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SENATE BILL NO. 321

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Stolle)

Senate Amendments in [] — February 6, 2004

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, provided such acts were not part of a common act, transaction, or scheme.

"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 an act of violence, any violation of §§ 18.2-42, 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.2, 18.2-60, 18.2-67.4, 18.2-67.5, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, 18.2-255.2, 18.2-280, 18.2-282, 18.2-287.4, 18.2-308, 18.2-308.1 or § 18.2-405 or 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 guilty of a Class 1 misdemeanor. An offense under this subsection committed by a person 18 years of age or older against a juvenile is a Class 6 felony.

B. Any person who uses or threatens force against any person due to that person's or any other person's (i) refusal to actively participate in or become a member of a criminal street gang, (ii) withdrawal as a participant in or member of a criminal street gang, or (iii) refusal to submit to a demand made by a criminal street gang, is guilty of a Class 6 felony. An offense under this subsection committed by a person 18 years of age or older against a juvenile is a Class 5 felony.

§ 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 to, or realized through, including any profit or interest derived from, criminal street gang member recruitment is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall utilize the

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60 provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and the procedures specified therein shall
61 apply, *mutatis mutandis*, to all forfeitures under this article. The application of one civil remedy under
62 the article does not preclude the application of any other remedy, civil or criminal, under this article or
63 any other provision of the Code.

64 § 18.2-460. Obstructing justice.

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

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

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

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

83 § 19.2-215.1. Functions of a multijurisdiction grand jury.

84 The functions of a multijurisdiction grand jury are:

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

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

87 b. § 13.1-520;

88 c. §§ 18.2-47 and 18.2-48;

89 d. §§ 18.2-111 and 18.2-112;

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

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

92 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;

93 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,

94 Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or any other provision prohibiting, limiting, regulating, or
95 otherwise affecting gaming or gambling activity;

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

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

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

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

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

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

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

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

104 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;

105 and

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

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

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

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

118 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
119 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation [is \$**
120 **cannot be determined] for periods of imprisonment in state adult correctional facilities and [\$**
121 **cannot be determined] for periods of commitment to the custody of the Department of Juvenile**

122 Justice.