



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1149

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – McDonnell and McQuigg)

Date Submitted: 2/19/04

LD #: 04-1470260

Topic: Criminal street gang predicate crimes

Proposed Change:

The proposed legislation amends § 18.2-46.1 to revise the definition of a “predicate criminal act” associated with gang activity. The proposal expands the definition of a “predicate criminal act” beyond the violent, assault, trespass and vandalism crimes currently covered to include (1) any violation of § 18.2-46.3, (2) a second violation of subsection C or any violation of subsections H, H1, or H2 of § 18.2-248, and (3) a second or subsequent felony conviction for violation of § 18.2-248.1, 18.2-255, or 18.2-255.2. Of these, § 18.2-46.3 prohibits recruitment of juveniles for a criminal street gang and §§ 18.2-248 through 18.2-255.2 cover offenses relating to the manufacture, sale, or distribution of illegal drugs.

All of the crimes in Article 2.1 (Crimes by Gangs) of Title 18.2 were created by the 2000 session of the General Assembly and enacted in July of the same year.

Data Analysis:

Based on fiscal year (FY) 2001 and 2002 Local Inmate Data System (LIDS) data, four offenders held pre- or post-trial in jail were convicted of gang-related crimes under §§ 18.2-46.2 or 18.2-46.3. Of these four, one was convicted under § 18.2-46.3, a Class 6 felony involving recruiting juveniles to become members of a street gang; that person was given a local-responsible (jail) sentence of 12 months. The other three were convicted under § 18.2-46.2, a Class 5 felony involving participation in a criminal act to benefit the street gang; one was sentenced to 12 months in jail, the other two were given state-responsible sentences of one and two years. There were no cases in the available data involving participation in a criminal act to benefit a street gang that has juvenile members (a Class 4 felony).

Impact of Proposed Legislation:

The proposed legislation expands the types of predicate crimes that trigger penalties delineated by §§ 18.2-46.2 and 18.2-46.3. The impact of the proposal cannot be determined; nonetheless, the number of offenders affected by the proposed legislation is likely to be negligible over the six-year

window specified in § 30-19.1:4 for legislative impact statements, as only four offenders were convicted under Virginia's gang statutes in the first two years following enactment.

The anticipated impact on community corrections programs is unknown because sufficient data are not available to calculate the impact on such programs; however, any impact is also expected to be negligible.

Convictions under this article are not covered by the guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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