



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 136

(Patron – O'Brien)

LD#: 06-0796784

Date: 1/6/2006

Topic: Criminal street gang predicate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$193,789 (8 beds)
- **Local Adult Correctional Facilities:**
\$1,470 (.15 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal 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 any violation of §§ 18.2-95 or 18.2-308. 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.

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 and 2005 General Assemblies.

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.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase the correctional bed space needs of the Commonwealth. 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 would be at least eight beds by 2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
2	4	6	7	7	8

Local adult correctional facilities. The proposal is expected to have an impact on local-responsible (jail) bed space; the impact is estimated to be .15 bed statewide (cost of \$1,470 to the state, \$1,355 to the localities).

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 are not 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 the bed space needs of juvenile correctional centers (JCC) 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$193,789 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 2005.
2. New cases representing state-responsible sentences were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in July 2005. 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.
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 11,116 offenders (under the age of 30) sentenced for a crime that is currently among the predicate crimes, and there were 3,604 offenders (under the age of 30) sentenced for crimes that will become a predicate crime under the proposal. The anticipated number of offenders was derived from the proportion of new and current predicate crimes.
4. Cost per prison bed was assumed to be \$23,966 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 FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 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 \$23.99 per day or \$8,763 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, 2006, 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, 2004. For violent offenses, this rate was 10.14%. 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%.

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