



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 167

(Patron – Pogge)

LD #: 10101186

Date: 12/14/2009

Topic: Crimes by gangs; predicate criminal acts

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$8,439 (less than one bed)
- **Local Adult Correctional Facilities:**  
Negligible
- **Adult 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 common law burglary in violation of § 18.2-89 and unlawful discharge of a firearm under § 18.2-279.

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:

According to fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) data, 39 offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang as the primary (most serious) offense; of these, 28% were sentenced to probation without an active term of incarceration, 13% received a local-responsible (jail) term, and 59% received state-responsible (prison) terms with a median sentence of two years. Six offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang that included a juvenile; of these, one (17%) was sentenced to probation and the other five (83%) received state-responsible (prison) terms with a median sentence of four years. One offender was convicted under the school zone penalty enhancement, defined in § 18.2-46.3:3, for participation in a criminal act to benefit a gang (§ 18.2-46.2); this individual was sentenced to four years imprisonment.

According to calendar year (CY) 2007 and CY2008 Local Inmate Data System (LIDS) data, there were three convictions for recruiting another as a gang member, a Class 1 misdemeanor under § 18.2-46.3(A). One offender was sentenced to probation and the others received local-responsible (jail) terms of four months and ten months.

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**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 less than one bed (0.30 beds) statewide by FY2016. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$8,439.

**Local adult correctional facilities.** The proposal is also expected to increase local-responsible (jail) bed space needs; however, the increase is likely to be negligible.

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections resources, however, is likely to be negligible.

**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 (DJJ), the magnitude of the proposal's impact on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the magnitude of the proposal's impact 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 \$8,439 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 2009.
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 2009.
3. Cost per prison bed was assumed to be \$27,700 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 FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 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 \$33.06 per day or \$12,075 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 FY2007 and FY2008 Pre/Post-Sentencing Investigation (PSI) data and CY2007 and CY2008 LIDS data, 21,438 offenders were sentenced for a crime currently listed as a predicate crime and 175 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 0.82% (175 convictions/21,438 convictions).

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2010, 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, 2008. For person crimes, this rate was 10.4%.
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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