



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 588

#### *Amendment in the Nature of a Substitute*

#### *(Patron Prior to Substitute – Watts)*

**LD#:** 06-1366544

**Date:** 1/24/2006

**Topic:** Brandishing a machete

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
Cannot be determined
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### **Summary of Proposed Legislation:**

The proposed legislation amends § 18.2-46.1 and adds § 18.2-282.1 relating to brandishing a machete and doing so as a gang member. The proposal adds § 18.2-282.1 making it unlawful for any person to point, hold or brandish a machete in a public place with the intent to intimidate any person or group of persons. However, this section shall not apply to any person engaged in justifiable self-defense. Any person violating this section shall be guilty of a Class 1 misdemeanor; however, if the violation occurs upon the property of any public or private school or upon public property within 1,000 feet of such school property, the offender shall be guilty of a Class 6 felony.

The proposal also amends § 18.2-46.1 to add brandishing a machete to the list of “predicate criminal acts” associated with gang activity. This expansion affects a number of offenses covered under §§ 18.2-46.2 and 18.2-46.3 of the *Code of Virginia*.

- Under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 5 felony. If the offender is eighteen years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony.
- Under subsection A of § 18.2-46.3, any person who solicits or recruits another to participate in or become a member of a criminal street gang is guilty of a Class 1 misdemeanor. Any person age 18 years or older who attempts to recruit a juvenile is guilty of a Class 6 felony.
- Under subsection B of § 18.2-46.3, any person who uses threats or force to encourage another person to become or remain a gang member is guilty of a Class 6 felony.
- In addition, § 18.2-46.3:3 provides enhanced penalties for violations of §§ 18.2-46.2 and 18.2-46.3 occurring on or within 1,000 feet of school property, or on a school bus as defined in § 46.2-100.

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**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 seven 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. Nearly all (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 six 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. A majority (67%) were committed to prison with a median sentence of 4.3 years. The other 33% received no active term of incarceration.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal may have an impact on the correctional bed space needs of the Commonwealth. The proposed legislation creates two new offenses and expands the types of predicate crimes that trigger penalties delineated by §§ 18.2-46.2 and 18.2-46.3. However, the databases available to the Commission are insufficiently detailed to identify the number of new crimes that would accrue under the proposed § 18.2-282.1. Therefore, the resulting impact on state-responsible (prison) beds cannot be determined.

**Local adult correctional facilities.** The proposal may have an impact on local-responsible (jail) bed space; however, the impact cannot be determined.

**Adult community corrections programs.** The impact on adult community corrections programs cannot be determined.

**Virginia's sentencing guidelines.** Convictions under Article 2.1 of Title 18.2 and new convictions under the proposed § 18.2-282.1 would not be covered by Virginia's sentencing guidelines as the primary offense (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.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the effect of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the effect of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**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.**