



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2217

(Patron – Albo)

Date Submitted: 1/10/05

LD #: 04-7996104

Topic: Criminal street gang predicate crimes; gang activity in school zones

Proposed Change:

The proposed legislation amends § 18.2-46.1 to expand the definition of a “predicate criminal act” associated with gang activity beyond the crimes currently covered to include (1) any violation of §§ 18.2-42, 18.2-56.1, 18.2-59, 18.2-95, 18.2-286.1, 18.2-287.4, or 18.2-308.1, and (2) any offense similar to those currently covered or to be included, under the laws of another state or territory of the United States, the District of Columbia, or the United States.

In addition, the proposal adds § 18.2-46.3:3 to the *Code* to:

- Add a mandatory, minimum sentence of two years for gang participation or gang activity (as defined in § 18.2-46.2) taking place on or within 1,000 of school property, a school bus stop, or state hospital or on the property of a public community center or library;
- Increase the penalties for recruiting gang members (§ 18.2-46.3(A)) on any of the properties described above from a Class 6 to a Class 4 felony when a person over the age 18 recruits a minor, and from a Class 1 misdemeanor to a Class 5 felony in other cases; and
- Increase the penalty for using or threatening to use force to encourage another person to become or remain a gang member (§ 18.2-46.3(B)) when the act is committed on any of the properties described above from a Class 6 to a Class 4 felony.

The proposal amends § 18.2-46.3:1 to add the proposed § 18.2-46.3:3 to the list of gang crimes that, upon a third or subsequent conviction, are punishable as a Class 3 felony.

The proposal also amends § 19.2-11.2 to specify that no attorney or other person may disclose to a defendant charged with a gang-related offense (in violation of §§ 18.2-46.2, 18.2-46.3, or 18.2-46.3:3) the residential address, telephone number or place of employment of a victim or witness in the case unless specifically permitted to do so by the court. Violation of this section is punishable as a Class 1 misdemeanor.

The proposal contains several provisions allowing for civil actions against a criminal street gang and its members. The proposed § 48-7.1 declares criminal street gangs a public nuisance subject to abatement and provides that suits may be filed against the gang as an unincorporated association and in the name by which it is commonly known, or against any known or unknown

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.

member. The proposed § 48-8 stipulates that when such a suit is brought, notice of such hearing shall be effective on the gang and all its members. According to the proposed § 48-9, evidence given in court of the general reputation of the gang shall be admissible for the purpose of proving the existence of a public nuisance. The proposed § 48-10 allows for contempt proceedings in case of the violation of any temporary or perpetual injunction granted to restrain such a public nuisance. By the amended § 48-11, a party found guilty of contempt under the provisions of § 48-10 shall be punished by a fine of not less than \$100 nor more than \$2,500 and/or by imprisonment in jail not less than three months nor more than six months with, in cases involving a criminal street gang, a mandatory, minimum jail term of 10 days.

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. Additions to the definition of a “predicate criminal act” and other revisions were made by the 2004 General Assembly.

Analysis:

Based on fiscal year (FY) 2003 and 2004 Local Inmate Data System (LIDS) data, a total of 25 offenders held pre- or post-trial in jail were convicted of gang-related crimes under §§ 18.2-46.2 or 18.2-46.3.

In 7 of the 25 cases, offenders were convicted under § 18.2-46.3 for recruiting juveniles to become members of a street gang, a Class 6 felony. The majority (86%) received a state-responsible (prison) term (median sentence of two years).

In 12 of the 25 cases, offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit the street gang, a Class 5 felony. Most (83%) were sentenced to prison (median sentence of nearly three years).

In the remaining 6 of the 25 cases, offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a street gang that has juvenile members, a Class 4 felony. The largest share (67%) were committed to prison with a median sentence of 4.3 years. The other 33% received probation without active incarceration.

Impact of Proposed Legislation:

The proposal is expected to increase the correctional bed space needs of the Commonwealth. First, the proposed legislation 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 existing crimes, but with an expanded number of offenders to whom the sentences would apply, indicates that the net high state-responsible (prison) impact for this aspect of the proposal would be approximately six beds.

This aspect of the proposal is also expected to have a small impact on local-responsible (jail) beds; based on the methodology, there will be a need for an additional partial jail bed statewide, for a cost to the state of \$1,221 (using FY2003 jail inmate costs) for reimbursement to localities.

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.

There would be an additional statewide cost borne by the localities of \$1,014 for the same partial bed.

Second, the proposed § 18.2-46.3:3 adds a mandatory, minimum penalty and raises the punishment for gang activity in certain locations, such as schools. For this aspect of the proposal, data are not sufficiently detailed to identify how many gang-related violations take place around a school or other location specified by the proposal.

Third, the amended § 19.2-11.2 creates a new misdemeanor crime. The number of potential violations cannot be estimated with available data.

While the overall impact of the proposed legislation cannot be determined, the effect of expanding the predicate crimes related to gang activity can be estimated, as noted above. This figure represents a minimum impact of this proposal and does not account for all elements contained therein. Moreover, the impact on community corrections programs is unknown because sufficient data are not available to calculate the impact on such programs. However, it may increase the need for probation services from both state and local programs.

Convictions under this article are not covered by Virginia's sentencing guidelines as the primary offense (or most serious) 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.

The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase Juvenile Correctional Center (JCC) bed space needs.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY06	FY07	FY08	FY09	FY10	FY11
1	2	4	5	6	6

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$143,105 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.

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 2004.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2004. 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.

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.

3. The estimated number of offenders that would be sentenced under the proposed Article 2.1 of Title 18.2 was adjusted to reflect the change in the number of offenders with the requisite predicate crimes. Based on FY2002 and FY2003 PSI data and FY2003 and FY2004 LIDS data, there were 19,765 offenders sentenced for a crime that is currently among the predicate crimes, and there were 5,528 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 approximately 1.3 times the number currently affected.
4. Cost per prison bed was assumed to be \$22,854 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 FY2003 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$27.48 per day or \$10,037 per year. The local cost was calculated by using the daily expenditure cost of \$54.51 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 \$22.83 per day or \$8,338 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, 2005, is phased in to account for case processing time.
2. The state-responsible 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, 2003. For violent offenses, this rate was 10.13%. 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%.

gang05_7996