



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 2208

(Patron – McQuinn)

LD #: 11103801

Date: 1/10/2011

Topic: Expansion of gang-free zones

#### 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 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 proposal amends § 18.2-46.3:3 to expand penalty enhancements for gang activities to include activities taking place within 1,000 feet of multifamily housing for older persons. The proposal specifies that multifamily housing for older persons means multi-unit housing where the majority of residents are older persons as defined in § 36-96.7.

Currently, § 18.2-46.3:3 provides for these penalty enhancements when gang activities take place on or within 1,000 feet of school property, on a school bus, or upon the grounds of a publicly owned or operated community center or recreation center. Gang penalty enhancements include:

- A mandatory, minimum sentence of two years for gang participation or gang activity (as defined in § 18.2-46.2) taking place on any of the properties designated in the statute;
- A higher penalty for recruiting gang members (in violation of § 18.2-46.3(A)) on any of the designated properties (the penalty is raised from a Class 6 to a Class 5 felony for a person 18 years of age or older who recruits a minor in one of the designated areas; the penalty is raised from a Class 1 misdemeanor to a Class 6 felony in other cases of gang recruiting taking place in one of the designated areas); and
- A higher penalty for using or threatening to use force to encourage another person to become or remain a gang member or to commit a felony (in violation of § 18.2-46.3(B)) when the act is committed on any of the properties (a Class 5 felony versus 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, 2008, and 2010 General Assemblies.

The proposal also modifies § 18.2-255.2, which specifies the penalties for manufacturing, selling, distributing, or possessing with the intent to distribute any drug or imitation controlled substance on or near certain properties. Specifically, the proposal expands the list of locations to add areas within 1,000 feet of multi-family housing for older persons. Currently, violation of §18.2-255.2 is a felony punishable by imprisonment of one to five years. Each violation constitutes a separate and distinct felony. A second or subsequent conviction involving a Schedule I, II, or III controlled substance or more than one-half ounce of marijuana is subject to a mandatory minimum term of one year. However, if the offender proves that he sold such a controlled substance or marijuana only as an accommodation to another person, and not with intent to profit or to induce the recipient to become addicted to the substance, he is guilty of a Class 1 misdemeanor.

The General Assembly has modified § 18.2-255.2 several times in recent years. The 2006 General Assembly added child day centers to the list of locations included in the provision. In 2005, the General Assembly expanded the statute to add any state facility defined under § 37.2-100, which includes hospitals, training centers, psychiatric hospitals and other residential and outpatient mental health facilities.

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**Analysis:**

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2009 and FY2010, 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 length 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 prison term, the median sentence was 9.0 years.

CAIS data for FY2009 and FY2010 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 length 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 in prison.

According to the Local Inmate Data System (LIDS) for FY2009 and FY2010, 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 jail terms totaling 4.0, 14.0, and 18.0 months, respectively, for all charges.

According to the FY2009 and FY2010 Sentencing Guidelines database, 183 offenders were sentenced for their first felony violation of § 18.2-255.2 for manufacturing, selling, distributing, or possessing with the intent to distribute controlled substances, imitation drugs, or marijuana on or near designated properties. This offense was the primary, or most serious, offense in 28 of the cases. Of these 28 cases, 32% of the offenders did not receive an active term of incarceration, while 46% were sentenced to a jail term with a median sentence of three months. For the 21% of offenders who were given a

prison term, the median sentence length was 1.1 years. According to CAIS data for FY2009 and FY2010, three offenders were convicted of a second or subsequent felony under § 18.2-255.2 involving a Schedule I, II, or III controlled substance or more than one-half ounce of marijuana. However, this charge was not the primary offense in any of these cases.

FY2009 and FY2010 LIDS data indicate that 19 offenders were convicted of a misdemeanor under § 18.2-255.2 as the primary offense during this time period. Nearly all (95%) of these offenders received a local-responsible (jail) term, for which the median sentence was slightly less than one month.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the applicability of certain felony statutes, including one that provides for a mandatory minimum penalty, and raising the punishment for gang activity in additional locations, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to identify how many gang and drug-related violations take place near multifamily housing for older persons. 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.** Felony convictions under § 18.2-46.2 for participation in a criminal act to benefit a gang and felony convictions under § 18.2-255.2 for a first violation of distributing certain drugs on or near designated properties are covered by the sentencing guidelines. 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.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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