



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 321

(Patron – Stolle)

Date Submitted: 1/14/04

LD #: 04-0191104

Topic: Crimes by gangs

Proposed Change:

This proposal amends §§ 18.2-46.1, 18.2-46.3 and 18.2-460 and adds §§ 18.2-46.3:1 and 18.2-46.3:2 to Article 2.1 of Chapter 4 of Title 18.2 of the *Code of Virginia* relating to crimes by gangs. The proposed § 18.2-46.1 revises the definitions of “criminal street gang” and “predicate criminal act” associated with gang activity. It 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.

Subsection A of the proposed § 18.2-46.3 would make it a Class 1 misdemeanor for any person to recruit another person to participate in or become a member of a criminal street gang, an offense that is not defined under current *Code*. Under both the existing and proposed versions of the statute, such an offense committed by a person 18 years of age or older against a juvenile is punishable as a Class 6 felony. Under subsection B of the proposed § 18.2-46.3, any person who uses or threatens to use force against another person due to that or another person’s (1) refusal to join, (2) withdrawal from, or (3) refusal to submit to a demand from a criminal street gang is guilty of a Class 6 felony. However, an offense under this subsection committed by a person 18 years of age or older against a juvenile is punishable as a Class 5 felony. These two felonies would be new to the *Code*.

According to the proposed § 18.2-46.3:1, any person receiving a third or subsequent felony conviction within 10 years for a criminal street gang offense under §§ 18.2-46.2 or 18.2-46.3 is guilty of a Class 3 felony, and subject to a mandatory minimum term of imprisonment of 10 years. The proposed § 18.2-46.3:2 declares that all personal and real property derived from or realized through conduct in violation of Article 2.1 (especially criminal street gang member recruitment) is subject to civil forfeiture to the Commonwealth.

The proposal also amends § 18.2-460 to increase the penalty for obstruction of justice from a Class 1 misdemeanor to a Class 6 felony. The penalty for obstruction of justice without threats or force was recently elevated from a Class 2 misdemeanor to a Class 1 misdemeanor; this change was enacted by the 2002 General Assembly. The proposal also expands the provision that makes it a Class 5 felony to

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intimidate public officials by threats of bodily harm or force or to otherwise obstruct justice in any case involving a violent felony offense or drug offense specified in §§ 18.2-248 or 18.2-248.1 (a, 3), (b) or (c). Under the proposal, this list of offenses is expanded to include gang-related crimes defined in §§ 18.2-46.2 and 18.2-46.3.

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.

Current Practice:

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).

According to the FY2001 and FY2002 LIDS data, 1,467 offenders held pre- or post-trial in jail were convicted of obstruction of justice without threats or force under § 18.2-460(A) (see *Background Sentencing Information* below). Of these, 11% received probation, while 88% were sentenced to local-responsible (jail) terms with a median sentence of 30 days. The remaining offenders (1%), convicted of additional charges, received state-responsible (prison) terms. Data reflecting the enhanced penalties for this offense are not yet available. Another 813 offenders were convicted of obstruction of justice by threats or force under § 18.2-460(B). Most of these (92%) were sentenced to terms of incarceration; however, 91% were sentenced to jail terms, with a median sentence of 30 days.

According to FY2000 and FY2001 Pre/Post-Sentencing Investigation (PSI) data, 12 offenders were convicted of felony violations of § 18.2-460(C) as the primary (most serious) offense in a sentencing event. Of these, 58% received probation, 17% received jail terms, and 25% were sentenced to prison terms with a median sentence of two years.

Background Sentencing Information

| Misdemeanor Crime | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median Local-Responsible Sentence |
|---|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Obstruct justice without threats or force (§ 18.2-460(A)) | 1467 | 11% | 88% | 1% | 30 days |
| Obstruct justice by threats or force (§ 18.2-460(B)) | 813 | 8% | 91% | 1% | 30 days |

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.
Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

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| Felony Crime | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median State-Responsible Sentence |
|--|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Intimidation of police, etc. by threat of bodily harm (§18.2-460(C)) | 12 | 58% | 17% | 25% | 2.0 yrs. |

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation is likely to increase the state-responsible (prison) bed space needs of the Commonwealth. The proposal creates several new crimes, one of which carries a mandatory minimum provision, and increases the penalty for obstruction of justice with or without threats or force from a Class 1 misdemeanor to a Class 6 felony. Furthermore, it extends the Class 5 felony penalty for intimidation of public officials to cases involving gang-related crimes. The proposal also expands 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 over the next six years, the net high state-responsible impact would be approximately 87 beds.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a need for approximately 25 more jail beds statewide, for a cost to the state of \$266,978 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional statewide cost borne by the localities of \$181,680 for the same beds.

The anticipated impact on community corrections programs is unknown because sufficient data is 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 these sections 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. 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 |
|------|------|------|------|------|------|
| 39 | 70 | 77 | 81 | 83 | 87 |

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

| FY05 | FY06 | FY07 | FY08 | FY09 | FY10 |
|------|------|------|------|------|------|
| 22 | 25 | 25 | 25 | 25 | 25 |

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,958,151 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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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, 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 almost twenty times the number currently affected.
 - b. that the impact of existing law (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 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 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 nonviolent offenses the rate was 9.54%. 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%. Release dates for local-responsible misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 to local jails; this rate was 39.66%.
3. Projected sentences for persons convicted of obstruction under § 18.2-460 (A) or (B) were randomly drawn from sentences for all Class 6 felony stalking offense and crimes involving threats. The projected sentence was applied only if it exceeded the actual sentence in the case.

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