



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 345

#### *Amendment in the Nature of a Substitute*

#### *(Patron Prior to Substitute – McDougle)*

**LD #:** 12105004

**Date:** 2/1/2012

**Topic:** Recruitment of persons for criminal street gang

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$249,045 (9 beds)
- **Local Adult Correctional Facilities:**  
-\$4,462 (less than one bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 18.2-46.3, relating to the recruitment of persons for a criminal street gang. Currently, any person who solicits, recruits, or otherwise causes or attempts to cause another to become a member of a criminal street gang is guilty of a Class 1 misdemeanor; if a person age 18 years or older recruits or attempts to recruit a juvenile, however, the offender is guilty of a Class 6 felony. Under the proposal, the recruitment of any individual for a criminal street gang would be a Class 6 felony. If a person age 18 years or older recruits or attempts to recruit a juvenile, the offender would be guilty of a Class 5 felony, which is punishable by imprisonment from one to ten years.

Under § 18.2-46.3(B), it is a Class 6 felony to use threats or force to encourage another person to become or remain a gang member or to commit a felony. Section 18.2-46.3:3 provides enhanced penalties for violations of §§ 18.2-46.2 and 18.2-46.3 occurring on or within 1,000 feet of school property, on a school bus, or 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 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.

#### Analysis:

According to fiscal year (FY) 2010 and FY2011 General District Court Automated Information System (CAIS) data, four offenders were convicted of a misdemeanor violation of § 18.2-46.3(A) for 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. Circuit

Court CAIS data for this time period indicate that a misdemeanor conviction for gang recruiting under § 18.2-46.3(A) was the primary, or most serious, offense in seven cases.<sup>1</sup> Five of these offenders did not receive an active term of incarceration to serve after sentencing, while the remaining two offenders were sentenced to local-responsible (jail) terms of 12 months.

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, five offenders were convicted of a Class 6 felony under § 18.2-46.3(A) for recruiting a juvenile for a street gang as the primary (most serious) 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.

Regarding 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. DJJ reports an average of 22 intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) alleging a violation of § 18.2-46.3 by a person under the age of 18. DJJ reports an average of five commitments per year to the state’s juvenile correctional centers for whom this offense was the most serious.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** Increasing the existing Class 1 misdemeanor in § 18.2-46.3(A) to a Class 6 felony and increasing the existing Class 6 felony to a Class 5 felony is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be nine beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$249,045.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY13	FY14	FY15	FY16	FY17	FY18
2	6	7	8	9	9

**Local adult correctional facilities.** The proposal is expected to decrease the need for local-responsible (jail) beds, as offenders who received a jail term in the past may receive a prison sentence under the proposal. The impact is estimated to be a decrease of less than one bed statewide, for a savings to the state of \$4,462 and \$4,776 to the localities.

**Adult community corrections programs.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The magnitude of the impact on local community-based probation services cannot be estimated.

**Virginia’s sentencing guidelines.** Convictions under § 18.2-46.3 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision can 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.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

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<sup>1</sup> Cases that were processed in circuit court as the result of an appeal from General District or Juvenile and Domestic Relations Court were excluded.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the effect of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$249,045 for periods of imprisonment in state adult correctional facilities and cannot be determined 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. 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.*
3. 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 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. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected misdemeanor cases under § 18.2-46.3(A) will be similar to the distribution of sentences under the existing Class 6 felony provision for gang recruitment. It was assumed that the distribution of sentences for the affected felony cases under § 18.2-46.3(A) will be similar to the distribution of sentences under the existing Class 5 felony provision for gang participation.
3. 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%.

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