

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: SB 1205

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

2. Patron: McDougle

3. Committee: Passed both houses

4. Title: Criminal street gangs—predicate offenses

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 acts to include a significant number of additional offenses including capital murder, certain types of burglary, grand larceny, aggravated malicious wounding, and felony possession of firearms. In addition, the proposed legislation would make any felony violation of statutes prohibiting the manufacture/distribution of a controlled substance or of marijuana a predicate offense, rather than the second or subsequent violation, as is now provided in law.

6. Budget Amendment Necessary: No. The budget bill proposed by the Governor includes an appropriation for the fiscal impact of this proposal and the General Assembly has included funding in the budget bill it passed.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2013		
2014	\$577,836	General
2015	\$5,840	General
2016	\$5,840	General
2017	\$5,840	General
2018	\$5,840	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.

The Virginia Criminal Sentencing Commission has determined that the proposed legislation also would result in an increase in the number of local-responsible (jail) inmates—two additional inmates in FY 2014 and four additional inmates in each fiscal year thereafter through FY 2019. The Compensation Board reimburses localities \$4.00 per day for each local-responsible inmate held in jails. It also provides funding for additional deputies needed in jails due to overcrowding. The amounts shown in Item 7 include the additional projected costs for the Compensation Board as a result of this proposed legislation.

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 \$574,916 (the highest annual cost over the next six years). The amount is based on the projection that the legislation will result in 20 additional inmates being incarcerated in prison.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Compensation Board
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments: Identical to HB 1847. The General Assembly added a clause to the bill stating that it would not effective unless funding was included in the 2013 Appropriation Act. The budget bill passed by the General Assembly includes the funding.

Date: 3/1/2013

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