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Consolidated Fiscal Note

2023-2024 Legislative Session

SF893 - 0 - Organized Retail Theft

Chief Author: **Ron Latz**
 Committee: **Judiciary And Public Safety**
 Date Completed: **2/9/2023 8:15:56 AM**
 Lead Agency: **Sentencing Guidelines Comm**
 Other Agencies:
 Corrections Dept Public Defense Board
 Supreme Court

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Corrections Dept						
General Fund	-	330	991	1,276	1,274	
State Total						
General Fund	-	330	991	1,276	1,274	
Total	-	330	991	1,276	1,274	
Biennial Total			1,321		2,550	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Corrections Dept					
General Fund	-	3.7	11	14.2	14.2
Total	-	3.7	11	14.2	14.2

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/9/2023 8:15:56 AM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
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Corrections Dept					
General Fund	-	330	991	1,276	1,274
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1 - Expenditures, Absorbed Costs*, Transfers Out*					
Corrections Dept					
General Fund	-	330	991	1,276	1,274
Total	-	330	991	1,276	1,274
Biennial Total			1,321		2,550
2 - Revenues, Transfers In*					
Corrections Dept					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Fiscal Note

2023-2024 Legislative Session

SF893 - 0 - Organized Retail Theft

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State Fiscal Impact	Yes	No
Expenditures		X
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Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
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Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/8/2023 2:11:55 PM
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	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

Sections 1, 2, 5, 6, and 9 relate to accessing and releasing financial records.

Section 4 creates the offense of organized retail theft, codified under a new Minn. Stat. § 609.522. A person who steals or fraudulently obtains retail merchandise from a retail merchant commits organized retail theft either by reselling the stolen merchandise, by advertising or displaying it for sale, or by returning it to a retail merchant for something of value. The crime also applies to someone who, knowing or having reason to know the property was stolen from a retail merchant, receives, purchases, or possesses retail merchandise with intent to resell it. Any retail theft if committed within ten years of a conviction for organized retail theft is also considered organized retail theft, as is possessing shoplifting gear intending to use it to shoplift.

The maximum penalties for organized retail theft generally vary by the value of the property stolen or by the number of prior convictions for organized retail theft, as summarized in Table 1. For purposes of determining value, prosecutors in one or more counties may aggregate multiple instances of organized retail theft committed within a six-month period.

Table 1. Sentences for Organized Retail Theft under New Minn. Stat § 609.522

Organized Retail Theft	Offense Level	Statutory Maximum Sentence
Value exceeds \$5,000	Felony	15 years
Value exceeds \$1,000 but not \$5,000	Felony	7 years
Committed within ten years of the first of two or more prior organized retail theft convictions	Felony	7 years
Value exceeds \$500 but not \$1,000	Felony	2 years
Committed within ten years of a previous organized retail theft conviction	Felony	2 years
Possession of shoplifting gear	Felony	2 years
Value is \$500 or less	Gross Misd.	1 year

In addition, a felony penalty increases by 50 percent if the organized retail theft creates a reasonably foreseeable risk of bodily harm to another. If the offense is a gross misdemeanor, such risk enhances it to a felony with a three-year statutory maximum sentence.

Section 3 adds organized retail theft to the list of theft-related offenses which, if convicted within five years of a gross misdemeanor theft, enhance the gross misdemeanor theft to felony theft.

Sections 7 and 8 create two new burglary offenses under Minn. Stat. § 609.582. If, within one year of being told to leave a building open to the public and not return, a person reenters the building with intent to steal or steals within the building, the person commits fourth-degree burglary, a gross misdemeanor. If committed within five years of a previous theft-related offense, the same act is third-degree burglary, a felony with a 5-year statutory maximum.

This bill is effective August 1, 2023, and applies to crimes committed on or after that date.

Assumptions

It is assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 are not a fair approximation of cases sentenced in the future. Cases sentenced in 2019 are used instead to estimate the impact of this bill.

Section 4. One of the responsibilities of the Commission is to assign severity-level (SL) rankings to new felony offenses passed by the Legislature. The Commission bases its decisions, in part, on the level of harm caused and the culpability of the person. The statutory maximum is also considered.

Because each statutory maximum for organized retail theft is higher than the statutory maximum for the corresponding theft offense, it is assumed that the Commission will rank these enhanced offenses one SL higher than their corresponding theft counterparts, as detailed in Table 2.

Table 2. Current Stat. Max., Current SL Rankings, Bill Stat. Max., Assumed SL Ranking for Organized Retail Theft under New Minn. Stat § 609.522, subdivision 2

Value of the Property Stolen or Subsequent Offense	Theft Stat. Max.	Theft SL Ranking	Bill Stat. Max.	Assumed SL Ranking Under Bill
Exceeds \$5,000	10 years	SL 3	15 years	SL 4
More than \$1,000 and less than \$5,000	5 years	SL 2	7 years	SL 3
Committed w/in 10 yrs. 1st of 2+ priors	5 years	SL 2	7 years	SL 3
More than \$500 but not more than \$1,000	1 year	GM	2 years	SL 1
Committed w/in 10 yrs. of prior	NA	NA	2 years	SL 1
\$500 or less	1 year	Misd.	1 year	Gr. Misd.

At SL 4, offenses with a Criminal History Score (CHS) 4 or more are recommended prison sentences with presumptive durations ranging from 21 months to 28 months. At SL 3, offenses with a Criminal History Score (CHS) 4 or more are recommended prison sentences with presumptive durations ranging from 17 months to 22 months. At SL 1, offenses with a Criminal History Score (CHS) 6 or more are recommended prison sentences with presumptive durations ranging from 17 months to 22 months.

According to the Minn. Judicial Branch, in 2019, there were 7,427 Misdemeanor cases and 632 Gross Misdemeanor cases that were sentenced for theft of movable property under Minn. Stat. § 609.52, subd. 2(a)(1). According to MSGC Monitoring Data, in 2019, there were 802 cases sentenced for theft of movable property under Minn. Stat. § 609.52, subd. 2(a)(1): 131 (16.3%) were ranked at SL 3 and 671 (83.7%) were ranked at SL 2.

It is assumed that some percentage of these theft cases will qualify as organized retail theft and receive more severe punishment under this bill. That percentage is not known. For purposes of estimating the impact, MSGC assumed that one-third (33%) of the total theft of movable property cases sentenced under Minn. Stat. § 609.52, subd. 2(a)(1) were from retailers (i.e., “shoplifting”) and half of those retail theft (50%) were organized retail theft where the merchandise was stolen for resale or return and would qualify in the future as organized retail theft for a total 237 felony cases, and 1,225 gross misdemeanors. The distribution, imprisonment rates, and average prison sentences for the new organized retail theft cases are assumed based on existing offenses; for the new SL 4 and new SL 1, they are based on offenses in the “property” category at those existing severity levels; for the new SL 3, they are based on theft of movable property over \$5,000, which is currently ranked at SL 3. The numbers associated with these assumptions are displayed in Table 3.

Table 3. Organized Retail Theft; Existing and Assumed Cases and Distribution; Imprisonment (“Prison”) Rates & Average Prison Sentences

Organized Retail Theft	Existing Cases	Existing Prison Rate	Existing Average Prison Mos. (2/3 Term of Prison; Mos.)	Assumed Cases Moving	Assumed Prison Rate	Assumed Average Prison Mos. (2/3 Term of Prison; Mos.)
Exceeds \$5,000	131	16%	21 (14)	22	22%	27 (18)
More than \$1,000 and less than \$5,000; or	671	15%	19 (11)	111	16%	21 (14)

Committed w/in 10 yrs. 1st of 2+ priors						
More than \$500 but not more than \$1,000; or Committed w/in 10 yrs. 1st of 2+ priors SL 1	632	NA	NA	104	22%	18 (12)
\$500 or less Gr. Misd.	7,427	NA	NA	1,225	NA	NA
Total	8,861			1,462		

The bill's sentencing enhancement for organized retail theft that creates a reasonably foreseeable risk of bodily harm is assumed to be like the existing sentencing enhancement under Minn. Stat. § 609.52, subd. 3a, which applies to theft offenses generally. According to the Guidelines, if a felony theft offense creates a foreseeable risk of bodily harm, the severity level is elevated by one. If the offense is otherwise a gross misdemeanor, it becomes a felony and is ranked at SL 2. This sentencing provision is rarely used. According to MSGC Monitoring Data, since enactment in August 2007, there have been a total 18 cases in which the theft created a reasonably foreseeable risk of bodily harm: 16 were gross misdemeanors that became felonies (ranked at SL 2); one was a felony (ranked at SL 4); and one was a felony (ranked at SL 5). According to MSGC Monitoring Data, in 2019, there were three felony cases ranked at SL 2 that would have been gross misdemeanors but for this provision. By comparison, according to the Minn. Judicial Branch, in 2019, 755 gross misdemeanor cases were sentenced under Minn. Stat. § 609.52, subd. 3(4), that were not enhanced by the bodily-harm provision. It is therefore assumed that bodily-harm provision of organized retail theft will result few cases annually and have little to no impact.

Section 3. It is assumed that organized retail theft, as defined by the bill, is now generally being prosecuted as theft. Because theft is already on the list of offenses whose prior convictions enhance gross misdemeanor theft to felony theft, it is assumed that the addition of organized retail theft to that list will have little to no impact.

Sections 7 & 8. The new felony third-degree burglary offense has the same statutory maximum as the existing third-degree, nonresidential burglary. Therefore, it is assumed the new offense will be ranked the same as the existing offense. Nonresidential burglary in the third degree is ranked at SL 4.

Although the bill's burglary crime is new, its elements are approximately a combination of two existing offenses: misdemeanor trespass by returning to property within one year after being told to leave the property and not return (Minn. Stat. § 609.605, subd. 1(b)(8)), and nonfelony theft. It is therefore assumed that the number of convictions of the new offense will approximately equal the number of cases annually in which someone was charged both with trespass under § 609.605, subd. 1(b)(8), and with nonfelony theft, and was convicted of one or both charges.

This assumption may overestimate the number of new burglary cases in that some people charged with theft and trespass and convicted of one may not have been provably guilty of the other, and would therefore not have been guilty of burglary under the bill. This assumption may underestimate the number of new burglary cases in that the bill's new burglary offense does not require completed theft; reentry with mere intent to steal is sufficient. It is assumed that these tendencies to overestimate and underestimate will approximately cancel each other out.

According to the Minn. Judicial Branch, in 2019, there were 232 cases with a trespassing charge under Minn. Stat. § 609.605, subd. 1(b)(8), a nonfelony theft charge under Minn. Stat. § 609.52, and a conviction for either or both charges. It is assumed that these 232 cases will become burglaries under the bill's new burglary provision.

The percentage of these 232 burglaries that will be felonies due to a theft-related offense conviction within the previous five years is not known. A similar enhancement provision is found in Minn. Stat. § 609.52, subd. 3(3)(c), where a gross misdemeanor theft (subd. 3(4)) is enhanced to a felony due to a theft-related offense conviction within the previous five years. According to the Minn. Judicial Branch, in 2019, 881 cases of theft between \$500 and \$1,000 were sentenced under either subd. 3(3)(c) or 3(4) of Minn. Stat. § 609.52: 126 cases (14.3%) were enhanced to felonies due to a prior conviction (subd. 3(3)(c)), and 755 cases (85.7%) remained gross misdemeanors (subd. 3(4)). It is assumed that the bill's 232 new burglary cases will be similarly apportioned: 33 cases annually (14.3% of 232) will be felony third-degree burglary, and 199 cases annually (85.7% of 232) will be gross misdemeanor fourth-degree burglary.

It is assumed that the 33 new third-degree burglary cases, to be ranked at SL 4, will have the same imprisonment rate and average prison sentence as the existing felony third-degree burglary cases. According to MSGC Monitoring Data, in 2019, the average imprisonment rate for third-degree burglary was 22.3 percent and an average pronounced duration of 27 months. An average 91.6 percent of probationers received local confinement as a condition of probation. The average pronounced confinement time was 85 days.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Based on the above assumptions, the total long-term fiscal impact from this bill will be 69 prison beds annually. There will be an impact from moving 237 felony cases a year from the existing theft of movable property to organized retail theft. It is estimated that the changes will result in a total 46 cases moving from the existing theft of movable property to organized retail theft; and a total prison-bed need of 58 beds a year. Allowing six months for implementation, there will be a need for 29 beds in FY2024 and 58 beds in FY2025, and every year after. The impact and distribution of the organized retail theft changes are described in Table 4.

Additionally, there will be a need for 11 prison beds annually for the new third-degree burglary of a business open to the public. Allowing six months for implementation, there will be a need for 5 beds in FY2024 and 11 beds in FY2025, and every year after. The impact is described immediately below Table 4.

The SL 3 theft of movable property cases sentenced in 2019 had an imprisonment rate of 16 percent (21 of the 131 cases), whereas it is estimated that at SL 4 the imprisonment rate will be 22 percent. Therefore, it is estimated that the number of prison cases for the 22 assumed to change severity levels will change from 3.5 (16% of 22) to 5 (22% of 22). The SL 3 theft of movable property cases sentenced in 2019 had an average pronounced sentence of 21 months (serve 2/3 term of imprisonment=14 mo.); whereas at SL 4 it is estimated that the average term of imprisonment will be 18 months. Thus, it is estimated that for the 22 cases assumed to switch severity levels, the prison bed need will change from 26 beds ((22 cases × 14) ÷ 12) to 33 beds ((22 cases × 18) ÷ 12). Thus, it is estimated that these changes from SL 3 to SL 4 will result in the need for 7 additional prison beds a year.

The SL 2 theft of movable property cases sentenced in 2019 had an imprisonment rate of 15 percent (101 of the 671 cases), whereas it is estimated that at SL 3 the imprisonment rate will be 16 percent. Therefore, it is estimated that the number of prison cases for the 111 assumed to change severity levels will change from 17 (15% of 111) to 18 (16% of 111). The SL 2 theft of movable property cases sentenced in 2019 had an average pronounced sentence of 19 months (serve 2/3 term of imprisonment=11 mo.); whereas at SL 3 it is estimated that the average term of imprisonment will be 14 months. Thus, it is estimated that for the 111 cases assumed to switch severity levels, the prison bed need will change from 102 beds ((111 cases × 11) ÷ 12) to 130 beds ((111 cases × 14) ÷ 12). Thus, it is estimated that these changes from SL 2 to SL 3 will result in the need for 28 additional prison beds a year.

The portion of gross misdemeanor theft of movable property cases which will move to SL 1 will be new impact rather than a shift in cases. It is estimated that 104 gross misdemeanor cases will move to SL 1. In 2019, SL 1 property cases had an imprisonment rate of 22 percent. Therefore, it is estimated that the number of new prison cases will be 23 (22% of 104). The SL 1 property cases sentenced in 2019 had an average pronounced sentence of 18 months (serve 2/3 term of imprisonment=12 mo.). Thus, it is estimated that for the 104 cases assumed to switch from gross misdemeanors to SL 1, the prison bed need will be 23 beds a year ((23 cases × 12) ÷ 12).

Table 4. Prison Impact; Cases & Distribution; Prison Cases & Prison Beds

Organized Retail Theft	Existing Prison Cases	Existing Prison Beds	New Prison Cases	New Prison Beds	Change
Exceeds \$5,000 Moving from SL 3 to SL 4	3.5	26	5	33	7
More than \$1,000 and less than \$5,000; or Committed w/in 10 yrs. 1st of 2+ priors Moving from SL 2 to SL 3	17	102	18	130	28
More than \$500 but not more than \$1,000; or Committed w/in 10 yrs. 1st of 2+ priors Moving from GM to SL 1	NA	NA	23	23	23
Total	21	127	46	186	58

Because it is assumed there will be an additional 33 cases sentenced for third-degree burglary annually, and because the imprisonment rate is 22.3 percent, it is estimated that there will be a need for 11 additional prison bed annually. (With an expected prison rate of 22.3 percent, there will be an additional 7 prison sentence per year with an expected average duration of 27 months, assuming service of 2/3 of the pronounced sentence (18 mos.); 7 prison sentences x 18 mos. to serve = 126/12 mos. = 10.5 prison beds.)

Local Fiscal Impact

As stated above, there will be 133 felony cases shifting to organized retail theft a year; and 110 will be felony probation cases (23 will be prison cases). Since those cases are already under felony supervision, the impact on local correctional resources will be minimal.

As stated above, there will be an estimated 104 new organized retail theft cases moving from a gross misdemeanor to a felony at SL 1, of which 89 cases will receive an average 65 days confinement as a condition of their probation (serve 2/3 = 43 days) resulting in a possible need for 11 local beds ((89 cases × 43) ÷ 365)). However, these cases may already receive local confinement time as part of their gross misdemeanor sentences, so the true impact on local beds is difficult to determine. These cases may also receive longer local supervision, but since felony probation terms are now capped at five years, it is estimated that the local impact will be minimal.

Based on the above assumptions, there will be 1,225 new gross misdemeanor retail theft offenses which will require local gross misdemeanor supervision and may receive local confinement as a condition of their sentences. The rate of confinement is unknown and the average confinement time is unknown. However, for example, if half the new cases (613 cases) each received 90-days' confinement (serve 2/3 = 54 days) as a result of their probation sentences, the impact would be 90 local beds statewide ((613 cases × 54) ÷ 365)).

Additionally, and as stated above, there will be 199 new gross misdemeanor fourth-degree burglary of a business open to the public cases requiring local gross misdemeanor supervision and may receive local confinement as a condition of their sentences. The rate of confinement is unknown and the average confinement time is unknown. However, for example, if half the new cases (100 cases) each received 90-days' confinement (serve 2/3 = 54 days) as a result of their probation sentences, the impact would be 14 local beds statewide ((100 cases × 54) ÷ 365)). Some of this will be offset by the reduction in misdemeanor theft and trespass sentences.

References/Sources

2019 Minn. Judicial Branch data.

2001 to 2021 MSGC Monitoring data.

2007 Minn. Laws ch. 54, art. 2, § 9. Retrieved 1/31/2023 at <https://www.revisor.mn.gov/laws/2007/0/Session+Law/Chapter/54/>

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Fiscal Note

2023-2024 Legislative Session

SF893 - 0 - Organized Retail Theft

Chief Author: **Ron Latz**
 Committee: **Judiciary And Public Safety**
 Date Completed: **2/9/2023 8:15:56 AM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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General Fund	-	330	991	1,276	1,274
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General Fund	-	3.7	11	14.2	14.2
Total	-	3.7	11	14.2	14.2

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/9/2023 8:12:35 AM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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Biennial Total			1,321			2,550
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-			-

Bill Description

S.F. 893 establishes the crime of organized retail theft, provides for releasing certain financial-account information to law enforcement, amends certain burglary crimes after a trespass notice, and establishes a period for a search warrant on financial institutions.

Criminal penalties are established under sections 4, 7, and 8.

Assumptions

The Minnesota Sentencing Guidelines Commission assumes that:

1. There will be a total need of 58 prison beds a year with the estimated number of cases scheduled to move from the existing theft of movable property to organized retail theft.
2. There will be a need of 11 additional prison beds annually for the new third-degree burglary of a business open to the public.

The Department of Corrections assumes that:

1. Prison bed costs are based on a marginal cost per diem of \$42.50 for FY2024, \$48.55 for FY2025, \$50.67 for FY2026 and \$50.58 for FY2027 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.
2. The annual cost is estimated by multiplying the number of prison beds needed by the subsequent annual per diem. Unless otherwise noted, prison beds are phased in on a quarterly basis.
3. Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 per year including benefits.
4. This bill is effective August 1, 2023.

Expenditure and/or Revenue Formula

Cost of Prison Beds

Fiscal Year	2024	2025	2026	2027
Number of Prison Beds	34	69	69	69

Cost of Prison Beds (in 000s)	330	991	1,276	1,274
FTE	3.7	11.0	14.2	14.2

Long-Term Fiscal Considerations

The Commission estimates the total long-term fiscal impact to be 69 prison beds annually after FY 2024. There will be a need for 34 beds in FY 2024 and 69 beds in FY 2025 and thereafter.

Local Fiscal Impact

The Commission estimates that:

1. There will be 133 felony cases shifting to organized retail theft a year, and 110 will be felony probation cases. Since these cases are already under felony supervision, the impact on local correctional resources will be minimal;
2. There will be an estimated 104 new organized retail theft cases moving from a gross misdemeanor to a felony, of which 89 cases will receive an average of 65 days' confinement as a condition of their probation, resulting in a possible need for 11 local beds. However, these cases may already receive local confinement time as part of their gross-misdemeanor sentences, so the true impact on local beds is difficult to determine. These cases may also receive longer local supervision, but since felony probation terms are now capped at five years, it is estimated that the local impact will be minimal;
3. There will be 1,225 new gross-misdemeanor retail-theft offenses that will require local gross-misdemeanor supervision and may receive local confinement as a condition of their sentences. The rate of confinement is unknown, and the average confinement time is unknown. However, if half the new cases each received 90-days' confinement as a result of their probation sentences, the impact would be 90 local beds statewide; and
4. There will be 199 new gross-misdemeanor cases requiring local gross-misdemeanor supervision and may receive local confinement as a condition of their sentences. The rate of confinement is unknown, and the average confinement time is unknown. However, if half the new cases each received 90-days' confinement as a result of their probation sentences, the impact would be 14 local beds statewide. Some of this will be offset by the reduction in misdemeanor theft and trespass sentences.

References/Sources

Department of Corrections Staff

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Fiscal Note

2023-2024 Legislative Session

SF893 - 0 - Organized Retail Theft

Chief Author: **Ron Latz**
 Committee: **Judiciary And Public Safety**
 Date Completed: **2/9/2023 8:15:56 AM**
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note has been reviewed and meets the LBO requirements for compliance with the fiscal note Uniform Standards and Procedures. The Public Defense Board assumes that the proposed legislation may impact criminal cases; however, the fiscal impact cannot be determined due to a lack of data.

LBO Signature: Karen McKey **Date:** 2/9/2023 8:12:07 AM
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State Cost (Savings) Calculation Details

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Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
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Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

The bill creates the crime of organized retail theft, defined as anyone who steals retail merchandise and resells the merchandise, displays the merchandise for sale; returns the stolen merchandise to the merchant for anything of value; receives, purchases or possess merchandise knowingly or having reason to know the property was stole with the intent to resell, or aids advises hires, counsels, or conspires with another person to commit organized retail theft or someone who steals from a retail merchant within ten years of a conviction under this bill.

The bill creates penalties of a 15 year felony for theft in excess of \$5,000; a seven year felony for merchandise valued at more than \$1,000 and less than \$5,000 or the offense is committed within 10 years of two or more convictions, a gross misdemeanor of 2years for merchandise valued at \$500 to \$1,000 or a conviction within 10 years of a prior conviction, or a misdemeanor if the merchandise is valued at \$500 or less.

The bill allows aggregation of the offenses if the offense occurs within 6 months of each other. Under the bill if there is a reasonable foreseeable risk of bodily harm, the penalties can be enhanced.

The bill expands the definition of burglary in the third degree to a person who enters a building that is open to the public, with intent to steal while in the building, or enters a building

that is open to the public, and steals while in the building, either directly or as an accomplice.

The sentence for this is a five year felony if the person enters the building within one year after being told to leave the building and not return; and (2) the person has been convicted within the preceding five years for an offense under this section, section 256.98, 268.182, 609.24, 609.245, 609.52, 609.522, 609.53, 609.625,609.63, 609.631, or 609.821, or a statute from another state, the United States, or a foreign jurisdiction,

The bill expands burglary in the fourth degree to include anyone who enters a building that is open to the public with intent to steal while in the building, or enters a building that is open to the public and steals while in the building, either directly or as an accomplice if the person enters the building within one year of being told to leave the building and not return. The sentence for this is a misdemeanor.

Assumptions

Many of these cases/individuals would be charged out already and would be public defender clients. With a creation of a new statute it is difficult if not impossible to estimate what the impact might be. Based on public defender experience in this area, the bill would impact most retail theft.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

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Fiscal Note

2023-2024 Legislative Session

SF893 - 0 - Organized Retail Theft

Chief Author: **Ron Latz**
 Committee: **Judiciary And Public Safety**
 Date Completed: **2/9/2023 8:15:56 AM**
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 2/8/2023 2:53:29 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

This bill adds a new statute, Minn. Stat. § 609.522, Organized Retail Theft, which establishes the penalties that apply to offenses where a person steals or fraudulently obtains retail merchandise from a retailer and resells or intends to resell it, advertises or displays it for sale, returns it to a retailer for anything of value, or steals retail merchandise within 5 years of a prior conviction under this section; receives, purchases, or possesses retail merchandise knowing or having reason to know the merchandise was stolen from a retailer and with intent to resell that merchandise; or possesses any device, gear, or instrument designed to assist in shoplifting or defeating an electronic surveillance system with intent to use the same to shoplift and commit theft.

The bill imposes a gross misdemeanor penalty if the value of the property is \$500 or less, and various felony penalties with imprisonment ranging from 2 to 15 years for higher value thefts. The bill allows for aggregation of the value of merchandise received by a defendant within a 6-month period. The bill also provides for enhanced penalties, increasing a gross misdemeanor to a felony and increasing the felony penalties, for any violation that creates a reasonably foreseeable risk of bodily harm to another.

The bill amends Minn. Stat. § 609.52 (Theft) at subdivision 3 to add a reference to section 609.522 to the list of qualifying prior offenses; amends Minn. Stat. § 609.527 (Identity Theft) to add a definition for financial institution and adds a new subdivision 8 authorizing a financial institution to release certain information to law enforcement or a prosecuting authority investigating an identity theft crime; amends Minn. Stat. § 609.582, subd. 3 (Third-degree Burglary) to provide that whoever enters certain public buildings and steals or with intent to steal either directly or as an accomplice within one year of being told to leave and having been previously convicted of certain offenses is guilty of third-degree burglary; and amends Minn. Stat. § 609.582, subd. 4 (Fourth-degree Burglary) to provide that whoever enters certain public buildings and steals or with intent to steal either directly or as an accomplice is guilty of fourth-degree burglary. The bill also amends Minn. Stat. § 626.15 governing execution and return of a search warrant to provide that a search warrant for a financial institution is valid for 30 days, with an option for a 30-day extension.

Assumptions

It is assumed that the provisions of this bill will not increase case filings as the conduct can already be charged as a crime under existing law. The bill only impacts the precise offense and level of offense that will be charged, and the sentence that applies and may be imposed for certain crimes. The bill will result in some offenses being charged as felony offenses rather than gross misdemeanor offenses; felony offenses require more judicial branch resources than non-felony offenses.

The Minnesota Sentencing Guidelines Commission assumes that one-third (33%) of the total theft of movable property cases under Minn. Stat. § 609.52, subd.2(a)(1) were from retailers (i.e., “shoplifting”) and half of those retail thefts (50%) were organized retail theft where the merchandise was stolen for resale or return and would qualify in the future as organized retail theft. For purposes of this fiscal note the judicial branch uses the same percent assumptions but uses all theft offenses as the baseline for calculating the potential impact to case filings.

Expenditure and/or Revenue Formula

Based on 3 years of judicial branch data, there are an average of 1,529 gross misdemeanor theft cases filed per year statewide. If one-third of those thefts were from retailers (510 cases), and if half of those constitute organized retail theft, the result is 255 cases statewide per year that may be charged as felony offenses under the provisions of this bill rather than gross misdemeanor offenses. An additional 255 felony theft cases statewide per year will require 28,560 minutes of judge time (112, which is the average number of judge minutes required for a felony property crime x 255 cases). That time will be offset by the elimination of 255 gross misdemeanor cases. Based on a 78,000 judge year in minutes, the bill will not require an additional judge FTE.

This bill is not anticipated to have a significant fiscal impact on the judicial branch as it will not increase case filing rates or measurably increase the judicial branch resources required to process these criminal cases.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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