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SENATE BILL NO. 183

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 18.2-46.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-282.1, relating to brandishing a machete and doing so as a gang member; penalty.

Patron—Puller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-46.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-282.1 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, 18.2-255.2, *18.2-282.1*, 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; (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.

§ 18.2-282.1. Holding, pointing or brandishing a machete; penalty.

A. It shall be unlawful for any person to point, hold or brandish any machete in such manner as to reasonably induce fear in the mind of another or hold a machete in a public place in such a manner as to reasonably induce fear in the mind of another of being cut, maimed, or injured. However, this section shall not apply to any person engaged in excusable or justifiable self-defense. Persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor or, if the violation occurs upon any public, private, or religious elementary, middle or high school, including buildings and grounds or upon public property within 1,000 feet of such school property, he shall be guilty of a Class 6 felony.

B. Any police officer in the performance of his duty, in making an arrest under the provisions of this section, shall not be civilly liable in damages for injuries or death resulting to the person being arrested if he had reason to believe that the person being arrested was pointing, holding, or brandishing such machete with intent to induce fear in the mind of another.

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.