the board the results of the demonstration project. The reports may include, but are not limited to, the use of risk assessment, the formal probation program components, the number of individuals who were placed on formal probation, the number of individuals who were placed on informal probation, and the number of individuals in each group who were subsequently convicted of a new offense.

(c) (1) The Board of State and Community Corrections shall prepare a report that compiles the information it receives from each county receiving a grant, as described in subdivision (b). The report shall be completed and distributed to the Legislature and county criminal justice officials two years after an appropriation by the Legislature for this section.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 9. Chapter 13 (commencing with Section 13899) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 13. Retail Theft Prevention Program

13899. The Department of the California Highway Patrol shall, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the Department of the California Highway Patrol as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The task force shall provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of the California Highway Patrol in consultation with task force members.

13899.1. This chapter shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.