



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1867

(Patron – Cole)

LD #: 11103155

Date: 12/21/2010

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 874 of the 2010 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 (i) at any designated school bus stop or (ii) upon the property of any publicly owned or operated park or hospital. Gang penalty 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, on a school bus, or upon the grounds of a publicly owned or operated community center or recreation center.

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, 2008, and 2010 General Assemblies.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2009 and 2010, 60 offenders were convicted of a felony under § 18.2-46.2 for participating in a criminal act to benefit a

gang that does not have a juvenile member. In these cases, the gang offense was the primary (or most serious) offense at sentencing. Of these offenders, 20% were sentenced to probation without an active term of incarceration and 30% received a local-responsible (jail) term, with a median sentence length of 10 months. The remaining 50% of offenders received a state-responsible (prison) term, with a median sentence of 2.8 years.

During the same period, another 30 offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang having a juvenile member (as the primary offense). In addition to the 13% who were sentenced to probation, 30% of these offenders received a jail term, with a median sentence of 6.0 months. For the 57% of offenders who received a state-responsible (prison) term, the median sentence was 9.0 years.

CAIS data for fiscal years 2009 and 2010 also indicate that six additional offenders were convicted of a felony under § 18.2-46.3 for recruiting a juvenile for a street gang (as the primary offense). Of these offenders, one was sentenced to probation and three received a jail sentence, with a median sentence length of 3.0 months. The other two offenders were sentenced to prison terms of 2.0 and 2.5 years, respectively. Another 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 7.0 years imprisonment.

According to the Local Inmate Data System (LIDS) for fiscal years 2009 and 2010, a misdemeanor violation of § 18.2-46.3(A), recruiting an adult for a gang, was the primary offense for three offenders held in jail pre- or post-trial during this time period. All three offenders received local-responsible (jail) terms totaling 4.0, 14.0, and 18.0 months, respectively, for all charges.

Impact of Proposed Legislation:

State adult correctional facilities. Since 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. Felony convictions under § 18.2-46.2 for participation in a criminal act to benefit a gang are covered by the sentencing guidelines as the primary (most serious) offense. 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 874 of the 2010 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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