



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 572

(Patron – Albo)

Date Submitted: 1/13/04

LD #: 04-0190104

Topic: Crimes by gangs

Proposed Change:

This proposal amends § 18.2-46.1 to revise the definitions of “criminal street gang” and “predicate criminal act” associated with gang activity. The proposal modifies the definition of “criminal street gang” by adding language specifying the nature of criminal gang activity. The proposal differs from existing *Code* by removing the requirement that at least one of the gang’s criminal acts be a crime of violence. Similarly, the proposal expands the definition of a “predicate criminal act” for gang activity beyond the violent, assault, trespass and vandalism crimes currently covered to include any felony crime as well as certain misdemeanors.

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 and 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 definition of a criminal street gang and the types of predicate crimes that trigger penalties delineated by §§ 18.2-46.2 and 18.2-46.3. Application of observed sentences for the same crimes, but with an expanded number of offenders to whom the sentences would apply, indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately 55 beds.

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.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a need for approximately 15 more jail beds statewide, for a cost to the state of \$160,550 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional statewide cost borne by the localities of \$109,255 for the same beds.

The anticipated impact on community corrections programs is unknown because sufficient data are not available to calculate the impact on such programs. However, it is expected to increase the need for probation services from both state and local programs.

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.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

| FY05 | FY06 | FY07 | FY08 | FY09 | FY10 |
|------|------|------|------|------|------|
| 30 | 52 | 55 | 55 | 55 | 55 |

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

| FY05 | FY06 | FY07 | FY08 | FY09 | FY10 |
|------|------|------|------|------|------|
| 14 | 15 | 15 | 15 | 15 | 15 |

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,252,379 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.
3. The estimated number of offenders that would be sentenced under the proposed Article 2.1 of Title 18.2 was adjusted to reflect:
 - a. the change in the number of offenders with the requisite predicate crimes. Based on FY2000 and FY2001 PSI data, overall, there were 2,620 offenders sentenced for a crime that is currently among the predicate crimes, and there were 52,706 offenders sentenced for crimes that will become a predicate crime under the proposal. This indicates that the number of offenders affected under the proposal will be approximately twenty times the number currently affected.
 - b. that the impact of existing laws (adopted in 2000) has not been fully felt yet. The Commission adjusted the number of affected offenders based on Commission analyses of case processing time for violent felons sentenced to prison and jail during the most recent two years. For example, of the 5,939 violent offenders admitted to prison during those two years, only 3,755 were estimated to have been sentenced for a crime committed on or after July 1, 2000. To adjust for the incomplete data, it was assumed that every offender

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observed during the first two years of implementation, would represent 1.66 offenders once the existing law were fully implemented; for jail-bound offenders, the comparable number was 1.58, based on 1,140 total admissions, of which 689 were estimated to have been for crimes committed on or after July 1, 2000.

4. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
5. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002. For violent offenses, this rate was 9.04%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.

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