



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2524

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Iaquinto)

LD#: 07-7799342

Date: 1/16/2007

Topic: Criminal street gang predicate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$4,251 (0.17 beds)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Negligible

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

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 § 18.2-53.1 (use of a firearm in the commission of a felony, first or subsequent offense).

The list of crimes defined as “predicate criminal acts” under this provision affects a number of gang-related offenses defined in §§ 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 or to commit a felony 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, 2005 and 2006 General Assemblies.

Analysis:

Based on calendar year (CY) 2004 and 2005 Local Inmate Data System (LIDS) data, a total of 34 offenders held pre- or post-trial in jail were convicted of gang-related crimes under §§ 18.2-46.2 and 18.2-46.3. Of these, 23 were convicted of a Class 5 felony for participating in a criminal act for the benefit of a gang. Most (57%) received a state-responsible (prison) term, for which the median sentence was three years.

Eight offenders were convicted under § 18.2-46.2 for participating in a criminal act to benefit a street gang that has juvenile members, a Class 4 felony. Five of these offenders (63%) were committed to prison (median sentence of 2.3 years). Three offenders were convicted under § 18.2-46.3(A) for recruiting a juvenile to become a member of a criminal street gang, a Class 6 felony. Of these, one offender was sentenced to 6 months in jail and the other two offenders received prison terms of, respectively, 1.6 and 3.1 years.

During the two-year time period, there were no convictions for gang activity taking place in or near a school zone under § 18.2-46.3:3.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the types of predicate crimes that trigger penalties for gang participation delineated by §§ 18.2-46.2 and 18.2-46.3, potentially increasing the future state-responsible (prison) bed space needs of the Commonwealth. Use of a firearm in the commission of a felony, however, is often secondary to an act of violence or an offense that is already on the list of predicate crimes. Therefore, the impact of the proposal is expected to be less than one bed (.17 of a bed) statewide by FY2013. Pursuant to § 30-19.1:4, the estimate amount of the necessary appropriation is \$4,251.

Local adult correctional facilities. The proposal is expected to have a negligible impact on the future need for local-responsible (jail) beds.

Adult community corrections programs. The impact on adult community corrections programs is expected to be negligible.

Virginia's sentencing guidelines. Offenses under Article 2.1 of Title 18.2 are not covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a case; however, convictions under these provisions may augment the guidelines recommendation if a covered offense is the most serious at sentencing.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,251 for periods of imprisonment in state adult correctional facilities and is \$0 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 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 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.*
4. Cost per jail bed was based on the Compensation Board's FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

5. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.

Assumptions relating to offenders

1. The increase in the number of offenders sentenced for a gang-related offense under Article 2.1 of Title 18.2 as a result of the proposal was estimated using conviction data for the current and proposed predicate crimes. According to CY2004 and CY2005 PSI data and CY2004 and CY2005 LIDS data, 17,962 offenders were sentenced for a crime currently listed as a predicate crime and 79 offenders were sentenced for a proposed predicate crime. Therefore, the increase in the number of gang-related convictions associated with the proposed predicate crimes was assumed to be an increase by a factor of .04% (79 convictions/17,962 convictions).

Assumptions relating to sentence lengths

1. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for a gang-related offense under Article 2.1 of Title 18.2.

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