



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1396

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Stuart and DeSteph [SB1296])

LD #: 23104438

Date: 01/30/2023

Topic: Organized retail theft

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal adds § 18.2-103.1 to define the crime of organized retail theft, making it a Class 3 felony for any person who conspires or acts in concert with another person to commit simple larceny of retail property from one or more retail mercantile establishments, with a value exceeding \$1,000 aggregated over a 90-day period, with the intent to sell such retail property for monetary or other gain, and who takes or causes such retail property to be placed in the control of a retail property fence or other person and either (i) receives or possesses such retail property while knowing or having reasonable grounds to believe the property was unlawfully obtained or (ii) conspires or acts in concert with two or more other persons as an organizer, manager, etc. to engage for profit in a scheme for the transfer or sale of such retail property.

The proposal adds organized retail theft to 1) the list of offenses that are defined as predicate criminal acts for the purpose of criminal street gang provisions (§ 18.2-46.1), and 2) the list of offenses defined as racketeering activity (§ 18.2-513). Penalties for gang-related offenses range from a Class 1 misdemeanor to a Class 3 felony, while penalties for racketeering range from a Class 6 felony to a Class 2 felony.

Currently, under § 18.2-23, any person who conspires with another to commit larceny or assists another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is \$1,000 or more, is guilty of a felony punishable by imprisonment of 1 to 20 years. A violation of § 18.2-23 constitutes a separate and distinct felony.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of additional convictions that may result from enactment of other aspects of the proposal. However, such individuals may be sentenced similarly to those convicted under the existing provisions (see table below).

Offenders Convicted of Select Felony Offenses, FY2017-FY2022

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Participation in criminal act for benefit of gang (§ 18.2-46.2) – Class 5 felony ¹	65	21.5%	13.8%	6.0 mos.	64.6%	2.8 yrs.
Participation in criminal act for benefit of gang w/ juv. member (§ 18.2-46.2) – Class 4 felony ¹	12	8.3%	8.3%	6.0 mos.	83.3%	2.2 yrs.
Conspire to commit or assist in larceny with agg. value >=\$1,000 (§ 18.2-23) – Felony 1-20 years ²	110	23.6%	55.5%	3.4 mos.	20.9%	1.5 yrs.
Racketeering, 1 st offense (§ 18.2-514) – Felony 5-40 years ²	89	2.2%	6.7%	4.0 mos.	91.0%	3.5 yrs.
Racketeering, 2 nd /sub. offense (§ 18.2-514) – Class 2 felony ²	0	N/A	N/A	N/A	N/A	N/A

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense at sentencing.

¹Source: Virginia Criminal Sentencing Commission, Sentencing Guidelines Data System, FY2021-FY2022

²Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2021-FY2022

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony and expanding the applicability of existing criminal offenses defined 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, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The proposal may increase the need for community corrections resources; however, the potential impact on community corrections programs cannot be quantified.

Virginia's Sentencing Guidelines. As a new felony, convictions under § 18.2-103.1 would not be covered by the Sentencing Guidelines as the primary (most serious) offense. The Guidelines cover two gang-related offenses under § 18.2-46.2. The Guidelines do not cover other gang offenses or racketeering offenses when the offense is the primary, or most serious, offense in a case. Convictions not covered by the Guidelines as a primary offense may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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