

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB1885ER

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Byron

3. Committee: Passed both Houses

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.

6. Budget Amendment Necessary: Yes, Items 61, 404, and 430. See Item 8.

7. Fiscal Impact Estimates: Final. See Item 8 below.

8. Fiscal Implications: The introduced budget included \$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.

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 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.

By creating a new felony and expanding the applicability of existing criminal offenses under §§ 18.2-46.1 and § 18.2-513, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data does not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal, and the magnitude of the impact cannot be determined at this time. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined at this time.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill. Pursuant to §30-19.1:4 of the Code of Virginia, the introduced budget included 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 SB1396ER.