



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 321

Engrossed Substitute with Amendments (Patron Prior to Substitute – Stolle)

Date Submitted: 1/29/04

LD #: 04-0961820

Topic: Crimes by gangs

Proposed Change:

This proposal amends §§ 18.2-46.1, 18.2-46.3, 18.2-460 and 19.2-215.1 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 offenses currently covered to include certain other felony and misdemeanor offenses; the proposed additions include, but are not limited to, reckless handling, discharge, and brandishing of firearms.

Under § 18.2-46.3, the proposal creates a Class 1 misdemeanor prohibiting any person from recruiting another person to participate in or become a member of a criminal street gang. Under both the existing and proposed versions of the statute, a person 18 years of age or older who recruits a juvenile is guilty of a Class 6 felony. Under the proposal, 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; the proposal increases the penalty to a Class 5 felony if the offense is committed by a person 18 years of age or older against a juvenile. 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 amends subsection C of § 18.2-460 to expand the provision making it a Class 5 felony to 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

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§§ 18.2-46.2 and 18.2-46.3. The proposal also amends § 19.2-215.1 by empowering multijurisdictional grand juries to investigate any condition that involves or tends to promote criminal violations of Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2.

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 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 (see *Background Sentencing Information* below). 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

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 may increase the state-responsible (prison) bed space needs of the Commonwealth. The proposal expands the types of predicate crimes that trigger penalties for gang activity delineated by §§ 18.2-46.2 and 18.2-46.3; the impact of this aspect of the proposal is expected to be less than one prison bed by FY2010. Furthermore, the proposal creates several new crimes, one of which carries a mandatory minimum provision, and it extends the Class 5 felony penalty for intimidation of public officials to cases involving gang-related crimes. For these elements of the proposal, the impact on the state-responsible (prison) bed space needs of the Commonwealth cannot be determined.

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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.

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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