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SENATE BILL NO. 1396

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 30, 2023)

(Patrons Prior to Substitute—Senators Stuart and DeSteph [SB1296])

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.1 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 and 18.2-103.1 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.

B. 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

60 *other person and either (i) receives or possesses any retail property that has been obtained by simple*
61 *larceny from one or more retail mercantile establishments while knowing or having reasonable grounds*
62 *to believe the property was unlawfully obtained or (ii) conspires or acts in concert with two or more*
63 *other persons as an organizer, supervisor, financier, leader, or manager to engage for profit in a*
64 *scheme or course of conduct to effectuate the transfer or sale of property obtained by simple larceny*
65 *from one or more retail mercantile establishments is guilty of organized retail theft.*

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

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

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

72 **§ 18.2-513. Definitions.**

73 As used in this chapter:

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

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

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

79 "Racketeering activity" means to commit, attempt to commit, or conspire to commit or to solicit,
80 coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1
81 (§ 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,
82 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,
83 § 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,
84 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
85 4 (§ 18.2-111 et seq.) of Chapter 5, Article 1 (§ 18.2-168 et seq.) of Chapter 6, § 18.2-178 or 18.2-186,
86 Article 6 (§ 18.2-191 et seq.) of Chapter 6, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6, § 18.2-246.13,
87 Article 1 (§ 18.2-247 et seq.) of Chapter 7, § 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2,
88 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, 18.2-356,
89 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 Chapter 9,
90 Article 1 (§ 18.2-434 et seq.) of Chapter 10, Article 2 (§ 18.2-438 et seq.) of Chapter 10, Article 3
91 (§ 18.2-446 et seq.) of Chapter 10, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12, § 3.2-6571,
92 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar offenses under
93 the laws of any other state, the District of Columbia, or the United States or its territories.

94 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
95 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
96 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
97 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
98 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
99 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
100 **appropriation cannot be determined for periods of commitment to the custody of the Department**
101 **of Juvenile Justice.**