



Fiscal Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 546 (Patron – Comstock)

LD#: 12100316

Date: 12/9/2011

Topic: Crimes by gangs; predicate criminal acts

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$3,358 (less than one bed)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Negligible

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

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 § 18.2-355 (taking, detaining, etc., a person for prostitution or consenting thereto) or § 18.2-357 (receiving money from the earnings of a male or female prostitute). All of these offenses are punishable as Class 4 felonies.

The proposal affects a number of gang-related offenses defined in 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 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony. In addition, § 18.2-46.3:3 provides enhanced penalties for violations of § 18.2-46.2 occurring (i) on or within 1,000 feet of school property; (ii) on a school bus; or (iii) on the property of a publicly owned or operated community center or recreation center. Under § 18.2-46.3:1, a third or subsequent conviction for a gang offense is elevated to a Class 3 felony.

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, 2006, 2007, and 2010 General Assemblies.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, 49 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, 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, such as robbery.

During the same period, 19 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). 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.

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. Four offenders were convicted of a third or subsequent gang offense under § 18.2-46.3:1; of these, one offender was sentenced to nine months in jail and the other three were sentenced to imprisonment with a median sentence of 4.0 years. Two offenders were convicted of gang participation on school property as an additional offense and one offender was convicted of a third or subsequent criminal street gang violation as an additional offense.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the list of crimes that trigger penalties for gang participation delineated by § 18.2-46.2 and, therefore, is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be less than one bed (0.12 beds) statewide by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,358.

Local adult correctional facilities. The proposal is expected to have a negligible effect on local-responsible (jail) bed space needs.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections resources, however, is likely to be negligible.

Virginia's sentencing guidelines. Felony convictions under § 18.2-46.2 (participation in a criminal act to benefit a gang) are covered by the sentencing guidelines. Other gang-related offenses under Article 2.1 of Title 18.2 are not covered as the primary (or most serious) offense; however, a conviction under one of these provisions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Although a juvenile may be subjected to the proposed amendments, the Department of Juvenile Justice reports no intake petitions for the three most recent fiscal years (FY09 to FY11) for a violation of § 18.2-355 or for a violation of § 18.2-357 by a person under the age of 18. As a result, the Department does not anticipate a fiscal impact upon juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. Similarly, although a juvenile may be subjected to the proposed amendments, the Department of Juvenile Justice does not anticipate an impact on the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,358 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 of Public Safety's Committee on Inmate Forecasting in 2011.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2011.
3. Cost per prison bed was assumed to be \$27,688 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 FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

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 FY2010 and FY2011 Circuit Court and General District Court Automated Information System (CAIS) data, 25,186 offenders were sentenced for a crime currently listed as a predicate crime and 14 offenders were sentenced for a proposed predicate crime. Therefore, under the proposal, convictions for predicate offenses would increase from 25,186 to a total of 25,200 convictions; this is an increase of less than 0.1%.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2012, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2010. For person crimes, this rate was 10.5%.
3. It was assumed that prosecutors would charge all eligible offenders with a gang offense.
4. 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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