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HOUSE BILL NO. 569

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 18, 2004)

(Patron Prior to Substitute—Albo [HB 569], [HB 571] and [HB 572] and Lingamfelter [HB 419])

A BILL to amend and reenact §§ 18.2-46.1, 18.2-46.3, 18.2-460 and 19.2-215.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 18.2 sections numbered 18.2-46.3:1 and 18.2-46.3:2, relating to crimes by gangs; definitions; recruitment; three strikes; forfeiture; obstruction of justice; multijurisdictional grand juries; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.1, 18.2-46.3, 18.2-460 and 19.2-215.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 4 of Title 18.2 sections numbered 18.2-46.3:1 and 18.2-46.3:2 as follows:

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"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 predicate criminal acts, (ii) which has an identifiable name or identifying sign or symbol, and (iii) whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity *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.*

"Pattern of criminal gang activity" means 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 predicate criminal acts (i) were not part of a common act, transaction or scheme or (ii) were committed by two or more persons who are members of, or belong to, the same criminal street gang.

"Predicate criminal act" means (i) an act of violence, (ii) any violation of §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or (iii) any violation of a local ordinance adopted pursuant to § 18.2-138.1.

§ 18.2-46.3. Recruitment of juveniles for criminal street gang; penalty.

A. Any person age eighteen years or older who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile another to actively participate in or become a member of what he knows to be a criminal street gang ~~shall be~~ is guilty of a Class 6 ~~felony~~ 1 misdemeanor. Any person age 18 years or older who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile to actively participate in or become a member of what he knows to be a criminal street gang is guilty of a Class 6 felony.

B. Any person who, in order to encourage an individual (a) to join a criminal street gang, (b) to remain as a participant in or a member of a criminal street gang, or (c) to submit to a demand made by a criminal street gang to commit a felony violation of Title 18.2, (i) uses force against the individual or a member of his family or household or (ii) threatens force against the individual or a member of his family or household, which threat would place any person in reasonable apprehension of death or bodily injury, is guilty of a Class 6 felony. The definition of "family or household member" set forth in § 16.1-228 applies to this section.

§ 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes.

Upon a felony conviction of § 18.2-46.2 or § 18.2-46.3, where it is alleged in the warrant, information or indictment on which a person is convicted that (i) such person has been previously convicted twice under any combination of § 18.2-46.2 or § 18.2-46.3, or of similar offenses under the law of any other jurisdiction, within 10 years of the third or subsequent offense, and (ii) each such offense occurred on different dates, such person is guilty of a Class 3 felony. Upon conviction of an offense under this section, the sentence of such person shall include a mandatory minimum term of imprisonment of 10 years, none of which may be suspended in whole or in part.

§ 18.2-46.3:2. Forfeiture.

All property, both personal and real, of any kind or character used in substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from, any conduct in violation of any provision of this article is subject to civil forfeiture to the Commonwealth. Further, all property, both personal and real, of any kind or character used or intended to be used in substantial connection with, during the course of, derived from, traceable

60 *to, or realized through, including any profit or interest derived from, criminal street gang member*
61 *recruitment as prohibited under § 18.2-46.3 is subject to civil forfeiture to the Commonwealth. The*
62 *forfeiture proceeding shall utilize the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and*
63 *the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article. The*
64 *application of one civil remedy under the article does not preclude the application of any other remedy,*
65 *civil or criminal, under this article or any other provision of the Code.*

66 § 18.2-460. Obstructing justice.

67 A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney
68 for the Commonwealth, witness or any law-enforcement officer in the performance of his duties as such
69 or fails or refuses without just cause to cease such obstruction when requested to do so by such judge,
70 magistrate, justice, juror, attorney for the Commonwealth, witness, or law-enforcement officer, he shall
71 be guilty of a Class 1 misdemeanor.

72 B. If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate,
73 justice, juror, attorney for the Commonwealth, witness, or any law-enforcement officer, lawfully engaged
74 in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be
75 deemed to be guilty of a Class 1 misdemeanor.

76 C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a
77 judge, magistrate, justice, juror, witness, or any law-enforcement officer, lawfully engaged in the
78 discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a
79 violation of or conspiracy to violate § 18.2-248 or § 18.2-248.1 (a) (3), (b) or (c), *or § 18.2-46.2 or*
80 *§ 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in*
81 *subsection C of § 17.1-805, he shall be guilty of a Class 5 felony.*

82 D. Any person who knowingly and willfully makes any materially false statement or representation
83 to a law-enforcement officer who is in the course of conducting an investigation of a crime by another
84 is guilty of a Class 1 misdemeanor.

85 § 19.2-215.1. Functions of a multijurisdiction grand jury.

86 The functions of a multijurisdiction grand jury are:

87 1. To investigate any condition that involves or tends to promote criminal violations of:

88 a. Title 10.1 for which punishment as a felony is authorized;

89 b. § 13.1-520;

90 c. §§ 18.2-47 and 18.2-48;

91 d. §§ 18.2-111 and 18.2-112;

92 e. Article 6 (§ 18.2-59 et seq.) of Chapter 4 of Title 18.2;

93 f. Article 7.1 (§ 18.2-152.1 et seq.) of Chapter 5 of Title 18.2;

94 g. Article 1 (§ 18.2-247 et seq.) and Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2;

95 h. Article 1 (§ 18.2-325 et seq.) and Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2,
96 Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or
97 otherwise affecting gaming or gambling activity;

98 i. § 18.2-434, when violations occur before a multijurisdiction grand jury;

99 j. Article 2 (§ 18.2-438 et seq.) and Article 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2;

100 k. § 18.2-460 for which punishment as a felony is authorized;

101 l. Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of Title 18.2;

102 m. Article 1 (§ 32.1-310 et seq.) of Chapter 9 of Title 32.1;

103 n. Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1;

104 o. Article 6 (§ 3.1-796.122 et seq.) of Chapter 27.4 of Title 3.1;

105 p. Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

106 q. *Article 2.1 (§ 18.2-46.1 et seq.) and Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of Title 18.2;*

107 and

108 r. Any other provision of law when such condition is discovered in the course of an investigation
109 that a multijurisdiction grand jury is otherwise authorized to undertake and to investigate any condition
110 that involves or tends to promote any attempt, solicitation or conspiracy to violate the laws enumerated
111 in this section.

112 2. To report evidence of any criminal offense enumerated in subdivision 1 to the attorney for the
113 Commonwealth or United States attorney of any jurisdiction where such offense could be prosecuted or
114 investigated and, when appropriate, to the Attorney General.

115 3. To consider bills of indictment prepared by a special counsel to determine whether there is
116 sufficient probable cause to return each such indictment as a "true bill." Only bills of indictment which
117 allege an offense enumerated in subdivision 1 may be submitted to a multijurisdiction grand jury.

118 4. The provisions of this section shall not abrogate the authority of an attorney for the
119 Commonwealth in a particular jurisdiction to determine the course of a prosecution in that jurisdiction.

120 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
121 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**

122 be determined for periods of imprisonment in state adult correctional facilities and cannot be
123 determined for periods of commitment to the custody of the Department of Juvenile Justice.