

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 764

An Act to amend and reenact §§ 18.2-46.1, 19.2-11.2, 48-7, 48-8, and 48-9 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 18.2 a section numbered 18.2-46.3:3; relating to criminal street gangs; penalties.

[S 1217]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.1, 19.2-11.2, 48-7, 48-8, and 48-9 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 4 of Title 18.2 a section numbered 18.2-46.3:3 as follows:

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of §§ 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, subsection H, H 1 or H 2 of § 18.2-248, §§ 18.2-248.01, 18.2-255, ~~or~~ § 18.2-255.2, 18.2-286.1, 18.2-287.4, or 18.2-308.1; (iii) a second or subsequent felony violation of subsection C of § 18.2-248 or of § 18.2-248.1; ~~or~~ (iv) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (v) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

§ 18.2-46.3:3. *Enhanced punishment for gang activity taking place in a school zone; penalties.*

Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; or (iii) on any school bus as defined in § 46.2-100 is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years. A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

Upon request of any witness in a criminal prosecution under § 18.2-46.2 or 18.2-46.3, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

§ 48-7. Houses and contents are nuisances subject to abatement.

~~Whoever~~ Any person who shall knowingly erect, establish, continue, maintain, use, own, occupy or

lease any building, erection, ~~or~~ place, *or area* used for the purpose of lewdness, assignation, ~~or~~ prostitution, *or activities of a criminal street gang, as criminal street gang is defined in § 18.2-46.1* in the Commonwealth is guilty of a nuisance, and the building, erection, ~~or~~ place, *or area*, the ground itself, in or upon which such lewdness, assignation, ~~or~~ prostitution, *or criminal street gang activity* is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

§ 48-8. How nuisance enjoined.

Whenever a nuisance is kept, maintained, or exists as defined in § 48-7 the attorney for the Commonwealth or the Attorney General of the Commonwealth, or, *with the exception of a suit brought against a criminal street gang as defined in § 18.2-46.1*, any responsible citizen of the Commonwealth, may maintain a suit in equity in the name of the Commonwealth, upon the relation of such attorney for the Commonwealth, Attorney General, or citizen, to perpetually enjoin such nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which such nuisance exists. In such suit the court, or a judge in vacation, shall, upon the presentation of a bill therefor alleging that the nuisance complained of exists, and sworn to by two reputable citizens, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise as the complainant may elect, that the nuisance complained of exists, unless the court or judge by previous order shall have directed the form and manner in which the evidence shall be presented. Three days' notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. *A suit brought to enjoin criminal street gang activity may be brought against the criminal street gang as defined in § 18.2-46.1, as an unincorporated association and in the name by which it is commonly known.*

§ 48-9. When case to be tried; dismissal; substitution of complainant; costs.

The suit when ready for hearing shall be tried at the first term of court, unless good cause for a continuance shall be shown, and in such suit oral evidence given in court of the general reputation of the place *or criminal street gang as defined in § 18.2-46.1* shall be admissible for the purpose of proving or tending to prove the existence of such nuisance. If the complaint is filed by a citizen it shall not be dismissed by him before final hearing, except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the attorney for the Commonwealth, or the Attorney General of the Commonwealth, in writing or in open court. In any case, if the court is of the opinion that the suit ought not to be dismissed, it may direct the attorney for the Commonwealth to prosecute it to judgment; and if the suit is continued more than one term of court, any citizen or the attorney for the Commonwealth may be substituted for the complaining party and prosecute such suit to judgment. If the suit is brought by a citizen, and the court finds there was no reasonable ground or cause for said suit, the costs may be taxed against such citizen.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. 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.