



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 569

Amendment in the Nature of a Substitute (Patron – Albo)

Date Submitted: 1/29/04

LD #: 04-0205204

Topic: Recruitment of members for a criminal street gang

Proposed Change:

This proposal amends § 18.2-46.3 to create two new crimes related to gangs. First, the proposal makes it a Class 1 misdemeanor for any person (regardless of age) to solicit, invite, encourage or otherwise cause or attempt to cause another to actively participate in, or become a member of, a criminal street gang. Second, the proposal makes it a Class 6 felony for any person to use or threaten force against another person (or a member of that person's family or household) because he refuses to become a member, remain a member, or submit to a demand of a gang.

Currently, § 18.2-46.3 makes it a Class 6 felony for a person age 18 or more to recruit or attempt to recruit a juvenile to actively participate in, or become a member of, a criminal street gang. The penalty for the current offense remains unchanged in the proposal.

Data Analysis:

Based on fiscal year (FY) 2001 Pre/Post-Sentence Investigation (PSI) data, there were no convictions for violations of § 18.2-46.3 either as the primary (most serious) offense or an additional offense in a sentencing event. However, 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.

Convictions under this article are not covered by the guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

By creating two new Class 6 felony crimes, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Because the proposal criminalizes certain behavior not explicitly defined in current *Code*, data are not available to determine the number of cases that may be affected by the proposed legislation. Therefore, the impact of the proposal cannot be determined.

No adjustment to the sentencing guidelines would be necessary under the proposal.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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