

## Department of Planning and Budget 2004 Fiscal Impact Statement

**1. Bill Number** HB 569

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

**2. Patron** Albo

**3. Committee** Passed both houses

**4. Title** Gang membership and gang-related offenses

**5. Summary/Purpose:**

Current law makes participation in a criminal act to benefit a criminal street gang a separate Class 5 felony offense. The recruitment of a juvenile to join a criminal street gang is also a felony offense. The law sets out the following definitions:

*“Criminal street gang”*—a group of three or more persons who meet the following criteria:

- Have as one of its primary objectives or activities the commission of “predicate criminal acts”;
- Have an identifying name or symbol; and
- Engage in a “pattern of criminal gang activity.”

*“Pattern of criminal gang activity”*—the commission of two or more “predicate criminal acts” of which at least one is an act of violence.

*“Predicate criminal act”*—an act of violence (as defined by statute) or any one of several specified assault, trespass, and vandalism offenses.

The proposed legislation would make the following changes in the provisions related to gang activity:

- Consolidate the definitions of “criminal street gang” and “pattern of criminal gang activity”;
- Make it a Class 1 misdemeanor to recruit anyone to participate or become a member of a gang (currently, it is an offense only to recruit juveniles to become gang members);
- Make it a Class 6 felony to use force or threaten to use force to get someone to join a gang or remain a member of a gang;
- Make a third or subsequent offense, within a ten-year period, of (i) participating in a criminal act to benefit a gang, (ii) of trying to recruit someone to join a gang, or (iii) of using force to get someone to join or remain in a gang, a Class 3 felony; and
- Make it a Class 5 felony to use threats or otherwise obstruct justice in a case involving gang-related offenses.

**6. Fiscal Impact Estimates are:** Final. See Item 8.

**7. Budget amendment necessary:** None.

**8. Fiscal implications:**

The Virginia Criminal Sentencing Commission has stated that the proposed legislation may result in additional persons committed to the Commonwealth's correctional facilities. However, because the legislation would create several new offenses and the Commission does not sufficient information to project the number of persons who might be convicted for these offenses, the impact on prison bed space cannot be determined.

Potentially, this legislation could have a significant impact on prison bed space. The gang-related statutes were enacted only in 2000. Therefore, there has not been enough time elapsed since their enactment to reasonably project how many offenders might be convicted under them. Certainly, not enough time has passed to enable one to project how many offenders might be convicted of a third or subsequent gang-related offense within a ten-year period and thus subject to a Class 3 felony sentence (5-20 years). Furthermore, because of their newness, prosecutors and law-enforcement officials have probably not utilized those provisions to their fullest potential.

**9. Specific agency or political subdivisions affected:** Department of Corrections

**10. Technical amendment necessary:** None.

**11. Other comments:** There are several bills passed by the General Assembly that amend the sections relating to criminal street gangs—HB 569, 760, 801, 1012, and 1149 and SB 321. (HB 569 and SB 321 are identical.) To get a truer sense of the potential impact of all these bills, including the one under consideration here (HB 569), they should be considered as a whole, rather than in isolation.

**Date:** 03/24/04 / rwh

**Document:** G:\LEGIS\Fis-04\HB569ER.Doc Dick Hall-Sizemore

cc: Secretary of Finance  
Secretary of Public Safety