



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 876

(Patron – McDougle)

LD#: 07-8999766

Date: 12/19/2006

Topic: Criminal street gang predicate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$284,837 (11 beds)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None
- **Juvenile Detention Facilities:**
None

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 subsection C of § 18.2-248. Currently, only second or subsequent felony violations of § 18.2-248(C) are considered predicate crimes.

The proposed expansion 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 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 7 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 6 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 expands the types of predicate crimes that trigger penalties delineated by §§ 18.2-46.2 and 18.2-46.3, potentially increasing the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is expected to be approximately 11 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$284,837.

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

| FY08 | FY09 | FY10 | FY11 | FY12 | FY13 |
|------|------|------|------|------|------|
| 3 | 6 | 8 | 9 | 10 | 11 |

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. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections resources, however, cannot be quantified.

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 sentencing event. However, convictions under these provisions may augment the guidelines recommendation if a covered offense is the most serious at conviction.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$284,837 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 FY2002 and FY2003 PSI data and FY2003 and FY2004 LIDS data, 20,470 offenders were sentenced for a crime currently listed as a predicate crime and 4,443 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 21.7% (4,443 convictions/20,470 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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