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**SENATE BILL NO. 1396**

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 18.2-46.1, 18.2-137, and 18.2-513 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-511.2, 18.2-103.1, and 18.2-104.01, relating to organized retail theft; report; penalty.*

Patrons—Stuart and DeSteph

Referred to Committee on the Judiciary

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-46.1, 18.2-137, and 18.2-513 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-511.2, 18.2-103.1, and 18.2-104.01 as follows:**

**§ 2.2-511.2. Organized Retail Crime Fund; report.**

*There is hereby created in the state treasury a special nonreverting fund to be known as the Organized Retail Crime Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of awarding grants to attorneys for the Commonwealth and law-enforcement agencies to investigate, indict, and prosecute violations of organized retail theft and associated fraud and property crimes. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Attorney General.*

*The Attorney General shall establish guidelines and procedures for the proper administration of the Fund including eligibility requirements and procedures for filing a grant application. The Attorney General shall submit an annual report to the General Assembly summarizing the activities of the Fund.*

**§ 18.2-46.1. Definitions.**

*As used in this article, unless the context requires otherwise or it is otherwise provided a different meaning:*

*"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.*

*"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.*

*"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-31, 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, 18.2-89, 18.2-90, 18.2-95, 18.2-103.1, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346.01, 18.2-348, or 18.2-349; (iv) a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1 or a conspiracy to commit a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.*

**§ 18.2-103.1. Organized retail theft; penalty.**

*A. As used in this section:*

*"Retail mercantile establishment" means any place where merchandise is displayed, held, stored, or offered for sale to the public.*

*"Retail property" means any article, product, commodity, item, or component intended to be sold in retail commerce.*

*"Retail property fence" means a person or business that buys retail property knowing or believing that such retail property has been unlawfully obtained.*

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59 *B. Any person who (i) conspires or acts in concert with another person to commit simple larceny of*  
60 *retail property from one or more retail mercantile establishments, with a value exceeding \$1,000*  
61 *aggregated over a 90-day period, with the intent to sell such retail property for monetary or other gain,*  
62 *and who takes or causes such retail property to be placed in the control of a retail property fence or*  
63 *other person; (ii) receives or possesses any retail property that has been obtained by simple larceny*  
64 *from one or more retail mercantile establishments in violation of clause (i) while knowing or having*  
65 *reasonable grounds to believe the property was unlawfully obtained; or (iii) conspires or acts in concert*  
66 *with two or more other persons as an organizer, supervisor, financier, leader, or manager to engage for*  
67 *profit in a scheme or course of conduct to effectuate the transfer or sale of property obtained by simple*  
68 *larceny from one or more retail mercantile establishments in violation of either of clause (i) or (ii) is*  
69 *guilty of organized retail theft.*

70 *C. A violation of this section is punishable as a Class 3 felony.*

71 *D. Any larceny of retail property occurring in more than one county or city may be aggregated into*  
72 *an alleged violation of this section.*

73 *E. Venue for the trial of any person charged with an offense under this section may be in the county*  
74 *or city in which (i) any act was performed in furtherance of the offense or (ii) the person charged with*  
75 *the offense resided at the time of the offense.*

76 **§ 18.2-104.01. Punishment for conviction of second or subsequent misdemeanor larceny; penalties.**

77 *When a person is convicted of an offense of larceny or any offense deemed to be or punished as*  
78 *larceny under any provision of the Code and it is alleged in the warrant, indictment, or information on*  
79 *which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has*  
80 *been before convicted in the Commonwealth or in another jurisdiction for any offense of larceny or any*  
81 *offense deemed to be or punishable as larceny, or of any substantially similar offense in any other*  
82 *jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination*  
83 *thereof, he shall be confined in jail not less than 30 days nor more than 12 months; and for a third or*  
84 *any subsequent offense, he is guilty of a Class 6 felony.*

85 **§ 18.2-137. Injuring, etc., any property, monument, etc.**

86 *A. If any person unlawfully destroys, defaces, damages, or removes without the intent to steal any*  
87 *property, real or personal, not his own, or breaks down, destroys, defaces, damages, or removes without*  
88 *the intent to steal, any monument or memorial for war veterans, not his own, described in § 15.2-1812;*  
89 *any monument erected to mark the site of any engagement fought during the Civil War, or any*  
90 *memorial to designate the boundaries of any city, town, tract of land, or any tree marked for that*  
91 *purpose, he shall be is guilty of a Class 3 misdemeanor, provided that the court may, in its discretion,*  
92 *dismiss the charge if the locality or organization that owns or is responsible for maintaining the injured*  
93 *property, monument, or memorial files a written affidavit with the court stating it has received full*  
94 *payment for the injury.*

95 *B. If any person who is not the owner of such property intentionally causes such injury, he is guilty*  
96 *of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial, or monument is less*  
97 *than \$1,000 or; (ii) a Class 6 felony if the value of or damage to the property, memorial, or monument*  
98 *is \$1,000 or more; or (iii) a Class 5 felony if such injury to property occurs during a violation or*  
99 *attempted violation of § 18.2-103.1 and the value of or damage to the property, memorial, or monument*  
100 *is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage, or removal of such*  
101 *property, memorial, or monument may be established by proof of the fair market cost of repair or fair*  
102 *market replacement value. Upon conviction, the court may order that the defendant pay restitution.*

103 **§ 18.2-513. Definitions.**

104 *As used in this chapter:*

105 *"Criminal street gang" means the same as that term is defined in § 18.2-46.1.*

106 *"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business*  
107 *trust, criminal street gang, or other group of three or more individuals associated for the purpose of*  
108 *criminal activity.*

109 *"Proceeds" means the same as that term is defined in § 18.2-246.2.*

110 *"Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit,*  
111 *coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§*  
112 *18.2-46.1 et seq.) of Chapter 4, § 18.2-460; a felony offense of § 3.2-4212, 3.2-4219, 10.1-1455,*  
113 *18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4,*  
114 *§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59,*  
115 *18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-95, or 18.2-103.1, Article*  
116 *4 (§ 18.2-111 et seq.) of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or*  
117 *18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6,*  
118 *§ 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300,*  
119 *18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-346, 18.2-346.01, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355,*  
120 *18.2-356, 18.2-357, 18.2-357.1, 18.2-368, 18.2-369, or 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of*

121 Chapter 9, Article 1 (§ 18.2-434 et seq.) of Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10,  
122 Article 3 (§ 18.2-446 et seq.) of Chapter 10, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12,  
123 § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar  
124 offenses under the laws of any other state, the District of Columbia, or the United States or its  
125 territories.  
126 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
127 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
128 **necessary appropriation is at least \$14,659,486 for periods of imprisonment in state adult**  
129 **correctional facilities and cannot be determined for periods of commitment to the custody of the**  
130 **Department of Juvenile Justice.**