



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2131

(Patron – Miller, J.H.)

LD#: 09-0839640

Date: 12/22/2008

Topic: Gang activity in certain public areas

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 adds § 18.2-46.3:4 to the *Code of Virginia* to provide for penalty enhancements for gang activities taking place in certain public areas. The proposal would:

- Add a mandatory, minimum sentence of two years for gang participation or gang activity (as defined in § 18.2-46.2) taking place (i) on or within 1,000 feet of a school bus stop during the time when children are waiting to be picked up; (ii) on the property of a public community center or library; (iii) on or within 1,000 feet of the property of a state hospital as defined in § 37.2-100; or (iv) on any private property within an area designated a “gang-free” zone;
- Increase the penalty for recruiting gang members (in violation of § 18.2-46.3(A)) for violations committed on any of the properties described above from a Class 6 to a Class 5 felony when a person over the age of 18 recruits a minor and from a Class 1 misdemeanor to a Class 6 felony in other cases; and
- Increase the penalty for using or threatening to use force to encourage another person to become or remain a gang member or to commit a felony (in violation of § 18.2-46.3(B)) when the act is committed on any of the properties described above from a Class 6 to a Class 5 felony.

Currently, § 18.2-46.3:3 provides for these penalty enhancements when gang activities take place on or within 1,000 feet of school property or on a school bus.

All of the crimes in Article 2.1 (Crimes by Gangs) of Chapter 4 of Title 18.2 were created by the 2000 session of the General Assembly and enacted in July of the same year. Additions and other revisions were made by the 2004, 2005, 2006, 2007, and 2008 General Assemblies.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 39 offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang; of

these, 13% were sentenced to probation, 11% received a local-responsible (jail) term, and 76% received state-responsible (prison) terms with a median sentence of two years. Six offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang that included a juvenile; of these, one (17%) was sentenced to probation and the other five (83%) received state-responsible (prison) terms with a median sentence of three years. One offender was convicted under the school zone penalty enhancement, defined in § 18.2-46.3:3, for participation in a criminal act to benefit a gang (§ 18.2-46.2); this individual was sentenced to four years imprisonment.

According to calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) data, there were no convictions for recruiting another as a gang member, a Class 1 misdemeanor under § 18.2-46.3(A).

Impact of Proposed Legislation:

State adult correctional facilities. As the proposal adds a mandatory, minimum penalty and raises the punishment for gang activity in certain locations, it may increase the state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to identify how many gang-related violations take place in the locations specified by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. For similar reasons, the proposal's impact on the local-responsible (jail) bed space needs of the Commonwealth cannot be determined.

Adult community corrections resources. The proposal's impact on the need for adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. None of the convictions affected by the proposal are covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for any of these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal's impact on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact 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.

gang01_0839