

## Department of Planning and Budget 2023 Fiscal Impact Statement

1. **Bill Number:** HB1885

**House of Origin**     Introduced     Substitute     Engrossed

**Second House**     In Committee     Substitute     Enrolled

2. **Patron:** Byron

3. **Committee:** Courts of Justice

4. **Title:** Organized retail theft; report; penalty.

5. **Summary:** Establishes the Organized Retail Crime Fund, which shall be used solely for the purposes of awarding grants to Commonwealth’s attorneys and law enforcement agencies to investigate, indict, and prosecute violations of organized retail theft and associated fraud and property crimes. The bill directs the Attorney General to 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 Fund’s activities.

The bill includes organized retail theft as a “predicate criminal act” and as “racketeering activity,” as defined in the Code. It provides a definition of organized retail theft; a violation is a Class 3 felony. Additionally, the bill establishes a minimum sentence of 30 days in jail (and a maximum sentence of 12 months) for individuals convicted of a second larceny offense. For a third or subsequent offense, the offender is guilty of a Class 6 felony. The bill makes it a Class 5 felony for any person to injure property during an act or attempted act of organized retail theft when the value of or damage to the property, memorial, or monument is \$1,000 or more.

6. **Budget Amendment Necessary:** Yes, in Item 404 (DOC).

7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.

8. **Fiscal Implications:** The introduced budget (HB1400/SB800) provides \$772,760 in general fund support in Item 430 for the Department of State Police (VSP) to address organized retail crime. This funding supports five positions and a database to allow the agency to address the provisions of the proposed legislation. Funding of \$414,105 general fund also was provided in Item 61 for the Office of the Attorney General (OAG) to establish an organized retail crime task force. This funding will support three positions and the procurement of a database network to allow cooperation with law enforcement to address organized retail crime across the Commonwealth.

The proposed legislation also creates a Class 3 felony for people who commit organized retail theft, establishes a minimum sentence of 30 days in jail for individuals convicted of a second offense, and creates a Class 6 felony for people who commit a third or subsequent offense. The bill also creates a Class 5 felony for people who injury property during an act or attempted act of organized retail theft, when the property value is \$1,000 or more.

Class 3 felonies are punishable by a term of not less than five years nor more than 20 years and a fine of not more than \$100,000, or imprisonment alone. A Class 5 felony is punishable by a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. A Class 6 felony is punishable by a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

In re-establishing the enhanced penalties for second and third misdemeanor larceny convictions, some offenders may be convicted a Class 6 felony rather than a misdemeanor, or they may be convicted of a misdemeanor that carries a 30-day statutory minimum. As a result, some offenders may receive longer jail sentences and other offenders may be given a state prison sentence rather than a local-responsible (jail) sentence. The net impact on local-responsible (jail) beds is estimated to be 205 beds by FY 2029 and a cost of \$3,030,450. The impacts of other aspects of the proposal (organized retail theft, gang activity, racketeering and property damage) cannot be included due to insufficient data

Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of at least \$14,659,486. The amount is based on the projection that the legislation will result in 299 additional offenders being incarcerated in prison by fiscal year 2029. Pursuant to §30-19.1:4 of the Code of Virginia, the introduced budget includes a placeholder amount of \$50,000 general fund under Item 404 in support of this legislation.

The amount of funding required for the Organized Retail Crime Fund established by this legislative proposal is dependent on the amount of funding provided to it by the General Assembly.

**9. Specific Agency or Political Subdivisions Affected:** Commonwealth's Attorneys, Department of State Police, Office of the Attorney General, Local law enforcement agencies, Department of Corrections, Local and regional jails.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill is a companion to SB1396.