**T.P.I. – CRIM. 11.08**

**ORGANIZED RETAIL CRIME**

Any person who commits the offense of Organized Retail Crime is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

[Part A **(Only for offenses committed prior to 7/1/20)**:

(1) that the defendant **[only for offenses committed prior to 7/1/18:** worked with one (1) or more persons**] [only for offenses committed on or after 7/1/18:** acted in concert with one (1) or more people**]** to commit theft of any merchandise with a value exceeding one thousand dollars ($1,000) aggregated over a ninety-day period;

and

(2) that the defendant did so with the intent to *[sell that property for monetary or other gain] [fraudulently return the merchandise to a retail merchant].*]

[and

(3) **[only for offenses committed on or after 7/1/18:** that the defendant exercised organizational, supervisory, financial or management authority over the activity of one (1) or more persons in furtherance of the offense.]

or

[Part B **(Only for offenses committed prior to 7/1/20)**:

(1) that the defendant *[received] [possessed] [purchased]* any *[merchandise] [stored value cards]* obtained from a fraudulent return;

and

(2) that the defendant knew that the property was obtained by *[theft] [theft of merchandise]*.]

[and

(3) **[only for offenses committed on or after 7/1/18:** that the defendant exercised organizational, supervisory, financial or management authority over the activity of one (1) or more persons in furtherance of the offense.]

or

[Part C **(Only for offenses committed on or after 7/1/20 but prior to 7/1/25)**:

(1) That the defendant acted in concert with one (1) or more individuals to commit theft of any merchandise with a value greater than one thousand dollars ($1,000) aggregated over a ninety-day period;

and

(2) (a) That the defendant did so with the intent to *[sell] [barter] [trade]* the merchandise for monetary or other gain;

or

(b) That the defendant did so with the intent to fraudulently return the merchandise to a retail merchant

or

(c) That the defendant *[received] [possessed] [sold] [purchased]* by physical or electronic means any *[merchandise] [stored value cards]* obtained from a fraudulent return with the knowledge that the property was obtained by *[theft] [theft of merchandise].*

[and

(3) that the defendant exercised organizational, supervisory, financial or management authority over the activity of one (1) or more persons in furtherance of the offense.]

[Part D **(Only for offenses committed on or after 7/1/25):**

(1)(a) That the defendant acted in concert with one (1) or more individuals to commit theft of any merchandise with a value greater than one thousand dollars ($1,000) aggregated over a ninety-day period with the intent to [*[sell] [barter] [trade] the merchandise for monetary or other gain] [fraudulently return the merchandise to a retail merchant]*;

or

(1)(b) That the defendant *[received] [possessed] [sold] [purchased]* by physical or electronic means any *[merchandise] [stored value cards]* obtained from a fraudulent return with the knowledge that the property was obtained by *[theft][theft or merchandise]*;

or

(1)(c) That the defendant knowingly *[removed] [destroyed] [deactivated] [evaded]* any component of an anti‑shoplifting or inventory control device *[to prevent the activation of that device] [to facilitate* *\_\_\_\_\_\_\_\_\_\_\_.]* [Here insert an action listed in T.C.A. § 39-14-113 (c);

or

(1)(d) That the defendant knowingly *[activated] [interfered with]* a fire alarm system *[during] [to facilitate \_\_\_\_\_\_\_\_\_.]* [Here insert an action listed in T.C.A. § 39-14-113 (c);

or

(1)(e) That the defendant knowingly used an online marketplace or a social media platform to coordinate a meeting with one (1) or more individuals to *[sell] [barter] [trade]* stolen merchandise for monetary or other gain;

or

(1)(f) That the defendant knowingly returned *[stolen] [counterfeit]* merchandise to a retail merchant;

or

(1)(g) That the defendant *[received] [purchased] [possessed]* retail merchandise for the purpose of *[sale] [resale]* knowing or believing the merchandise to be stolen from a merchant;

or

(1)(h) That the defendant knowingly used any *[artifice] [instrument] [container] [device] [article]* to facilitate *\_\_\_\_\_\_\_\_\_\_\_.]* [Here insert an action listed in T.C.A. § 39-14-113 (c);

or

(1)(i) That the defendant knowingly used *[a device] [an apparatus] [including, but not limited to, [a device] [an apparatus] that can be affixed to [point‑of‑sale terminals] [automated teller machines] [fuel pumps] [payment processing devices]]* unlawfully to *[capture] [record] [transmit]* the electronic information contained on the *[magnetic strip] [embedded chip]* of a *[credit card] [debit card] [payment device]* with the intent to defraud another;

or

(1)(j) That the defendant knowingly *[possessed] [controlled] [had custody of]* ten (10) or more fraudulently obtained access devices, *[including gift cards,]* with the intent to defraud another.

[and

(2)(a) that the defendant exercised organizational, supervisory, financial or management authority over the activity of one (1) or more persons in furtherance of the offense.]

[and

(2)(b) that the defendant engaged in the destruction of property during the commission of the offense.]

[and

(2)(c) that the defendant used a weapon during the commission of the offense.]

[Include here the elements of theft (11.01) or theft of merchandise (11.17)]

[There are two types of possession recognized in the law: actual possession and constructive possession. A person who knowingly has direct physical control over an object at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and intention at any given time to exercise dominion and control over an object is then in constructive possession of it.]

[The law also recognizes that possession may be sole or joint. If one (1) person alone has actual or constructive possession of a thing, possession is sole. If two (2) or more persons have actual or constructive possession of a thing, their possession is joint.]

["Property" means anything of value, including but not limited to *[money] [real estate] [tangible or intangible personal property (including anything severed from land)] [library material] [contract rights] [chose-in-action] [interest in or claim to wealth] [credit] [admission or transportation tickets] [captured or domestic animals] [food and drink] [electric or other power]*.]

[“Access devices” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or other thing of value, whether the device is physical or digital.]

["Stored value card" means any card, gift card, instrument, or device issued with or without fee for the use of the cardholder to obtain money, goods, services, or anything else of value. Stored value cards include, but are not limited to, debit cards issued for use as a stored value card or gift card, and an account identification number or symbol used to identify a stored value card. "Stored value card" does not include a prepaid card usable at multiple, unaffiliated merchants or at automated teller machines, or both.]

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

[The trial judge should now instruct the jury with respect to fixing the value of the property obtained. See T.P.I. CRIM. -- 11.03(a).]