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Criminal Justice Data: Organized Retail Crime

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Criminal Justice Data: Organized Retail Crime

Retailers and retail industry advocacy groups have expressed concern about what they see as a general increase in retail crime, and more specifically an increase in organized retail crime (ORC). Reports of incidents where individuals, occasionally acting in flash mobs, storm stores to steal large amounts of items, and at times assault employees, have underscored these concerns. Some law enforcement agencies have increased resources and information sharing to counter these crimes. Additionally, some retail organizations have urged policymakers and law enforcement to take steps to educate the public and crack down on this apparent increase in retail crime, and more specifically ORC.

A primary barrier to measuring ORC accurately is a lack of a consistent, widely accepted definition that can be used in a systematic and comprehensive effort to collect and report these data. Nonetheless, there is general consensus that ORC involves coordinated theft with the intent to resell for financial gain. ORC typically refers to large-scale retail theft and fraud by organized groups of professional shoplifters (or *boosters*). Organized crime rings resell illegally acquired merchandise via a variety of *fencing* operations such as flea markets, swap meets, pawn shops, and online marketplaces. ORC differs from shoplifting in that traditional shoplifters tend to steal merchandise for personal use.

A number of factors contribute to the lack of comprehensive criminal justice data on ORC. At the federal level, there is currently no law prohibiting *organized retail crime* that could be used to help document the number of ORC incidents known to federal law enforcement, specifically. Combating retail theft has primarily been handled by state and local law enforcement under state criminal laws. While state laws prohibiting theft are the statutes that state and local law enforcement and prosecutors have often relied on to investigate and prosecute ORC, over 30 states have enacted ORC-specific laws. However, these laws differ by state and there is no centralized reporting system for ORC-related crimes. The Federal Bureau of Investigation's Uniform Crime Reporting Program, National Incident-Based Reporting System collects data on thefts reported to state and local law enforcement, including shoplifting; however, it does not capture ORC specifically. In the absence of comprehensive data on ORC, snapshots of data from various sources may offer insight into its extent and nature. For instance, 78.1% of respondents to the National Retail Federation's 2023 National Retail Security Survey indicated that the threat of ORC was more of a priority than it had been in the prior year.

While some observers believe that ORC is a national problem, others disagree, citing anecdotal and high-profile flash mob thefts and smash-and-grabs as driving this concern. Nonetheless, there is debate over the federal government's role in deterring ORC and sanctioning various actors that may be involved in committing or aiding these crimes. A principal underlying issue is the lack of data on the scope of ORC to inform this debate. Without these data, Congress may not be able to accurately assess the proper role of the federal government. As such, policymakers may debate various options regarding data on ORC, including how new or existing mechanisms for collecting national crime data could be used to capture these data and help inform policymakers on the prevalence and nature of this type of crime.

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Retailers and retail industry advocacy groups have expressed concern about what they see as a general increase in retail crime, and more specifically an increase in organized retail crime (ORC).¹ Anecdotal reports of individuals, occasionally acting in flash mobs, storming stores, and at times assaulting employees have underscored these concerns.² Some law enforcement agencies have increased resources and information sharing to counter these crimes.³ Additionally, some retail organizations have urged policymakers and law enforcement to take steps to educate the public and crack down on an apparent increase in retail crime, and more specifically ORC.⁴

However, comprehensive data on the prevalence of ORC and the proportion of retail losses attributable to it are lacking, and estimates vary widely. This report provides an overview of ORC, including a discussion of how it relates to overall retail losses. Additionally, it discusses the limited sources of data on ORC and measurement challenges that prevent a full understanding of the extent and nature of these crimes. It also includes a discussion of data-related issues policymakers may consider as they debate the appropriate federal role in deterring ORC and contending with the actors involved in committing or facilitating these crimes.

Conceptualizing ORC

ORC, also referred to as organized retail theft (ORT), is one form of retail crime—a broader category that also includes employee theft, shoplifting, and robberies. ORC typically refers to large-scale retail theft and fraud by organized groups of professional shoplifters (or *boosters*). Organized crime rings resell illegally acquired merchandise via a variety of *fencing* operations that use venues such as flea markets, swap meets, pawn shops, and online marketplaces. ORC differs from traditional shoplifting in that traditional shoplifters tend to steal merchandise for personal use. Boosters, on the other hand, are professional thieves who make money by stealing merchandise and reselling it through legal or illegal economic outlets for a fraction of the retail cost. Stolen and fraudulently obtained goods may be taken not only from retailers, but from manufacturers and distributors as well. Some industry advocates have linked the proliferation of online marketplaces to increasing ORC, because they believe these markets make reselling stolen goods easier.⁵

Implications for Measuring ORC

One primary barrier to measuring ORC accurately is a lack of a consistent, widely accepted definition that can be used in a systematic and comprehensive effort to collect and report these data. Absent a widely accepted definition of ORC, various stakeholders define ORC for different purposes. Nonetheless, there is general consensus that ORC involves coordinated theft with the

¹ Retail Industry Leaders Association, letter to Congress, December 9, 2021, <https://rilastagemedia.blob.core.windows.net/rila-web/rila.web/media/media/pdfs/letters%20to%20hill/2021/ceo-inform-consumers-act-final1.pdf>.

² National Public Radio, *Videos of 'flash mob' thefts are everywhere, but are the incidents increasing?*, October 9, 2023, <https://www.npr.org/2023/10/09/1203697964/flash-mob-retail-thefts>.

³ Andre Senior, KTVU, *Bay Area law enforcement agencies hope teaming up puts end to 'flash mob' robberies*, December 9, 2021, <https://www.ktvu.com/news/bay-area-law-enforcement-agencies-hope-teaming-up-puts-end-to-flash-mob-robberies>.

⁴ Michael Hanson, Retail Industry Leaders Association, *Retailers Endorse INFORM Consumers Act*, March 23, 2021.

⁵ Jason Brewer and Michael Hanson, Retail Industry Leaders Association, *Organized Retail Crime, Counterfeits and Marketplaces*, <https://www.rila.org/retail-works-for-all-of-us/ensuring-a-safe-sustainable-future/organized-retail-crime-counterfeits-marketplaces>.

intent of resale for financial gain. Examples of these definitions and their purposes include the following:

- The Council on Criminal Justice, for their analysis of crime data on theft—and shoplifting, more specifically—defines ORT as “coordinated efforts between many people in which theft is for financial gain, not personal use. These stolen items are intended to be resold on a black market.”⁶
- The National Retail Federation (NRF), for its 2023 National Retail Security Survey, defines ORC as “theft/fraud activity conducted with the intent to convert illegally obtained merchandise, cash, cargo or cash equivalent for financial gain. Organized retail crime typically involves a criminal enterprise that organizes large scale thefts from a number of retail stores and employs a fencing operation to sell the illegally obtained goods for profit. It should be distinguished from traditional ‘shoplifting,’ which is typically a theft by a single individual of a small number of goods for personal use or consumption.”⁷

In addition to the lack of a consistent definition of ORC, there is an issue of conflating it with other forms of retail *shrink*—or what the NRF defines as “the measurement of losses calculated by a retailer during a specific period of time, categorized across various means of retail loss. Measured as a percentage of sales, shrink percentage often includes losses caused by both internal and external theft, operational or process mistakes and systemic errors.”⁸ All forms of external theft, including ORC, collectively accounted for about 36% of overall shrink, according to respondents to the NRF’s 2023 National Retail Security Survey (NRSS).⁹ Without a consistent definition of ORC, retailers and analysts may not be able to accurately parse ORC from other forms of external theft, such as shoplifting, for the purposes of reporting and analysis. Not separating ORC from other forms of shrink could result in policies that are not specific to countering the unique nature of this type of crime. Some observers have also highlighted that a portion of shrink reported by retailers falls into an *unknown* source category; if retailers can better identify the sources of shrink, there may be more accurate data available for analysis.¹⁰ Moreover, more nuanced definitions and reporting on various forms of shrink, including the portion attributable to external theft—and ORC, specifically—may allow for better analysis of data and trends in ORC, and more effective policies to address it.

In addition to definitional challenges, an unknown portion of ORC incidents go unreported.¹¹ The underreporting of crime is not unique to ORC and adds a layer of difficulty to understanding its scope. Further, the underground activities of criminal networks, including concealing illicit activities and reselling goods on the black market, contribute to challenges in measuring the scope of ORC. Not unique to retail crime, these are challenges for law enforcement and analysts in understanding the scope of the illicit activities of criminal networks.

⁶ Ernesto Lopez, Robert Boxerman, and Kelsey Cundiff, “Shoplifting Trends: What You Need to Know,” Council on Criminal Justice, November 2023, <https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>.

⁷ NRF, *2023 National Retail Security Survey*, p. 21.

⁸ NRF, *2023 National Retail Security Survey*, p. 20.

⁹ NRF, *2023 National Retail Security Survey*.

¹⁰ Jennifer Fagan, “Why retail’s \$100 billion ‘shrink’ crisis may not be all about shoplifting,” *Fortune*, January 9, 2024.

¹¹ The NRF notes that “some retailers have policies to call the police only in response to theft incidents that involve violence or pose a physical safety threat because of concerns that reporting all thefts would cause reputational damage.” NRF and K2 Integrity, *Organized Retail Crime: An Assessment of a Persistent and Growing Threat*, November 29, 2023, p. 13

Sources of ORC Data

While comprehensive data on ORC do not exist, snapshots of data from various sources may offer some insight into its extent and nature. These data come from various sources, including crime incident reports and retailer reports of victimization. Notably, while there have been previous federal efforts to establish a national ORC database to track retail crime, such a repository does not currently exist.

National ORC Database

In 2006, Congress, through provisions enacted in P.L. 109-162, directed the Attorney General and the Federal Bureau of Investigation (FBI), in consultation with the retail community, to establish a task force to combat organized retail theft and provide expertise to the retail community to help establish a national database—housed in the private sector—to track organized retail theft crimes in the United States.¹² For the purpose of the database, Congress defined *organized retail theft* as

“(1) the violation of a state prohibition on retail merchandise theft or shoplifting, if the violation consists of the theft of quantities of items that would not normally be purchased for personal use or consumption and for the purpose of reselling the items or for reentering the items into commerce;

(2) the receipt, possession, concealment, bartering, sale, transport, or disposal of any property that is know [sic] or should be known to have been taken in violation of paragraph (1); or

(3) the coordination, organization, or recruitment of persons to undertake the conduct described in paragraph (1) or (2).”¹³

The result of this legislation was the creation of the Law Enforcement Retail Partnership Network (LERPnet).¹⁴ LERPnet began as a partnership between the FBI, U.S. Immigration and Customs Enforcement, various local police departments, individual retailers, and retail organizations including the Food Marketing Institute, NRF, and Retail Industry Leaders Association.

In 2011, the Government Accountability Office (GAO) reviewed efforts certain retailers, law enforcement, and federal agencies were taking to counter ORC as well as existing mechanisms for these stakeholders to collaborate and share information.¹⁵ Among their findings, GAO noted that all five retailers interviewed by GAO cited limitations with the national database and its functionality. While LERPnet was acquired by Verisk Retail in 2011¹⁶ and underwent subsequent revisions, it has since been abandoned.¹⁷

Criminal Justice Data

One way to understand the scope of a particular crime, such as ORC, is to examine available criminal justice administrative data. There are no comprehensive criminal justice data on ORC at either the federal or state level. A number of factors contribute to this. At the federal level, there is currently no law prohibiting *organized retail crime*, specifically. There are, however, provisions in the U.S. Code that federal law enforcement can use to bring cases against ORC rings, including the following:

- 18 U.S.C. §1956, laundering of monetary instruments;

¹² P.L. 109-162, Title XI, Section 1105, as amended by P.L. 109-271.

¹³ 34 U.S.C. §41505(c).

¹⁴ FBI, “FBI Partners with Retailers to Fight Organized Retail Theft,” press release, April 5, 2007, <https://archives.fbi.gov/archives/news/pressrel/press-releases/fbi-partners-with-retailers-to-fight-organized-retail-theft>.

¹⁵ U.S. Government Accountability Office (GAO), *Organized Retail Crime: Private Sector and Law Enforcement Collaborate to Deter and Investigate Theft*, GAO-11-675, June 14, 2011.

¹⁶ Verisk Retail, “Verisk Retail Launches LERPnet Falcon,” press release, June 10, 2013, <https://www.verisk.com/company/newsroom/archive/verisk-retail-launches-lerpnet-falcon/>.

¹⁷ Council on Criminal Justice, Crime Trends Working Group, *Shoplifting Trends: What You Need to Know, Methodology*, https://counciloncj.org/wp-content/uploads/2023/11/Shoplifting_Methodology_vf2.pdf.

- 18 U.S.C. §1957, engaging in monetary transactions in property derived from specified unlawful activity;
- 18 U.S.C., Chapter 96, the Racketeer Influenced and Corrupt Organizations (RICO) provisions;
- 18 U.S.C. §2314, transportation of stolen goods, securities, moneys, fraudulent state tax stamps, or articles used in counterfeiting; and
- 18 U.S.C. §2315, sale or receipt of stolen goods, securities, moneys, or fraudulent state tax stamps.

The number of prosecutions under each of these statutes is not an effective proxy for the number of ORC-specific offenses. For example, aggregate data published by the U.S. Attorneys on prosecutions related to transportation of stolen goods do not distinguish between those cases associated with ORC groups relative to other perpetrators.

Combating retail theft has primarily been handled by state and local law enforcement under state criminal laws. While state laws prohibiting thefts are the statutes that state and local law enforcement and prosecutors have often relied on to investigate and prosecute ORC, over 30 states have enacted ORC-specific laws.¹⁸ However, because ORC laws differ by state and all states do not have ORC laws, state criminal justice administrative data cannot be used to obtain a comprehensive picture of ORC at the national level.

FBI Crime Data Collection

The FBI collects data on certain offenses known to law enforcement. Since 1930, the FBI has been collecting and reporting crime statistics through its Uniform Crime Reporting (UCR) program.¹⁹ In January 2021, the FBI generally transitioned from its prior crime data reporting system, the Summary Reporting System (SRS), in favor of the National Incident-Based Reporting System (NIBRS).²⁰ NIBRS collects more detailed data about a larger number of crimes than SRS and thus is expected to improve the utility of national crime data. Participation in NIBRS is voluntary and has been increasing since the 2021 transition.²¹

While NIBRS collects more detailed data about a larger number of crimes than its predecessor system, it does not collect data on theft in a manner that allows for an understanding of ORC separate from other types of theft. For example, analysts from the Council on Criminal Justice (CCJ) examined 2021 NIBRS data with respect to larceny and stolen property, and identified the following:

- Larceny/theft offenses are defined as “the unlawful taking, carrying, leading, or riding away of property from the possession, or constructive possession, of

¹⁸ Organized Retail Crime Resource Center, *ORC State Laws*, <http://www.orcinfo.com/state-orc-laws.html>. The National Retail Federation indicates that at least 34 states have passed ORC laws; NRF, *2023 Retail Security Survey*, p. 2.

¹⁹ The UCR program was initially comprised of the Summary Reporting System (SRS), but in the late 1980s the FBI allowed states to submit crime data through the National Incident-Based Reporting System (NIBRS).

²⁰ For more information, see CRS Report R46668, *The National Incident-Based Reporting System (NIBRS): Benefits and Issues*. Notably, because of low participation in NIBRS in 2021, the FBI accepted 2022 data submissions from law enforcement agencies through both NIBRS and SRS in order to have more nationally representative data. FBI, “FBI Releases 2022 Crime in the Nation Statistics,” press release, October 16, 2023, <https://www.fbi.gov/news/press-releases/fbi-releases-2022-crime-in-the-nation-statistics>.

²¹ The FBI notes that as of May 2023, all 50 states and the District of Columbia are certified to report data to NIBRS and 77% of the U.S. population is covered by NIBRS-reporting law enforcement agencies; see <https://bjs.ojp.gov/national-incident-based-reporting-system-nibrs>.

another person.”²² These offenses include pocket-picking, purse-snatching, shoplifting, theft from buildings, theft from coin-operated machines or devices, theft from motor vehicles, and theft of motor vehicle parts or accessories. The FBI reported 2,967,229 larceny offenses in 2021.

- Stolen property offenses are defined as “receiving, buying, selling, possessing, concealing or transporting any property with the knowledge that it has been unlawfully taken, as by Burglary, Embezzlement, Fraud, Larceny, Robbery, etc.”²³ The FBI reported 89,625 stolen property offenses in 2021.

As noted, there is some overlap between larceny offenses and stolen property offenses. This overlap—the portion of stolen property offenses attributable to larceny—is, according to CCJ analysts, the most likely portion of NIBRS crime data to reflect theft with the intent to resell. CCJ analysts note that if all of the stolen property offenses were the result of larceny, “about 3% of larcenies were committed with the intent to resell stolen items.”²⁴ However, the NIBRS data do not allow analysts to know which portion of stolen property offenses is the result of larceny, and they do not allow analysts to know whether alleged perpetrators were acting on behalf of an ORC ring.

Ad Hoc Research and Surveys on Retail Crime

In addition to available crime data, ad hoc studies and surveys can provide further perspectives from which to examine the nature and extent of ORC. For instance, some researchers have examined whether data on offenses that may be related to ORC can help glean insight into its trends. For example, analysts from CCJ examined shoplifting data from 24 cities around the country for January 2018 to June 2023.²⁵ However, the study authors note that “crime incident data is not suited to measure organizational retail theft.”²⁶ They go on to explain that because ORC is generally not a reported type of theft, it cannot be separated from the available crime data on theft more generally. Additionally, while some shoplifting data include information on the average value of goods stolen or the number of individuals involved, these data do not necessarily provide insight into the prevalence of or changes in ORC specifically.

Another potential slice of data related to ORC involves the resale of goods known or suspected to have been boosted by ORC thieves. For instance, some have identified peer-to-peer ecommerce platforms such as Craigslist and Facebook Marketplace as popular outlets for resale of goods stolen by ORC groups. The NRF and K2 Integrity²⁷ examined over 8,800 listings on these two

²² FBI, Uniform Crime Reporting Program, National Incident-Based Reporting System, *NIBRS Offense Definitions*, https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf.

²³ FBI, Uniform Crime Reporting Program, National Incident-Based Reporting System, *NIBRS Offense Definitions*, https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf.

²⁴ Council on Criminal Justice, Crime Trends Working Group, *Shoplifting Trends: What You Need to Know, Methodology*, https://counciloncj.org/wp-content/uploads/2023/11/Shoplifting_Methodology_vf2.pdf.

²⁵ Ernesto Lopez, Robert Boxerman, and Kelsey Cundiff, *Shoplifting Trends: What You Need to Know*, Council on Criminal Justice, November 2023, <https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>. These analyses used incident-level data from police departments or city websites. For more information on their methodology, see https://counciloncj.org/wp-content/uploads/2023/11/Shoplifting_Methodology_vf2.pdf.

²⁶ Ernesto Lopez, Robert Boxerman, and Kelsey Cundiff, *Shoplifting Trends: What You Need to Know*, Council on Criminal Justice, November 2023, <https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>.

²⁷ K2 Integrity is a risk, compliance, investigations, and monitoring firm.

platforms in 21 locations in 2022. They reported that “about 25% of search results for typical ORC goods or keywords had elements associated with ORC.”²⁸

Industry Data

Some observers have relied on industry experts to estimate the prevalence of ORC and associated losses. The NRF administers the annual NRSS through which it and the Loss Prevention Research Council (LPRC) survey loss prevention and asset protection professionals about retail risks, threats, and vulnerabilities.²⁹ According to the 2023 NRSS respondents, external theft—including ORC—accounted for about 36% of overall inventory shrink.³⁰ While the 2023 NRSS does not speak to the portion of shrink specifically attributable to ORC, 78.1% of survey respondents indicated that the threat of ORC was more of a priority than it had been in the prior year.

The NRSS does not include data on the proportion of external theft incidents reported to law enforcement. Some observers have suggested that these theft incidents may be under-reported to police for a number of reasons. For instance, NRF notes that “some retailers have policies to call the police only in response to theft incidents that involve violence or pose a physical safety threat because of concerns that reporting all thefts would cause reputational damage.”³¹ And, some retailers may build in these losses as a factor in their general cost of doing business.

Going Forward

Combating retail theft has traditionally been handled by state and local law enforcement under state criminal laws. While some observers believe that ORC is a national problem, others disagree, citing anecdotal high-profile flash mob thefts and smash-and-grabs as driving this concern.³² Nonetheless, there is debate over the federal government’s role in deterring ORC and sanctioning various actors that are involved in committing or aiding these crimes. A principal underlying issue is the lack of data on the scope of ORC. Without these data, Congress may not be able to accurately assess the proper role of the federal government, if any, in addressing ORC-related issues. As such, policymakers may debate various options regarding data on ORC.

If Congress is considering bolstering data collection and availability, policymakers may debate the utility of a database on ORC, as they have in the past. They could consider whether such a database would be best housed within a federal entity or whether it should be housed in the private sector and supported by the federal government. LERPnet (see text box above), in its various iterations, had been criticized for issues relating to the utility of its link analysis tools (to help identify patterns of criminal activity), notification mechanisms (to help push real time

²⁸ The ORC-associated elements were “Multiple listings for the same item; Clothes in multiple sizes; Multiple listings by one person for the same or similar items; Stock photos, no photo, or vague item descriptions; Sale located in warehouse or storage space; Different brands or types of baby formula offered for sale in a single listing; Bulk volumes of regular baby formula or baby diapers; Unopened packs of diapers in multiple sizes or brands; Yard sales featuring multiple numbers of household or baby items; and, Large amounts of laundry detergent offered for a cheap price.” NRF and K2 Integrity, *Organized Retail Crime: An Assessment of a Persistent and Growing Threat*, November 29, 2023, pp. 16, 45.

²⁹ NRF, *2023 National Retail Security Survey*. Participation in the survey is voluntary. The 2023 survey results represent responses from 177 retail brands covering 28 retail sectors.

³⁰ NRF, *2023 National Retail Security Survey*.

³¹ NRF and K2 Integrity, *Organized Retail Crime: An Assessment of a Persistent and Growing Threat*, November 29, 2023, p. 13.

³² Abdallah Fayyad, *Vox*, “The shoplifting scare might not have been real—but its effects are,” January 7, 2024.

notifications to retailers), and data entry (to allow for enabling data entry from retailers' existing case management systems).³³ Policymakers may consider how any future database might address these and other issues to improve upon the utility of the previous LERPnet system.

Various entities within DOJ, including the FBI and the Bureau of Justice Statistics (BJS), have experience collecting and analyzing crime data. As analysts have noted, the FBI's primary crime data collection effort, the UCR program, may not be well suited in its current form to provide data on ORC because the crime data do not allow for analysis of ORC separate from other theft offenses. One way to enhance the utility of NIBRS data may be for the FBI to consider adding a data element to this system where law enforcement can tag thefts that appear to be ORC. Alternative data collection efforts also may be able to reflect crimes attributable to ORC. For instance, as DOJ's primary statistical agency, BJS may be positioned to collect, analyze, and disseminate information on ORC; BJS could collect data on business victimization to report in an ongoing effort to understand ORC. BJS may also be able to support state, local, and tribal governments in data collection relevant to ORC. Additionally, other entities within DOJ, such as the National Institute of Justice (NIJ), may be positioned to sponsor private sector and academic research and data collection on ORC.³⁴

Policymakers may also debate whether a national survey could help inform on the prevalence of ORC. While there is already a national data collection effort on crime victimization (the National Crime Victimization Survey, or NCVS), the NCVS does not survey businesses.³⁵ Currently, retail crime data are captured through industry-administered surveys such as the NRSS. The NRSS is methodologically limited in a number of ways, as acknowledged by the survey's sponsors. For instance, the survey is only distributed to research executives already on the survey's sponsor (NRF and LPRC) email lists. A national survey of retail victimization could help glean information from a broader segment of businesses that may be victimized by ORC.

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³³ GAO, *Organized Retail Crime: Private Sector and Law Enforcement Collaborate to Deter and Investigate Theft*, GAO-11-675, June 14, 2011.

³⁴ NIJ has previously sponsored studies on retail business crimes; see <https://nij.ojp.gov/taxonomy/term/retail-business-crimes>.

³⁵ For more information about the NCVS, see <https://bjs.ojp.gov/data-collection/ncvs>.

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