



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 760

(Patron – Hurt)

Date Submitted: 12/8/03

LD #: 04-0163104

Topic: Third or subsequent conviction of criminal street gang crimes

Proposed Change:

This proposal adds § 18.2-46.3:1 to make a third conviction for gang-related crimes under § 18.2-46.2 or § 18.2-46.3 (or similar offenses in other jurisdictions) within ten years a Class 3 felony. A mandatory minimum of 10 years incarceration, which cannot be suspended in whole or in part, would apply to those convicted under this statute.

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 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 recruitment of 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).

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 a 10-year mandatory minimum for third or subsequent convictions of §§ 18.2-46.2, 18.2-46.3, or similar crimes, the proposed legislation may increase state-responsible (prison) bed space needs of the Commonwealth. Data are not available on the number of criminal cases that may result should the proposal be adopted; therefore, the impact of the proposal cannot be determined. Nonetheless, the number of offenders affected by the proposed legislation is likely to be small over the six-year window specified in § 30-19.1:4 for legislative impact statements, since only four offenders

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.

were convicted under Virginia's gang statutes in the first two years following enactment. However, the 10-year mandatory term required by the proposal is substantially longer than the sentences given to date for convictions under the state's gang provisions.

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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