

## Department of Planning and Budget 2012 Fiscal Impact Statement

**1. Bill Number: HB 546**

House of Origin    ☐ Introduced    ☐ Substitute    ☐ Engrossed  
Second House    ☐ In Committee    ☐ Substitute    ☒ Enrolled

**2. Patron: Comstock**

**3. Committee: Passed both houses**

**4. Title: Gangs; predicate criminal act**

**5. Summary:**

Current law makes participation in a criminal act to benefit a criminal street gang a separate Class 5 felony offense. If the criminal street gang includes a juvenile member or participant, such participation in a criminal act to benefit the gang is a Class 4 felony. The recruitment of a juvenile to join a criminal street gang is also a felony offense. The law sets out the following definitions:

*“Criminal street gang”*—a group of three or more persons who meet the following criteria:

- Have as one of its primary objectives or activities the commission of criminal activities;
- Have an identifying name or symbol; and
- Engage in the commission of two or more “predicate criminal acts” of which at least one is an act of violence.

*“Predicate criminal act”*—an act of violence (as defined by statute) or any one of several specified assault, trespass, and vandalism offenses.

The proposed legislation would expand the list of “predicate criminal acts” to include (i) taking, detaining, etc. a person for prostitution or consenting the taking of a person for such persons and (ii) receiving money from the earnings of a prostitute.

**6. Budget Amendment Necessary: See Item 8.**

## 7. Fiscal Impact Estimates: Final.

### Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2013	\$3,358	General
2014	\$0	General
2015	\$0	General
2016	\$0	General
2017	\$0	General
2018	\$0	General

## 8. Fiscal Implications:

For someone convicted of a Class 5 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 10 years in prison. For a Class 4 felony, the possible sentence is 2 to 10 years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail. It also funds most of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2011), the estimated total state support for local jails averaged \$29.98 per inmate, per day in FY 2010.

Generally speaking, any gang-related bill could eventually have an impact on prison bed space. There are two features of the gang-related statutes that could make them result in more inmates being in prison for longer periods of time. First, many of the predicate offenses that define "participation in a criminal act to benefit a criminal street gang" are less serious offenses than that specific offense, which is a Class 5 felony. For example, some of the predicate offenses are misdemeanors. Second, "participation in a criminal act to benefit a criminal street gang" is a separate offense, with the result that the offender could be sentenced both for the predicate crime and "participation in a criminal act to benefit a criminal street gang."

Given this and pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact on prison beds of \$3,358 (the highest annual cost over the next six years).

The budget as originally approved by the House included an appropriation for the fiscal impact of this legislation, but the budget recommendations made by the Senate Finance Committee did not. The newly introduced House Bill 1301, as passed by the House, includes an appropriation for this fiscal impact.

**9. Specific Agency or Political Subdivisions Affected:**

Department of Corrections  
Local and regional jails

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** None

**Date:** 3/6/2012

**Document:** G:\LEGIS\fis-12\hb546er.doc Dick Hall-Sizemore