



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 528 **(Patron – McQuinn)**

LD #: 12100264

Date: 12/1/2011

Topic: Expansion of gang-free and drug-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 890 of the 2011 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 within 1,000 feet of multifamily housing for older persons. The proposal defines multifamily housing for older persons as multi-unit housing where the majority of residents are older persons living in housing for older persons, as defined in § 36-96.7. 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 in § 18.2-46.3:3;
- A higher penalty for recruiting gang members (in violation of § 18.2-46.3(A)) on any of the properties described in § 18.2-46.3:3 (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, and 2010 General Assemblies.

The proposal also modifies § 18.2-255.2, which outlines the penalties for manufacturing, selling, distributing, or possessing with the intent to distribute any drug or imitation controlled substance on or near certain properties. Specifically, the proposal expands the list of locations to add areas within 1,000 feet of multifamily housing for older persons. Currently, under § 18.2-255.2, the sale or distribution of controlled substances, imitation drugs, marijuana, or synthetic cannabinoids upon school or child day center property, a school bus or school bus stop, a community center or public library, a state facility, or on public property within 1,000 feet of a school, daycare, state facility, or school bus stop is a felony punishable by imprisonment of one to five years. Each violation constitutes a separate and distinct felony. A second or subsequent conviction involving a Schedule I, II, or III controlled substance or more than one-half ounce of marijuana is subject to a mandatory minimum term of one year. However, if the offender proves that he sold such a controlled substance or marijuana only as an accommodation to another person and without the intent to profit or to induce the recipient to become addicted to the substance, he is guilty of a Class 1 misdemeanor.

The General Assembly has modified § 18.2-255.2 several times in recent years. In 2011, the General Assembly added synthetic cannabinoids to the list of prohibited drugs. The 2006 General Assembly added child day centers to the list of locations included in § 18.2-255.2. In 2005, the General Assembly expanded the statute to add any state facility defined under § 37.2-100, which includes hospitals, training centers, psychiatric hospitals, and other residential and outpatient mental health facilities.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, one offender was convicted under § 18.2-46.3:3 for participation in a criminal act to benefit a gang having a juvenile member in a gang-free zone (as the primary offense), and this offender was sentenced to probation. Two additional offenders were convicted of gang participation in a gang-free zone as an additional offense. No other offenders were convicted under the penalty enhancements provided in § 18.2-46.3:3.

During the same period, 19 offenders were convicted in circuit court under § 18.2-46.2 for participation in a criminal act to benefit a gang having a juvenile member, not in a gang-free zone (as the primary offense). While 21% were sentenced to probation, 37% of these offenders received a jail term with a median sentence of 6.0 months. For the 42% of offenders who received a state-responsible (prison) term, the median sentence was 1.5 years. Another 24 offenders were convicted of this gang crime as an additional offense to a more serious felony, such as robbery.

CAIS data for fiscal years 2010 and 2011 also indicate that 49 offenders were convicted in circuit court 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 (as the primary offense). Of these offenders, 29% were sentenced to probation without an active term of incarceration and 12% received a local-responsible (jail) term with a median sentence of 2.5 months. The remaining 59% of offenders received a state-responsible (prison) term with a median sentence of 2.5 years. Another 68 offenders were convicted of this gang crime as an additional offense accompanying a more serious felony.

Four offenders were convicted of a third or subsequent gang offense under § 18.2-46.3:1; of these, one offender was sentenced to 9.0 months in jail and the other three were sentenced to imprisonment with a median sentence of 4.0 years. One offender was convicted of a third or subsequent criminal street gang violation as an additional offense. Five offenders were convicted of a felony under § 18.2-46.3(A) for recruiting a juvenile for a street gang (as the primary offense). Of these offenders, one was sentenced to probation and two received a jail sentence, with a median sentence length of 5.5 months. The other two offenders were sentenced to prison terms of 2.0 and 2.5 years, respectively.

According to FY2010 and FY2011 General District Court Automated Information System (CAIS) data, four offenders were convicted of a misdemeanor violation of § 18.2-46.3(A), recruiting an adult for a gang. The gang conviction was the primary offense in all of the sentencing events. While three of the offenders received a local-responsible (jail) term of 12 months, one offender received a local-responsible (jail) term of 36 months for all charges in the sentencing event. Existing criminal justice databases are not sufficiently detailed to identify the number of gang-related crimes that take place within 1,000 feet of multifamily housing for older persons.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The Department of Juvenile Justice reports an average of 168 intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) alleging a violation of § 18.2-46.2 of the *Code of Virginia* by a person under the age of 18. The Department of Juvenile Justice reports an average of 26 commitments to juvenile correctional centers per year where the most serious committing offense was a violation of § 18.2-46.2 of the *Code of Virginia* by a person under the age of 18. The number of instances of criminal street gang activity occurring within 1,000 feet of multifamily housing for older persons is not known.

The FY2010 and FY2011 Sentencing Guidelines database indicates that 169 offenders were sentenced for a first felony violation of § 18.2-255.2 for manufacturing, selling, distributing, or possessing with the intent to distribute controlled substances, imitation drugs, or marijuana on or near designated properties. This offense was the primary, or most serious, offense in 25 of the cases. Of these 25 cases, 52% of the offenders did not receive an active term of incarceration, while 32% were sentenced to a local-responsible (jail) term, with a median sentence length of three months. For the 16% of offenders who were given a state-responsible (prison) term, the median sentence length was one year. According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, two offenders were convicted of a second or subsequent felony under § 18.2-255.2 involving a Schedule I, II, or III controlled substance or more than one-half ounce of marijuana. However, this charge was not the primary, or most serious, offense in either of these cases.

According to the FY2010 and FY2011 Local Inmate Data System (LIDS), there were nine offenders who were held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 18.2-255.2 as the primary offense during this time period. Two offenders were not given an active term of incarceration to serve after sentencing, while the remaining 77.8% received a local-responsible (jail) term, with a median sentence length of slightly less than two months. Existing criminal justice databases are not sufficiently detailed to identify how many drug-related violations take place within 1,000 feet of multifamily housing for older persons.

The Department of Juvenile Justice reported an average of 182 intake petitions for the three most recent fiscal years (FY2009 to FY2011) alleging a violation of § 18.2-255.2 by a person under the age of 18. However, it is not known how many narcotic offenses occurred within 1,000 feet of multifamily housing for older persons.

Impact of Proposed Legislation:

State adult correctional facilities. Since the proposal expands the applicability of mandatory minimum penalties and raises the punishment for gang and drug-related 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 or drug-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. Convictions under § 18.2-46.3:3 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. Felony convictions for a first offense under § 18.2-255.2 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. It is possible that a person under the age of 18 could engage in criminal street gang activity or illegal narcotic activity within 1,000 feet of multifamily housing for older persons and be subject to the enhanced penalty of this bill. In such an event, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code of Virginia*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. It is possible that a person under the age of 18 could engage in criminal street gang activity or illegal narcotic activity within 1,000 feet of multifamily housing for older persons and be subject to a Class 1 misdemeanor offense or a Class 6 felony penalty under the provisions of this bill. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code of Virginia*. In addition, an adjudication for a Class 1 misdemeanor offense or a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1 of the *Code of Virginia*. Therefore, the legislative proposal may have an impact on juvenile detention bed space needs. However, the actual impact on juvenile detention bed space needs 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 890 of the 2011 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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