



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2381

(Patron – Pogge)

LD #: 11101018

Date: 12/9/2010

Topic: Crimes by gangs; predicate criminal acts

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$6,719 (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 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. Under subsection A of § 18.2-46.3, any person who solicits or recruits another to participate in or become a member of a criminal street gang is guilty of a Class 1 misdemeanor. Any person age 18 years or older who attempts to recruit a juvenile is guilty of a Class 6 felony. Under subsection B of § 18.2-46.3, any person using threats or force to encourage another person to become or remain a gang member or to commit a felony is guilty of a Class 6 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 types of predicate crimes that trigger penalties for gang activity 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 (0.25 beds) statewide by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$6,719.

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. Felony convictions under § 18.2-46.2 for participation in a criminal act to benefit a gang are covered by the sentencing guidelines. Other gang-related offenses under Article 2.1 of Title 18.2 are not covered as the primary (or most serious) offense; however, a conviction under one of 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 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 is \$6,719 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 2010.
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 2010.
3. Cost per prison bed was assumed to be \$27,065 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 FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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 FY2009 and FY2010 Circuit Court Automated Information System (CAIS) data and FY2009 and FY2010 LIDS data, 23,437 offenders were sentenced for a crime currently listed as a predicate crime and 312 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 1.33% (312 convictions/23,437 convictions).

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2011, 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, 2009. For person crimes, this rate was 10.6%.
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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