



**House Judiciary Subcommittee on  
Crime, Terrorism and Homeland Security**

**Hearing on**

**H.R. 6713, the “E-fencing Enforcement Act of 2008”, H.R.  
6491, the “Organized Retail Crime Act of 2008”, and S.  
3434, the “Combating Organized Retail Crime Act of 2008”**

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**Testimony of**

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**on Behalf of**

**Walgreens  
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## **I. Introduction**

Good afternoon Chairman Scott and members of the Subcommittee. I am Frank Muscato, Organized Retail Crime Field Investigator with Walgreens, and I thank you for the opportunity to appear before the Subcommittee as it examines the significant problem of organized retail crime (“ORC”). Walgreens operates over 6,300 drugstores in 49 states, the District of Columbia and Puerto Rico and serves 1.8 billion customers nationwide annually. I have spent the last 15 years working ORC cases after retiring from a major metropolitan police department following 25 years of service. I am here today testifying on behalf of Walgreens, and the Coalition Against Organized Retail Crime. Mr. Chairman, I thank you for your interest in this issue, for convening this hearing to explore legislative means of addressing this growing problem, and for introducing your bill, H.R. 6713, the “E-fencing Enforcement Act.” I would also like to take this opportunity to commend Congressmen Ellsworth and Jordan for their work on H.R. 6491, the “Organized Retail Crime Act.”

My testimony today will cover three issues:

- First, I will describe the nature and scope of the problem of ORC;
- Second, I will describe more specifically ORC’s impact on Walgreens and our customers, as well as set forth the broad fraud prevention efforts we undertake; and
- Finally, I will provide specific comments on the proposed legislation.

## **II. Nature of Organized Retail Crime**

ORC is a significant problem that is victimizing diverse segments of the retail community from supermarkets and drug stores to department stores and specialty shops. Unlike shoplifters, ORC gangs are sophisticated criminal enterprises that steal large quantities of merchandise from retail stores with the intent to resell the goods for a profit. Products most often stolen by professional rings include: infant formula, over-the-

counter medications, razor blades, batteries, DVDs, and CDs. These criminals also target other retailers for higher-end items such as designer clothes and accessories, household appliances, and consumer electronics. The more sophisticated rings often engage in identity theft, credit card fraud, gift card fraud, and returns fraud that amount to millions in lost revenue. Equally alarming are the possible health and safety consequences for consumers who unknowingly purchase merchandise acquired through illegal means – particularly over-the-counter medications and other consumables.

ORC rings frequently travel to a designated area and methodically steal merchandise from a number of stores over a short period of time. The stolen merchandise is then moved and sold through fencing operations, flea markets, pawnshops, Internet auction sites and swap meets. Merchandise also may be fed back through the supply chain by re-packagers and illegitimate wholesalers who move the products into the distribution system, rerouting the items to unsuspecting retailers and consumers.

As you can see, ORC is not what is commonly known as shoplifting. It is not opportunistic theft where merchandise like food, clothing, sundries or music are stolen for personal use. Rather, ORC is an extremely sophisticated and coordinated crime. It involves highly structured organizations and gangs that hire and control teams of thieves to steal merchandise in large quantities. These teams move from store-to-store, city-to-city, and state-to-state employing sophisticated tactics and methods to elude store security, fraud prevention tools, and law enforcement. Make no mistake about it, ORC rings have networks throughout the United States, and they distribute their stolen goods through interstate commerce. This is a Federal problem with all the multijurisdictional law enforcement challenges that come with it.

The FBI estimates that ORC costs retailers \$30 billion annually. This type of crime also deprives state and local governments of hundreds of millions in lost sales tax

revenues. Losses resulting from ORC also increase costs to consumers – every time a truckload worth of over-the-counter medication or baby formula is stolen, our customers ultimately incur the cost of products that must be replaced. Proceeds from ORC are often used to finance other criminal enterprises such as drug trafficking, terrorism, and gang activity. In fact, the low risk – high return nature of this crime is attractive to street gangs. Many gangs even finance the travel and expenses for illegal immigrants and put them to work stealing from retailers. Some crime rings, in an attempt to protect their interests, have resorted to murdering witnesses and plotting to murder law enforcement agents and federal prosecutors. ORC has evolved into serious, organized criminal activity that impacts consumer welfare and our national economy as a whole.

Retailers have identified the hierarchy consisting of “boosters” and “fences” within the ORC rings. “Boosters” are those individuals who actually steal the merchandise. There are three levels of boosters: “level 1” is a person who steals close to home, is typically dependent on drugs or alcohol, and sells the goods the day they are stolen to support a habit; “level 2” boosters are persons that work with accomplices who travel to nearby states to steal and there is usually a leader of the group who sells the goods to a “fence”; “level 3” boosters travel in organized groups, cover large geographical areas and can be on the road for weeks at a time – these groups are often organized by a “fence”. A “fence” buys stolen goods from the boosters and is also identified in three distinct levels. A “level 1” fence often controls the three levels of boosters, they purchase goods for 20-30 percent of retail value and often have small retail businesses where boosters bring the merchandise; a “level 2” fence typically controls 10 – 20 different “level 1” fences and many “level 2 and 3” boosters – they often work out of small warehouses where product is cleaned, stored and sold to “level 3” fences for 50-60 percent of the retail value; “level 3” fences redistribute stolen retail goods, they have several “level 2” fences working for them and buy millions of dollars worth of stolen property every month – they operate large warehouses where stolen goods are mixed with legitimate product and sold back to some retailers through the supply chain.

I would like to share a few examples of recent large-scale ORC cases reported in the press to illustrate the nature of this crime. As you heard from Sherriff Grady Judd, in early 2008 authorities broke up an enormous ORC ring in Polk County, Florida. What started as a single shoplifting investigation led to an 18-member organized enterprise that stole up to \$100 million in over-the-counter medications and health and beauty aids. This criminal enterprise operated for at least five years under the control of ringleaders, which directed a sophisticated theft ring that stole from convenience and grocery stores statewide. Unfortunately, such incidents are all too common and not isolated. In June of this year, state and federal law enforcement broke up two ORC rings in the San Jose / San Francisco Bay area, arresting 17 members and on the day of the bust, recovered over \$5.5 million dollars worth of stolen property. These rings employed hundreds of shoplifters to steal razor blades, baby formula, tooth whitening strips, and over-the-counter medications for sale through storefronts, flea markets, and the Internet.

In Texas, Walgreens and other retailers collaborated with law enforcement on a case that involved a fence who was buying \$50,000 to \$100,000 worth of stolen baby formula, diabetic test strips and other over-the-counter medications every single day. The stolen product was being stored in a mini warehouse with no temperature controls in an area where temperatures routinely exceed 100 degrees during the summer months. The merchandise was being sold back to unsuspecting retailers and fenced over the internet. This type of activity puts the public's health and safety at risk as merchandise like baby formula and OTC medications can easily degrade. The fence was selling this product to an out of state fence that operated a distribution warehouse.

In 2002, Walgreens and other retailers were instrumental in investigating one of the first groups identified by law enforcement as an ORC ring, in this case members of the same family. They were operating a large network of ORC repack and redistribution warehouses. Members of this crime ring fenced more than \$78 million dollars worth of stolen property to and from Kentucky through Ohio, Texas, Utah, California, Florida,

New York, New Jersey and North Carolina. This investigation led to a conviction. In 2004, the FBI investigated and charged other members of the same family who continued to conduct the same type of business.

Law enforcement was ultimately successful in these cases, but this is the exception not the rule. Too often, cases are abandoned due to lack of resources and jurisdictional challenges. The legislation currently being considered would make ORC a federal criminal offense which would be extremely helpful in prosecuting more of these large, multijurisdictional cases.

### **III. Impact of Organized Retail Crime**

As previously mentioned, Walgreens operates over 6,300 community pharmacies in 49 states, the District of Columbia and Puerto Rico. ORC impacts us throughout the country and costs Walgreens in excess of \$300 million dollars a year. Walgreens has been a leader in advocating for ORC legislation in the states and supports making ORC a federal criminal offense, including criminalizing those activities that clearly facilitate the furtherance of ORC.

We understand the first line of defense against ORC is in our stores and within our distribution channels. For this reason, in 2003 Walgreens created an Organized Retail Crime Division that currently consists of six experienced investigators solely devoted to working both state and federal ORC cases in collaboration with law enforcement. We have a robust fraud prevention program that includes upgrading the cameras in our stores to “state of the art” digital systems, in-store security, anti-theft tagging, retail secure devices and employee training. We developed a sophisticated “computer dashboard” which helps our loss prevention personnel track stolen property using the “top 25 stolen items list.” This list is continually updated using our perpetual inventory system. Although our fraud prevention program has proven successful and effective, legislation is necessary to supplement our efforts and target facets of the

criminal activity beyond our reach. Without this legislation, cases involving multiple jurisdictions and facilitators will continue to be a challenge to prosecute.

I would like to briefly outline two examples where this federal law would have helped in the prosecution of the cases. The first involves a small grocery store in Chicago. In collaboration with the Cook County Sheriff's Department we observed more than 52 boosters enter the grocery store with what appeared to be stolen property and leave counting money as they walked out. An informant admitted on tape that he would travel to Wisconsin, Indiana, Michigan, and Iowa to steal property and sell thousands of dollars worth of goods to this grocery store every day. We discovered the store owner was selling stolen goods to other business in Chicago and out of state. Because of limited resources and jurisdictional issues the out of state cases were not pursued. If ORC was identified as a specific crime in Title 18 of the criminal code, we could have taken the case to a federal agency to pursue further investigation and/or prosecution.

The second case occurred this year in New York City. Three small "mom & pop" stores were identified by an informant as buying stolen retail property. NYPD worked this case and was able to infiltrate the businesses. After several months of investigation and surveillance the stores were busted and proprietors arrested. At one of the stores, police recovered more than \$600,000 in stolen property that was boxed up and ready for shipment to out of state locations. The Queens County Attorney working this case said the department could not pursue the case further because of budget and jurisdictional issues. Again, if ORC was identified as a specific crime in the criminal code we could have pursued the case federally.

#### **IV. Specific Comments on Proposed Legislation**

Mr. Chairman, as you know, there is no federal statute on the books to specifically address ORC. We are hopeful that legislation in this area will result in

greater awareness of this crime by both law enforcement and prosecutors alike. Today, ORC, like many property crimes, goes unrecognized and unpunished. Those who are caught often get away with only a “slap on the wrist” due to lagging investigative resources and federal prosecutors who may be unwilling to take complicated cases if high-dollar thresholds are not met. We are hopeful provisions in the law will serve to reduce the transfer and sale of stolen goods obtained through ORC by applying more scrutiny to those who may facilitate this crime.

As you know, two bills, H.R. 6491 and H.R. 6713, are now pending before this Subcommittee. H.R. 6491, the “Organized Retail Crime Act,” focuses on ORC itself and the sale of stolen goods obtained through ORC. There are several provisions Walgreens believes will be particularly impactful on combating this crime. First, the bill would explicitly criminalize the transportation, sale, and receipt of goods and services through ORC for the first time under Title 18. The bill would also criminalize the facilitation of ORC, including facilitation through the operation of an online marketplace. It is our strong belief the facilitation provisions will help ensure both individuals and entities are held accountable for perpetuating this criminal activity. In the case of online marketplaces, this provision will require them to take reasonable steps to gather information about sellers, assist retailers in investigations, and affirmatively limit the sale of stolen goods.

We also strongly support the provision in H.R. 6491 that amends the existing “access device” fraud statute to include devices commonly used to commit retail fraud such as gift cards, universal product codes and radio frequency identification transponders. By specifically enumerating these devices in the code, law enforcement will be able to more efficiently prosecute crimes involving the unlawful production and use of these devices. Additionally, as I understand it, the bill will impose stronger criminal penalties and sentences for ORC. As indicated earlier in my testimony, ORC is not garden variety shoplifting. It is organized crime and should be treated as such with stronger penalties and enforcement.



The second of the two bills, H.R. 6713, the “E-fencing Enforcement Act,” focuses on the serious problem of “e-fencing.” We thank the Chairman for his recognition that the problem of “e-fencing” is getting worse, not better. We believe status quo will not solve the problem and this bill takes the appropriate approach to limiting “e-fencing.” Like H.R. 6491, this bill would require certain information about high volume sellers be available to retailers for criminal investigations. Similarly, an online marketplace would be required to take down items where there is good reason to know they were not acquired lawfully.

## **V. Conclusion**

In summary, ORC poses harm to consumers, retailers of every kind, and deprives local and state governments of valuable and needed tax revenue. Walgreens supports legislation that makes ORC a federal crime and targets the facilitator and tools used to perpetrate these unlawful activities. Walgreens supports efforts to reduce ORC in all of the various channels used to dispose of the illegally acquired merchandise. A significant portion of ORC continues to be furthered through physical markets, such as flea markets, pawnshops, swap meets, and other large-scale distribution networks. For this reason, we hope legislation ultimately enacted by Congress includes provisions that go after all the channels used to dispose of stolen merchandise, and addresses the unique challenges of conducting investigations related to “e-fencing.”

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I thank you for your time and the opportunity to speak before your Subcommittee. I look forward to your questions and working with the Subcommittee on this legislation.