



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1781

(Patron – Gilbert)

LD #: 11102323

Date: 12/22/2010

Topic: Prohibited criminal street gang participation

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:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-46.2 regarding prohibited criminal street gang activity. Currently, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, at the direction of, or in association with the gang is guilty of a Class 5 felony. Under the proposal, such an act need not be committed for the benefit of, at the direction of, or in association with the gang.

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 and 18.2-46.3 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, and 2007 General Assemblies.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2009 and 2010, 60 offenders were convicted of a felony under § 18.2-46.2 for participating in a criminal act to benefit a gang that does not have a juvenile member. In these cases, the gang offense was the primary (or most serious) offense at sentencing. Of these offenders, 20% were sentenced to probation without an active

term of incarceration and 30% received a local-responsible (jail) term, with a median sentence of 10 months. The remaining 50% of offenders received a state-responsible (prison) term, with a median sentence of 2.8 years.

During the same period, another 30 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). In addition to the 13% who were sentenced to probation, 30% of these offenders received a jail term (with a median sentence of 6.0 months). For the 57% of offenders who received a state-responsible (prison) term, the median sentence was 9.0 years.

CAIS data for fiscal years 2009 and 2010 also indicate that six additional offenders were convicted of a felony under § 18.2-46.3 for recruiting a juvenile for a street gang (as the primary offense). Of these offenders, one was sentenced to probation and three received a jail sentence (with a median sentence of 3.0 months). The other two offenders were sentenced to prison terms of 2.0 and 2.5 years, respectively. Another 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; this individual was sentenced to 7.0 years imprisonment.

According to the Local Inmate Data System (LIDS) for fiscal years 2009 and 2010, a misdemeanor violation of § 18.2-46.3(A), recruiting an adult for a gang, was the primary offense for three offenders held in jail pre- or post-trial during this time period. All three offenders received local-responsible (jail) terms totaling 4.0, 14.0, and 18.0 months, respectively, for all charges.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the number of offenses that may be considered “prohibited criminal street gang activity,” potentially increasing the future state-responsible (prison) bed space needs of the Commonwealth. By removing the requirement that a “predicate criminal act” must be committed for the benefit of, at the direction of, or in association with the gang, the number of qualifying offenders is likely to increase. The number of additional felony convictions that may result from the proposal cannot be determined; therefore, the impact of the proposal 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. Felony convictions under § 18.2-46.2 for participation in a criminal act to benefit a gang are covered by the sentencing guidelines as the primary (most serious) offense. Other gang-related offenses under Article 2.1 of Title 18.2 are not covered; however, convictions under 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 proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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 874 of the 2010 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

gang05_2323