

Department of Planning and Budget 2006 Fiscal Impact Statement

1. Bill Number SB 183

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron Puller

3. Committee Passed both houses

4. Title Brandishing a machete

5. Summary/Purpose:

The proposed legislation would make it a Class 1 misdemeanor to point, hold, or brandish a machete with the intent of intimidating any person or group of persons and in a manner that reasonably demonstrates that intent. If the offense occurred on any school property or on public property within 1,000 feet of school property, it would be a Class 6 felony.

The legislation would also add these offenses of brandishing a machete to the list of “predicate criminal acts” associated with criminal gang activity. Current law makes participation in a criminal act to benefit a criminal street gang a separate Class 5 felony offense. If the criminal street gang includes a juvenile member or participant, such participation in a criminal act to benefit the gang is a Class 4 felony. The recruitment of a juvenile to join a criminal street gang is also a felony offense. The law sets out the following definitions:

“Criminal street gang”—a group of three or more persons who meet the following criteria:

- Have as one of its primary objectives or activities the commission of criminal activities;
- Have an identifying name or symbol; and
- Engage in the commission of two or more “predicate criminal acts” of which at least one is an act of violence.

“Predicate criminal act”—an act of violence (as defined by statute) or any one of several specified assault, trespass, and vandalism offenses. The proposed legislation would include brandishing a machete as one of these acts.

6. Fiscal Impact Estimates are: Final. See Item 8.

7. Budget amendment necessary: None.

8. Fiscal implications:

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth pays the localities \$8.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail, \$8.00 a day for each state responsible inmate held for sixty days or less, and \$14.00 a day for each state responsible inmate held for more than sixty days. It also funds most of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (FY 2004), the estimated total state support for local jails averaged \$26.03 per inmate, per day in FY 2004.

Due to the lack of data, the Virginia Criminal Sentencing Commission has reported, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined.

Potentially, this legislation, along with other gang-related bills, could have a significant impact on prison bed space. There are two features of the gang-related statutes that could make them result in more inmates being in prison for longer periods of time. First, many of the predicate offenses that define "participation in a criminal act to benefit a criminal street gang" are less serious offenses than that specific offense, a Class 5 felony. In fact, some of the predicate offenses, such as the one defined in the proposed legislation, are misdemeanors. Second, "participation in a criminal act to benefit a criminal street gang" is a separate offense, with the result that the offender could be sentenced both for the predicate crime and "participation in a criminal act to benefit a criminal street gang." The gang-related statutes were enacted only in 2000, with major expansions made in 2004. Therefore, not enough time has elapsed since their enactment to reasonably project how many offenders might be convicted under them. Furthermore, because of their newness, prosecutors and law-enforcement officials have probably not utilized those provisions to their fullest potential.

9. Specific agency or political subdivisions affected:

Department of Corrections
Local and regional jails

10. Technical amendment necessary: None.

11. Other comments: Identical to HB 588.

Date: 03/29/06 / rwh

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