



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 682 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Miller, J.H.)

LD #: 10105266

Date: 02/10/2010

Topic: Expansion of gang-free zones

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-46.3:3 to expand penalty enhancements for gang activities to include activities taking place upon the property, including buildings and grounds, of any publicly owned or operated community center or publicly owned or operated recreation center. These enhancements include:

- A mandatory, minimum sentence of two years for gang participation or gang activity (as defined in § 18.2-46.2) taking place on any of the properties described above;
- A higher penalty for recruiting gang members (in violation of § 18.2-46.3(A)) on any of the properties described above (a Class 5 felony versus a Class 6 felony when a person over the age of 18 recruits a minor; a Class 6 felony versus a Class 1 misdemeanor in other cases); and
- A higher 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 (a Class 5 felony versus a Class 6 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) 2007 and FY2008 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 as the primary (most serious) offense; of these, 28% were sentenced to probation without an active term of incarceration, 13% received a local-responsible (jail) term, and 59% 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 four 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; this individual was sentenced to four years imprisonment.

The Circuit Court Automated Information System (CAIS) for fiscal years 2008 and 2009 includes 10 offenders convicted of a Class 6 felony involving recruitment of persons for criminal street gangs (§ 18.2-46.3). Four offenders (40%) were sentenced to probation without an active term of incarceration and three offenders (30%) received local-responsible (jail) terms with a median sentence of six months. The remaining three offenders (30%) received state-responsible (prison) terms with a median sentence of two years.

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, there were three misdemeanor convictions for recruiting another as a gang member. Two offenders received local-responsible (jail) terms of four months and ten months, respectively. The remaining offender was sentenced to probation without an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. As the proposal expands the applicability of a mandatory, minimum penalty and raises the punishment for gang activity in certain additional 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 programs. 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 effect of the proposal 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; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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