



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 590

(Patron – Marsden)

ID#: 08-8114608

Date: 12/20/2007

Topic: Crimes by gangs; predicate criminal acts

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$26,778 (1 bed)
- **Local Adult Correctional Facilities:**
Negligible
- **State Community Corrections Programs:**
Negligible

- **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 larceny of a motor vehicle in violation of clause (ii) of § 18.2-95.

The proposed expansion 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 and 18.2-46.3 occurring on or within 1,000 feet of school property or on a school bus. 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 and 2007 General Assemblies.

Analysis:

Based on calendar year (CY) 2005 and 2006 data from the Local Inmate Data System (LIDS), a total of 115 offenders held pre- or post-trial in jail were convicted of gang-related crimes under § 18.2-46.2. For two-thirds (63%) of these offenders, the gang offense was the most serious charge at conviction; for more than one-third of the offenders (37%), however, the gang offense accompanied a conviction for another crime with a higher statutory penalty.

Of the total 115 offenders, 47 were convicted under § 18.2-46.2 for participation in a criminal act to benefit the street gang, a Class 5 felony, as the most serious charge. Half of these offenders (51%) were sentenced to a state-responsible (prison) term, for which the median sentence was nearly 4.5 years. Another 26% received a local-responsible (jail) term with a median sentence of six months. The remaining 23% of offenders were sentenced to probation without an active term of incarceration to

serve. Another 28 offenders were convicted of this crime as an additional offense to a more serious charge.

Of the total 115 offenders, 25 were convicted under § 18.2-46.2 for participation in a criminal act to benefit a street gang that has juvenile members, a Class 4 felony, as the most serious offense. Of these, more than one-third (36%) were committed to prison (median sentence of 4 years), while half (52%) received jail terms (median sentence of 12 months). The remaining 12% received no active term of incarceration. One offender was convicted of the commission of this offense in a school zone, a crime which carries a two-year mandatory minimum penalty under § 18.2-46.3:3; this offender was sentenced to four years imprisonment. Another 14 offenders were convicted of this crime as an additional offense.

According to the Department of Juvenile Justice (DJJ), there were 84 commitments in fiscal year (FY) 2007 for larceny of a motor vehicle under § 18.2-95(ii). The number of offenders meeting the additional criteria for participation in a criminal street gang, however, is unknown.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the types of predicate 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 on state-responsible (prison) beds is estimated to be approximately one bed statewide by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$26,778.

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

FY09	FY10	FY11	FY12	FY13	FY14
0	0	1	1	1	1

Local adult correctional facilities. The proposal is expected to have a negligible impact on the future need for local-responsible (jail) beds.

Adult community corrections resources. Because the proposal is expected to have a relatively small impact on the state-responsible (prison) population, it will likely have a negligible on state community corrections resources.

Virginia's sentencing guidelines. Convictions under Article 2.1 of Title 18.2 are not covered by the sentencing guidelines as the primary (or most serious) offense. A conviction under one of these provisions, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal 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 \$26,778 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 2007.
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 July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

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 FY2006 and FY2007 Pre/Post-Sentencing Investigation (PSI) data and CY2005 and CY2006 LIDS data, 20,808 offenders were sentenced for a crime currently listed as a predicate crime and 263 offenders were sentenced for a proposed predicate crime. Therefore, the increase in the number of gang-related convictions associated with the proposed predicate crimes was assumed to be an increase by a factor of 1.26% (263 convictions/20,808 convictions).

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, 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, 2006. For person crimes, this rate was 10.63%.
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.

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