



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

**Senate Bill No. 1205**  
*Amendment in the Nature of a Substitute*  
*(Patron Prior to Substitute – McDougle)*

**LD#:** 13105254

**Date:** 2/18/2013

**Topic:** Crimes by gangs; predicate criminal acts

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$304,547 (10 beds)
- **Local Adult Correctional Facilities:**  
At least \$21,304 (2 beds)
- **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 § 18.2-46.1 to expand the definition of a “predicate criminal act” associated with gang activity beyond the crimes currently covered to include additional offenses. Specifically, the proposal expands § 18.2-46.1 to include several felony offenses, including capital murder, certain burglaries, and grand larceny. In addition, the proposal also adds conspiracy to commit any violation of §§ 18.2-248 or 18.2-248.1. This portion expands the list of predicate offenses to include conspiracy to commit a misdemeanor or felony drug crime under either of these statutes.

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, 2010, and 2012 General Assemblies.

#### Analysis:

According to the Circuit Court Case Management System<sup>1</sup> for fiscal years 2011 and 2012, a felony conviction under § 18.2-46.2 for participating in a criminal act to benefit a gang that does not have a juvenile member was the primary, or most serious, offense for 44 offenders. Of these offenders, 15.9%

<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

were sentenced to probation without an active term of incarceration and 18.2% received a local-responsible (jail) term with a median sentence of five months. The remaining 65.9% of offenders received a state-responsible (prison) term with a median sentence of two years. Another 39 offenders were convicted of this gang crime as an additional offense accompanying a more serious felony, such as robbery.

During the same period, 15 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 one offender was sentenced to probation, 26.7% of these offenders received a jail term, with a median sentence length of 12 months. For the 66.7% of offenders who received a state-responsible (prison) term, the median sentence was 3.4 years. Another 11 offenders were convicted of this gang crime as an additional offense to a more serious felony.

Two offenders were 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). While one offender did not receive an active term of incarceration, the other offender received a jail sentence of six months. One offender was convicted of a third or subsequent gang offense under § 18.2-46.3:1 as the primary offense and was sentenced to nine months in jail. One offender was 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.

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### 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 at least 10 beds statewide by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$304,547. This is a minimum estimate, as this figure does not include the misdemeanor component. In addition, this estimate does not include the impact the proposal may have on gang recruitment offenses under § 18.2-46.3; the data are insufficient to estimate the impact of this aspect of the proposal.

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

FY14	FY15	FY16	FY17	FY18	FY19
2	5	8	9	10	10

**Local adult correctional facilities.** The proposal will also increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be at least two beds by FY2019 (state costs: \$21,304; local costs: \$30,932).

#### Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY14	FY15	FY16	FY17	FY18	FY19
1	2	2	2	2	2

**Adult community corrections programs.** It is unclear how many additional felony offenders would be on supervision or would be subject to longer supervision periods under the proposal. Therefore, the potential impact of the proposal on community corrections resources cannot be determined.

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

**Juvenile detention facilities.** According to the Department of Juvenile Justice, 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 at least \$304,547 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 2012.
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 2012.
3. Cost per prison bed was assumed to be \$29,081 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 FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.21 per day or \$10,304 per year. The local cost was calculated by using the daily expenditure cost of \$74.07 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 \$40.96 per day or \$14,961 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 FY2011 and FY2012 Court Case Management System data, 23,757 offenders were sentenced for a crime currently listed as a predicate crime and 7,699 offenders were sentenced for a proposed felony predicate crime. Therefore, the increase in the number of gang-related convictions associated with the proposed felony predicate crimes was assumed to be an increase by a factor of .3 (7,699 convictions/23,757 convictions).

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2013, 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, 2011. For person crimes, this rate was 8.8%.
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.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax, Alexandria, or Virginia Beach.
2. The projection is a minimum estimate because it does not include the impact of expanding the list of predicate misdemeanors or the impact the proposal may have on gang recruitment offenses under § 18.2-46.3; the data are insufficient to estimate the impact of this aspect of the proposal.