



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 751

(Patron – Cline)

LD #: 12101744

Date: 12/14/2011

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 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 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 5 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 2010 General Assemblies.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, five offenders were convicted of a felony under § 18.2-46.3(A) for recruiting a juvenile for a street gang as the primary (most serious) offense. Of these offenders, one was sentenced to probation and two received a jail sentence, with a median sentence length of 5.5 months. The other two offenders were sentenced to prison terms of 2.0 and 2.5 years, respectively. No offenders were convicted for recruitment in a school zone during this time period.

According to FY2010 and FY2011 General District Court Automated Information System (CAIS) data, four offenders were convicted of a misdemeanor violation of § 18.2-46.3(A), recruiting an adult for a gang. The gang conviction was the primary offense in all of the sentencing events. While three of the offenders received a local-responsible (jail) term of 12 months, one offender received a local-responsible (jail) term of 36 months for all charges in the sentencing event.

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 5 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. Raising a crime from a Class 1 misdemeanor to a Class 5 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal, but any impact is likely to be small.

Virginia's sentencing guidelines. Convictions under § 18.2-46.3 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision can 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 impact 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 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.