



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 502

(Patron – Mullin)

LD#: 18100003

Date: 10/25/2017

Topic: Gang predicate offenses

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$23,136 (less than 1 bed)
- **Local Adult Correctional Facilities:**
At least \$560 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-46.1 to expand the definition of a “predicate criminal act” associated with gang activity to include sexual battery, a Class 1 misdemeanor under § 18.2-67.4.

The proposal affects several 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, 2012, 2013, 2014, and 2015 General Assemblies.

Analysis:

According to the Circuit Court Case Management System for fiscal years 2016 and 2017, 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 28 offenders. Of these offenders, 14.3% were sentenced to probation without an active term of incarceration and 25.0% received a local-responsible (jail) term with a median sentence of twelve months. The remaining 60.7% of offenders received a state-responsible (prison) term with a median sentence of approximately 2.3 years. Another 31

offenders were convicted of this gang crime as an additional offense accompanying a more serious felony, such as robbery.

During the same period, nine 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). Of these, one offender (11.1%) was sentenced to twelve months in jail, while the remaining eight offenders (88.9%) received prison terms with a median prison sentence of approximately 2.3 years. Another two offenders were convicted of this gang crime as an additional offense to a more serious felony.

Three offenders were convicted of a felony under § 18.2-46.3:3 during the two-year period for participation in a criminal act to benefit a gang having a juvenile member in a gang-free zone (as the primary offense). All three received local-responsible (jail) terms with a median sentence of six months. Another offender was convicted of participation in a criminal act to benefit a gang having a juvenile member on school property as an additional offense. There were no convictions under § 18.2-46.3:3 for participation in a criminal act to benefit a gang without a juvenile member in a gang-free zone or a third or subsequent gang offense under § 18.2-46.3:1.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the list of crimes that trigger felony 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 statewide by FY2024. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$23,136. This is a minimum estimate, as this figure 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.

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be at least one partial bed by FY2024 (state costs: \$560; local costs: \$812).

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$23,136 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 2017.
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 2017.
3. Cost per prison bed was assumed to be \$33,707 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 FY2015 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$31.42 per day or \$11,476 per year. The local cost was calculated by using the daily expenditure cost of \$79.64 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 \$45.56 per day or \$16,641 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 FY2016 and FY2017 Court Case Management System data, 33,369 offenders were sentenced for a crime currently listed as a predicate crime and 289 offenders were sentenced for a proposed misdemeanor predicate crime. Therefore, the increase in the number of gang-related convictions associated with the proposed misdemeanor predicate crimes was assumed to be an increase by a factor of .009 (289 convictions/33,369 convictions).

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2018, 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, 2016. For person crimes, this rate was 8.3%.
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 or Alexandria.
2. The projection is a minimum estimate because it 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.

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