



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2217 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Albo)**

Date Submitted: 2/3/2005

LD #: 05-8025204

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, 18.2-286.1, 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 feet of school property, or on a school bus as defined in § 46.2-100;
- 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 declares that any building, place or area used for the purpose of gang activity in violation of § 18.2-46.2 is a public nuisance subject to abatement.

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.

Furthermore, the proposed § 48-8 provides that suits may be brought against the gang as an unincorporated association and in the name by which it is commonly known when service is made on any member. 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.

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 may 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. However, 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 negligible (less than one-half of a prison 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.

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.

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. The estimate 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.

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.

gang12_8025