



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 868

(Patron – Cline)

LD #: 10102339

Date: 12/23/2009

Topic: Recruitment of persons for criminal street gang

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-46.3 relating to the recruitment of persons for a criminal street gang. Currently, any person who solicits, recruits, or otherwise causes or attempts to cause another to become a member of a criminal street gang is guilty of a Class 1 misdemeanor; if a person age 18 years or older recruits or attempts to recruit a juvenile, however, the offender is guilty of a Class 6 felony. In addition, § 18.2-46.3:3 provides for enhanced penalties when gang recruitment activities take place on or within 1,000 feet of school property or on a school bus. Under the proposal, recruitment of persons for a criminal street gang by telephone or by any electronically transmitted communication would be a Class 6 felony.

All of the crimes in Article 2.1 (Crimes by Gangs) of Chapter 4 of Title 18.2 were created by the 2000 session of the General Assembly and enacted in July of the same year. Additions and other revisions were made by the 2004, 2005, 2006, 2007, and 2008 General Assemblies.

Analysis:

According to fiscal year 2007 and 2008 Pre/Post-Sentence Investigation (PSI) data, no offenders were convicted of a felony under § 18.2-46.3 for recruitment of a juvenile for a gang or recruitment in a school zone as the primary (most serious) offense.

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, there were three misdemeanor convictions for recruiting another as a gang member. Two offenders received local-responsible (jail) terms of four months and ten months, respectively. The remaining offender was sentenced to probation without an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal increases the penalty for recruitment of persons for a criminal street gang from a Class 1 misdemeanor to a Class 6 felony when recruitment is done by telephone or by any electronically transmitted communication. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to identify how many gang-related recruitment violations take place under the conditions described by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. For similar reasons, the proposal's impact on the local-responsible (jail) bed space needs of the Commonwealth cannot be determined.

Adult community corrections programs. The proposal's impact on the need for adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. None of the convictions affected by the proposal are covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for any of these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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 (JCC) 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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