

“Beyond the Smash and Grab: Criminal Networks and Organized Theft”

Questions for the Record

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Questions for the Record from Senator Grassley, Chairman

- 1. There’s a lot of confusion about the availability of data related to organized retail crime. Terms like shrink are often conflated with other types of loss, creating confusion.**

a. What is the difference between retail shrink and organized retail crime?

Retail shrink is an overarching accounting term that represents all inventory loss primarily within retail stores and for many, distribution centers. Shrink, often represented as a percentage of sales, provides retailers a moment-in-time inventory of losses that may include theft but also administrative errors, damages, vendor fraud and depending on retail segment spoiled goods or waste. Organized Retail Crime, however, is not a specific element of shrink although some of the thefts involved in ORC are calculated within shrink. ORC is a distinct and complex criminal enterprise or group involved in the systematic theft of merchandise and frauds. These groups are orchestrating, directing and coordinating the thefts and frauds impacting retail shrink, but it is a critical misrepresentation of the issue to compare a retailer’s shrink to the impact of ORC.

- Retail shrinkage is too broad to be directly correlated with only theft. As mentioned, shrink calculations do include theft, but also include a number of various areas of non-related theft inventory loss.
- Shrink calculation methods differ retailer to retailer based on accounting practices, merchandise mix and number of physical inventories taken.
- Not all ORC-related theft is reflected in shrink. For many retailers, cargo and supply chain thefts may be reflected in their profit and loss statement as a cost of goods. Thefts and frauds involving credit cards or gift cards may show in a financial loss line – neither being part of a retailer’s shrink percent.
- Sales volume and diverse inventory can result in low shrink loss. Shrink is the “sum of the whole” involving both inventory and sales. A retailer can have high loss in low dollar items or high loss in high dollar items and still have an overall low shrink percentage at store or organization level.

For decades, retailers have offset the impact of increased theft by focusing on controlling other elements of inventory loss, such as administrative errors, damaged goods, and vendor fraud. This strategy has allowed them to compensate for rising ORC losses. However, the capacity for retailers to continue mitigating ORC losses through these means is diminishing. If ORC remains unchecked at national and transnational levels, the consequences will include higher prices, limited product availability, and the potential emergence of retail deserts.

b. What contributes to discrepancies in reporting data on organized retail crime?

From the retail perspective, each retailer has their own incident recording processes and data reporting capabilities. For most, even those with sophisticated systems and controls, it may still limit the overall view of the scope and complexity of organized retail crime. A retailer may define a theft as ORC based on their own ability, reach and determination. ORC is not a singular crime; to identify and determine whether a theft has occurred in part of a larger ORC network or group requires investigation beyond the initial act of theft.

Retailers have also been challenged with how law enforcement may respond and report data related to organized retail crime. Responding to a local incident, local law enforcement could report an incident as a burglary or if violence is involved, a robbery, thereby removing the initial theft from reporting statistics. These crimes frequently cross jurisdictional boundaries, making it difficult for any one local or state law enforcement agency to grasp the full scope of the activity. The complex nature of these criminal networks, involving various roles like boosters, mules, fences, and money launderers, further complicates data aggregation and clear identification. Retailers have invested in new technologies that provide clearer insights, but without a national-level coordination center that allows private sector and law enforcement at all levels to share information, the ability to connect these incidents across states remains a challenge.

The Coordination Center within the CORCA bill will provide the critical link to help retailers and law enforcement to provide information that can be properly analyzed to establish the criminal relationships between locations, suspects, vehicles, and other assets that are used to mobilize and monetize the stolen merchandise.

c. How would the Organized Retail and Supply Chain Crime Coordination Center that my bill, the Combatting Organized Retail Crime Act, establishes help solve these problems?

The Organized Retail and Supply Chain Coordination Center, established by the Combatting Organized Retail Crime Act (CORCA), would serve as a critical layer of collaboration. By uniting federal, state, and local law enforcement with private sector experts, the Center would facilitate the sharing of vital information and the coordination of strategies. This collaboration would provide national visibility and enable crucial link analysis, leading to a comprehensive understanding of criminal involvement. This collaboration and knowledge of the true extent of a criminal group's activity will assist with deconfliction at the federal level, creating a more efficient and effective federal response to large-scale national and transnational investigations.

This Center would build on state-level progress, effectively addressing cases that meet specific thresholds or cross state lines. Consequently, appropriate agencies could make legal determinations commensurate with the full scope of criminal activity, thereby disrupting and dismantling organized criminal groups.

2. The Organized Retail and Supply Chain Crime Coordination Center is charged with establishing relationships with state and local law enforcement, along with the retail and transportation industries, in an effort to share information and coordinate responses.

a. Why is it important to have law enforcement and private industry coordinate to share this information?

ORC groups operate as sophisticated criminal enterprises, crossing jurisdictional lines and exploiting vulnerabilities across the entire supply chain. Therefore, it is critically important for law enforcement and private industry to coordinate and share information. Private industry (e.g., retailers, transportation companies) collect and possess vital information and details regarding thefts that occur across their stores and organization and unique insights into the scope of these thefts through advanced technologies like RFID and surveillance analytics. Private industry can provide information and images which can pinpoint locations, suspects and merchandise; much with timestamps to support law enforcement as evidence. Currently, the ability to coordinate a response in many cases extends far beyond the reach or understanding of any one retailer, local police department, or state law enforcement agency. The Coordination Center would provide the missing nexus of supporting a single repository of information sharing for all key stakeholders in this effort to curtail this national crisis.

3. The Organized Retail and Supply Chain Crime Coordination Center led by Homeland Security Investigations brings together multiple players to solve this problem. At a federal level, Customs and Border Protection, Secret Service, Postal Inspection Service, ATF, DEA, FBI, and the Federal Motor Carrier Safety Administration will all staff the Organized Retail and Supply Chain Crime Coordination Center.

a. What advantages do these agencies bring to the table?

Each of these agencies brings a crucial and distinct advantage to the table.

- **Customs and Border Protection (CBP)** is essential for addressing the exfiltration of stolen goods across land and sea borders.
- **The Secret Service** brings expertise in financial crimes, which are integral to ORC operations, especially through gift card fraud and money laundering.
- **The Postal Inspection Service** addresses the use of shipping for illicit liquidation of stolen products.
- **ATF and DEA** are critical given the documented polycriminal activities of these transnational organizations, which include human, drug, and weapon trafficking.
- **The FBI** provides national investigative capabilities for complex criminal networks, specific financial investigations and major crimes related to other Organized Theft Groups (OTGs), who often engage in ORC-related activity to support other criminal activity.
- **The Federal Motor Carrier Safety Administration (FMCSA)** is vital for addressing cargo theft and the use of stolen vehicles for transport.

b. Why are their viewpoints crucial to this effort?

Multiagency viewpoints are crucial because ORC is not a singular issue but a complex web of polycriminal activity, transcending simple retail theft. These criminal networks engage in various illicit activities, including human, drug, and weapon trafficking, money laundering, identity theft, financial gift card fraud, smuggling, and cybercrime. Each agency contributes a specialized lens to identify, track, and disrupt different facets of these sophisticated operations. Additionally, the complexity, severity and polycriminal nature of ORC groups does not sit in any singular agency's mission. A coordinated effort incorporating these diverse viewpoints is essential to fully understand the scope, scale, and interconnectedness of these criminal enterprises, which exploit differences in legal jurisdictions to evade detection and prosecution.

c. Why should HSI lead this effort?

Homeland Security Investigations (HSI) is the ideal agency to lead this national effort. They possess a proven capability in investigating the transnational nexus of ORC, interdicting consolidation and exfiltration schemes that cross state and national borders, as recently demonstrated by the recovery of millions of dollars in stolen merchandise. Through Operation Boiling Point, HSI has shown their ability to respond against organized theft groups that profit from ORC and engage in various illicit activities. HSI's national and international reach and ability to collaborate with state and local law enforcement are crucial for developing cases that often extend *"far beyond the reach or understanding of any one local or state law enforcement agency given the magnitude of the crimes across a multitude of jurisdictions."*

The coordination center concept involving multi-agency coordination and private sector engagement already exists within the HSI organization in the National Intellectual Property Rights Coordination Center (IPR Center). This existing center has a long history in working with various law enforcement agencies and private sector organizations to stem the global impact and illicit trade of counterfeits and IP. Using the IPR Center as a model, it shows HSI's extensive experience in identifying and disrupting transnational criminal organizations, identifying their suitability to coordinate this initiative.

Questions for the Record from Senator Alex Padilla

1. What internal controls does American Eagle have in place to prevent inventory diversion into gray or illicit markets? Should large retailers be subject to federal standards governing inventory accountability before participating in enforcement partnerships?

At AEO, Inc., we prioritize safeguarding our people, products, and properties. Our robust asset protection program encompasses approximately 900 U.S. stores, our online web platforms, and our extensive supply chain. We leverage advanced retail technologies such as RFID, surveillance analytics, and data-driven applications. These technologies provide a picture of inventory movement, helping us pinpoint the last known locations of missing items and are critical for identifying and investigating potential inventory diversion.

Inventory control measures are a fundamental and well-ingrained aspect of a successful retail operation. The level of sophistication and effectiveness of these internal controls is a prerequisite for success in highly competitive markets. Imposing additional federal requirements for inventory accountability for a retailer to participate in a crime prevention program, such as the one proposed in CORCA, is therefore unnecessary. While internal inventory controls are vital for individual businesses, a collaborative approach through a center like the one proposed in CORCA would transform individual efforts into a collective, national defense against. The focus should be on facilitating information sharing and coordination to address a problem that extends far beyond the capabilities of any single entity or set of internal controls.

2. Does American Eagle currently share customer or transaction data with law enforcement or federal agencies as part of any loss prevention initiative? If so, what privacy or transparency safeguards are in place?

We do not share customer or transaction data in a manner that compromises individual privacy or tracks individual consumer behavior. Any information shared is strictly limited to what is necessary for law enforcement investigations, adhering to all applicable privacy laws and regulations.

AEO, Inc. cooperates with law enforcement and federal agencies to investigate and prevent theft, robbery, violence, and fraud. We provide information necessary to aid investigations, take action against criminals and criminal organizations, and intervene to prevent further crime.

Our intelligence sharing specifically supports investigations into Organized Retail Crime, focusing on the theft and illicit movement of merchandise. We are committed to identifying criminal networks, recovering stolen goods, and preventing future thefts being orchestrated by these larger crime groups.

3. As a leader in loss prevention strategy, what role do you think large retailers should play in a potential federal enforcement center like the one proposed under CORCA?

Retailers, large and small, should play a critical and active role in a public-private partnership that creates a collaboration to solve the many layers of criminal activity included in organized retail crime. CORCA is designed to provide the ability for local, State, and Federal agencies to be more efficient and effective in combating this problem. From my perspective, a retailer's role should include:

- Providing Expertise and Data: Retailers possess a broad and deep understanding of ORC's devastating impact and have invested in technologies that provide clear insights into the scope of these thefts, pinpointing last known locations of missing items and timestamping video evidence. We can share this valuable data related to known loss events, robberies, and cargo thefts with the coordination center, allowing law enforcement greater visibility to the magnitude of the crimes.
- Identifying Trends and Modus Operandi: Our day-to-day exposure to ORC allows us to identify emerging trends, new tactics employed by criminal groups, and specific target items, which are invaluable for proactive enforcement strategies.
- Facilitating Collaboration: We can serve as a vital link between the private sector partners/vendors and law enforcement, fostering the strong partnerships necessary for effective collaboration.
- Supporting Investigations: Our corporate field investigators can represent their victim companies and assist in identification of recovered merchandise and other analytical data that may be helpful in the recovery of additional stolen products, the identification of transient groups, and increased the safety of the retail store staff.
- Advocating for Best Practices: Retailers can contribute to the development of best practices for preventing and responding to ORC, leveraging our experience to inform national strategies.

4. Would you support legislative efforts that require retailers to adopt privacy and data-handling protocols before entering into any formal information-sharing arrangement with DHS or DOJ?

Retailers are committed to protecting the privacy of our customers and associates. We would support policies and necessary procedures that require the private sector responsible party who participates in direct information-sharing on ORC with DHS or DOJ to receive adequate online training on relevant privacy and data-handling protocols consistent with Departmental policies and existing federal and state privacy laws. Retailers and private industry individuals already engage with federal agencies utilizing Memorandum of Understanding agreements and proper training and protocols in other areas of information sharing systems and channels.

5. How does your company avoid unfairly targeting low-income consumers, informal resellers, or gig workers when identifying potential organized theft threats?

Our focus at AEO, Inc. is on identifying and disrupting organized criminal enterprises that perpetrate massive thefts and engage in sophisticated tactics. Our advanced retail technology, including RFID and surveillance analytics, helps us identify patterns of systematic theft and the movement of large volumes of merchandise, which are hallmarks of ORC. We prioritize investigations where there is clear evidence of organized criminal activity, such as the use of electronic countermeasures, manipulation of financial instruments, nefarious reverse logistics, or the coordination of large-scale thefts across multiple locations.

Our partnerships with law enforcement are specifically aimed at dismantling these criminal networks, which often employ intimidation and violence, posing a significant threat to our associates and customers. We differentiate between individual shoplifting incidents and the structured, often transnational, operations of ORC groups, ensuring our resources and efforts are directed at the true threat.

6. Do you believe that formal coordination with DHS under CORCA poses any risk of corporate overreach, particularly if enforcement relies on tips, trends, or data provided by private actors?

I do not believe that formal coordination with DHS under CORCA poses a risk of corporate overreach. On the contrary, it provides a crucial and necessary framework for addressing a problem that is currently beyond the capabilities of any single entity. The Combatting Organized Retail Crime Act establishes a Coordination Center that brings together federal, state, and local law enforcement with private sector experts, creating a collaborative environment. The "tips, trends, or data provided by private actors" are not the sole basis for enforcement; rather, they serve as vital intelligence that, when combined with law enforcement's investigative capabilities, enables a comprehensive understanding and response to ORC.

Our nation already supports and relies on this form of coordination and sharing "tips, trends and data" from private sector and even public sources. HSI's National Intellectual Property Rights Coordination Center (IPR Center) can serve as a model. FBI and DOJ Internet Crime Complaint Center (IC3) receives information from the public and private sectors to report and investigate various cyber-related frauds. Cybersecurity and Infrastructure Security Agency (CISA) utilizes public-private information sharing to strengthen our nation's critical infrastructure across various segments to prevent cyber and physical threats and acts.

The intent of CORCA is to facilitate the sharing of information and coordination of responses to dismantle organized criminal groups. This is about leveraging the unique insights and data that retailers possess to empower law enforcement to act more effectively against sophisticated criminal networks, which are exploiting jurisdictional gaps and operating with increasing violence. The alternative—leaving retailers to battle these highly organized and often violent groups in isolation—will be detrimental to our communities and the safety of our citizens.