



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 287** **(Patron – Iaquinto)**

**LD #:** 12102419

**Date:** 12/28/2011

**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 890 of the 2011 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 (i) within 1,000 feet of a designated school bus stop when school children are waiting to be picked up or are being dropped off for school or a school-related activity or (ii) upon the property of any publicly owned or operated park, library, or hospital. 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 described above;
- A higher penalty for recruiting gang members (in violation of § 18.2-46.3(A)) on any of the properties described above (a Class 5 felony versus a Class 6 felony when a person over the age of 18 recruits a minor; a Class 6 felony versus a Class 1 misdemeanor in other cases); 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).

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.

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.

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**Analysis:**

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, 49 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, 29% were sentenced to probation without an active term of incarceration and 12% received a local-responsible (jail) term with a median sentence of 2.5 months. The remaining 59% of offenders received a state-responsible (prison) term with a median sentence of 2.5 years. Another 68 offenders were convicted of this gang crime as an additional offense accompanying a more serious felony, such as robbery.

During the same period, 19 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). While 21% were sentenced to probation, 37% of these offenders received a jail term with a median sentence of 6.0 months. For the 42% of offenders who received a state-responsible (prison) term, the median sentence was 1.5 years. Another 24 offenders were convicted of this gang crime as an additional offense to a more serious felony.

One offender was convicted under § 18.2-46.3:3 for participation in a criminal act to benefit a gang having a juvenile member in a gang-free zone (as the primary offense), and this offender was sentenced to probation. Four offenders were convicted of a third or subsequent gang offense under § 18.2-46.3:1; of these, one offender was sentenced to nine months in jail and the other three were sentenced to imprisonment with a median sentence of 4.0 years. Two offenders were convicted of gang participation on school property as an additional offense and one offender was convicted of a third or subsequent criminal street gang violation as an additional offense.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. For FY2009 through FY2011, Court Services Units processed 174 petitions for violations of § 18.2-46.2 and 22 petitions for violations of § 18.2-46.3. Furthermore, 20 juveniles were committed to the Department for violations of § 18.2-46.2 and 2 for § 18.2-46.3. The location of these offenses is not known and cannot be tracked as to whether the offense would result in the enhanced penalties of the proposal.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Since the proposal raises the punishment for gang activity in certain additional locations and expands the applicability of a mandatory minimum penalty, it 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 violations take place in the locations specified 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.** Convictions under § 18.2-46.3:3 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision (as an additional offense) 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. The proposal expands the enhanced penalties for gang activities in “gang free zones” to include school bus stops and their vicinity, parks, libraries, and hospitals. The number of cases that may be affected by the proposal is unknown.

**Juvenile detention facilities.** Similarly, 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 890 of the 2011 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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