



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2256

(Patron – Collins)

LD #: 17101463

Date: 12/19/2016

Topic: Convictions for street gang crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

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

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 780 of the 2016 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 § 18.2-46.3:1 related to criminal street gang offenses. Currently, a third or subsequent conviction for a street gang offense under §§ 18.2-46.2 or 18.2-46.3 within 10 years is a Class 3 felony, punishable by imprisonment of 5 to 20 years. Under the proposal, prior juvenile adjudications of delinquency and findings of not innocent could be counted as prior convictions for the purposes of enhancing the penalty.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2015 and FY2016, 61 offenders were convicted of a felony under § 18.2-46.2 for participating in a criminal act for the benefit, or at the direction, of a criminal street gang (these crimes were not committed in a school zone or other designated gang-free zone). The gang crime was the primary, or most serious, offense in 35 of the cases. Among the 35 offenders, more than half (60%) received a state-responsible (prison) term with a median sentence of 2.7 years. Another 28.6% were given a local-responsible (jail) term, for which the median sentence was nine months. The remaining 11.4% did not receive an active term of incarceration to serve after sentencing.

The Circuit Court Case Management System (CMS) for FY2015-FY2016 indicates that 14 offenders were convicted under §§ 18.2-46.2 or 18.2-46.3 for felony gang offenses that are not covered by the Sentencing Guidelines, such as those involving gang recruitment and gang crimes committed in a designated gang-free zone. For seven of the offenders, the gang crime was the primary offense. Of these, four received a jail term with a median sentence of 7.5 months. Two received a prison term with

sentences of one year and 1.2 years, respectively. One offender did not receive an active term of incarceration to serve after sentencing. During this two-year period, one offender was sentenced for a third or subsequent gang conviction under § 18.2-46.3:1, but this was not the primary offense in the case.

Existing data sources do not provide sufficient detail to identify instances in which individuals currently convicted under §§ 18.2-46.2 or 18.2-46.3 would be subject to the enhanced penalty due to a prior juvenile finding of not innocent or adjudication of delinquency.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the prior offenses that can be counted for the purposes of enhancing a felony penalty, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of additional offenders who may receive the enhanced penalty if the proposal is enacted. Therefore, the impact of the proposal on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will likely stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Convictions for a third or subsequent gang offense under § 18.2-46.3:1 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 direct care. According to the Department of Juvenile Justice (DJJ), the proposal will not increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 780 of the 2016 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.