



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 451 **(Patron – Devolites Davis)**

LD#: 06-6573726

Date: 12/28/2005

Topic: Brandishing a machete; gang activity

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 18.2-53.1 relating to brandishing a machete and doing so as a gang member. Under the current § 18.2-53.1, it is unlawful for any person to use or attempt to use any pistol or other firearm, or to display such weapon in a threatening manner while committing or attempting to commit any of a number of violent felonies listed under this section. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of three years for a first conviction, and to a mandatory minimum term of five years for a second or subsequent conviction. Such punishment shall be made to run consecutively with any punishment received for the commission of the primary felony. The proposal amends § 18.2-53.1 to add a machete to the list of weapons covered under this section.

The proposal also amends § 18.2-46.1 to add violations of § 18.2-53.1 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.

Analysis:

According to fiscal year (FY) 2002 and 2003 Pre/Post Sentence Investigation (PSI) data, 1,123 offenders were convicted of use of a firearm in the commission of a felony. In general, these convictions occur as additional offenses in a sentencing event; the primary offense in these cases was typically a violent crime such as murder, rape, robbery or malicious wounding. Since most offenders convicted of violating § 18.2-53.1 have accompanying convictions for acts of violence or other predicate crimes already on the current list, the number of convictions triggering penalties delineated by §§ 18.2-46.2 and 18.2-46.3 may not increase substantially.

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 adds a machete to the list of weapons covered under § 18.2-53.1 and expands the types of predicate crimes that trigger penalties delineated by §§ 18.2-46.2 and 18.2-46.3. The databases available to the Commission are insufficiently detailed to identify the number of new crimes due to the addition of a machete in the proposed § 18.2-53.1; therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. The proposal may have an impact on local-responsible (jail) bed space needs, but this impact cannot be determined.

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

Virginia's sentencing guidelines. Convictions under § 18.2-53.1 are covered by Virginia's sentencing guidelines as the primary (most serious) offense in a sentencing event. Convictions under Article 2.1 of Title 18.2 are not covered 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.

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.

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