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HOUSE BILL NO. 2217

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 3, 2005)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 18.2-46.1, 18.2-46.3:1, 19.2-11.2, 48-7, 48-8, 48-9 and 48-10 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.1, 18.2-46.3:1, 19.2-11.2, 48-7, 48-8, 48-9 and 48-10 of the Code of Virginia are amended and reenacted 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 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.

§ 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes; penalties.

Upon a felony conviction of § 18.2-46.2, ~~or~~ § 18.2-46.3, or 18.2-46.3:3, where it is alleged in the warrant, information or indictment on which a person is convicted that (i) such person has been previously convicted twice under any combination of § 18.2-46.2, ~~or~~ § 18.2-46.3, or 18.2-46.3:3, within 10 years of the third or subsequent offense, and (ii) each such offense occurred on different dates, such person is guilty of a Class 3 felony.

§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a school etc. 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 5 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 4 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 4 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.

A. Upon request of any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, 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 victim or a member of the 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 (iv) permitted by the court for good cause.

B. 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

60 good cause.

61 *C. No attorney or other person provided such information pursuant to this subsection, shall disclose*
62 *or permit to be disclosed to a defendant charged with a violation of § 18.2-46.2, 18.2-46.3 or*
63 *18.2-46.3:3 or any other person, the residential address, telephone number or place of employment of a*
64 *victim or witness whose name is disclosed to the attorney by the attorney for the Commonwealth, unless*
65 *specifically permitted to do so by the court after a hearing and a showing of good cause, except to*
66 *persons employed by the attorney or to persons appointed by the court to assist in the preparation of a*
67 *defendant's case if that disclosure is required for that preparation. Persons provided this information by*
68 *an attorney shall be informed by the attorney that further dissemination of the information, except as*
69 *provided by this section, is prohibited. If the defendant is acting as his or her own attorney, the court*
70 *shall endeavor to protect the address, telephone number, or place of employment of a victim or witness*
71 *by providing for contact only through the attorney for the Commonwealth or by imposing other*
72 *reasonable restrictions, absent a showing of good cause as determined by the court. Any person who*
73 *willfully violates this section shall be guilty of a Class 1 misdemeanor.*

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

76 § 48-7. Houses and contents are nuisances subject to abatement.

77 Who ever shall knowingly erect, establish, continue, maintain, use, own, occupy or lease any
78 building, erection, ~~or~~ place, *or area* used for the purpose of lewdness, assignation, ~~or~~ prostitution, *or*
79 *criminal street gang activity* in the Commonwealth is guilty of a nuisance, and the building, erection, ~~or~~
80 place, *or area* the ground itself, in or upon which such lewdness, assignation, ~~or~~ prostitution, *or*
81 *criminal street gang activity* is conducted, permitted, or carried on, continued, or exists, and the
82 furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined
83 and abated as hereinafter provided.

84 § 48-8. How nuisance enjoined.

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

102 § 48-9. When case to be tried; dismissal; substitution of complainant; costs.

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

115 § 48-10. Contempt proceedings.

116 In case of the violation of any *temporary or perpetual* injunction granted to restrain such nuisance,
117 the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceeding
118 shall be commenced by filing with the clerk of the court an information, under oath, setting out the
119 alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue,
120 under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at
121 any stage of the proceeding demand the production and oral examination of the witnesses.

122 2. That the provisions of this act may result in a net increase in periods of imprisonment or
123 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
124 be determined for periods of imprisonment in state adult correctional facilities and cannot be
125 determined for periods of commitment to the custody of the Department of Juvenile Justice.