

Department of Planning and Budget
2021 Fiscal Impact Statement
REVISED 1/27/2021

1. Bill Number: HB2226

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Kory

3. Committee: Public Safety

4. Title: Criminal street gang reporting; notice and process for contesting entry of information.

- 5. Summary:** The proposed legislation provides that when a state or local law enforcement agency, a regional jail, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), or a regional multijurisdictional law enforcement task force determines that a person is a member of a criminal street gang by means of (i) an admission of membership in a gang; (ii) an observation by a law enforcement officer that a person frequents a known gang area, associates with known gang members, and demonstrates gang style of dress, tattoos, hand signals, or symbols; or (iii) being arrested on more than one occasion with known gang members for offenses intended to benefit the gang, the agency shall provide written notice, in English and Spanish, to the person, or to his parent or guardian if the person is under age 18, that the person is a member of a criminal street gang. The agency must also provide the basis for such determination, unless providing such notification would compromise an active criminal investigation or the health or safety of the person, if the person is under age 18. The notice shall describe the process for contesting such determination, as provided in the bill. The person, his parent or guardian, or his attorney may respond to the notice within 45 days and submit written documentation to the agency contesting the determination. If the person, his parent or guardian, or his attorney does not respond to the notice within 45 calendar days, the agency shall enter the person's name and other gang-related information required by the Department of State Police (VSP) into the Organized Criminal Gang File of the Virginia Criminal Information Network (VCIN) and the Violent Criminal Gang File of the National Crime Information Center (NCIC), maintained by the FBI. The agency may enter such information in any other systems that contain gang information or affiliation.

The bill provides for a process by which a person may contest his classification as a member of a criminal street gang. The receiving agency shall review the documentation and provide the person, his parent or guardian, or his attorney written verification of the agency's decision whether to affirm or reverse its determination that such person is a member of a criminal street gang within 45 days of receipt of the written documentation contesting the determination. If the agency finds, by clear and convincing evidence, that the person is a member of a criminal street gang after reviewing the submitted written documentation, the agency shall enter the person's name and other appropriate gang-related information required

by the Department into the databases and may enter such information into any other systems that contain gang information or affiliation. The agency shall include the basis for this decision in the written verification of its decision. If after reviewing the written documentation, the agency does not find by clear and convincing evidence that the person is a member of a criminal street gang, the agency shall not enter the person's name or any other information into the databases or any other systems that contain gang information or affiliation and shall remove any reference to the person being a member of a criminal street gang from law-enforcement records. If the agency does not provide written verification of its decision within the required 45-day period, then it shall be deemed that the person is not a member of a criminal street gang and the agency shall not enter the person's name or any other information into the databases or any other systems that contain gang information or affiliation.

A person, his attorney, or, if the person is under 18 years of age, his parent or guardian, may at any time request in writing of VSP information as to whether his information has been entered into the databases or of any agency that maintains a system that contains gang information or affiliation information as to whether his information has been entered into such system. If VSP or another agency finds that such person's information has not been entered into the databases or other system, they shall so notify the requestor within 45 days of receipt of the request. If they find that the person's information has been entered into the databases, they shall, as soon as practicable, forward the request to the agency that entered the person's information into the databases. The agency shall respond to the requestor with the information requested within 45 days of receipt of the request from VSP or the original request unless doing so would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age. If a person's information has been electronically entered into the databases or any other systems that contain gang information or affiliation, the person, his attorney, or, if the person is under 18 years of age, his parent or guardian, may submit to the agency written documentation contesting such determination and requesting that his information be removed from the databases or any other systems that contain gang information or affiliation. Upon receiving such documentation, the agency shall review the documentation and provide a written verification of the agency's decision on whether to remove the person's information from the databases within 45 days of receipt of the written documentation contesting the determination. If after reviewing the written documentation the agency finds, by clear and convincing evidence, that the person is a member of a criminal street gang, the agency shall deny the request for removal of information and include the basis for such decision in the written verification of its decision. If the agency does not find, by clear and convincing evidence, that the person is a member of a criminal street gang, the agency shall remove the person's name or any other information from the databases and any other systems that contain gang information or affiliation. If the agency does not provide written verification of its decision within the required 45-day period, then the request to remove shall be deemed to be approved, and the agency shall remove the person's name or any other information from the databases any other systems that contain gang information or affiliation.

Any person, or parent or guardian, who has contested such determination may petition the court (i) to review the agency's decision to affirm its determination and enter the person's

information in the databases or any other systems that contain gang information or affiliation or to deny the person's request for removal of such information and (ii) to order the agency to remove the person's information from the databases or any other systems that contain gang information or affiliation. The petition shall be filed and served within 90 days of the agency's mailing or personal service of the written verification of the decision to affirm its determination or to deny the request. The petition may be filed in the general district court of the locality in which the agency that entered the person's information is located or in the locality where the person resides. A copy of the petition shall be served on the agency in person or by first-class mail. Proof of service of the petition on the agency shall be filed in the general district court. In reviewing the petition, the evidence to be considered by the court shall be limited to the agency's statement of the basis of its determination that such person is a member of a criminal street gang included in the written verification of its decision and any evidence supporting such decision and the documentation provided to the agency by the person contesting the designation. If, upon review of the evidence and any arguments presented to the court, the court finds that the agency has failed to establish that the person is a member of a criminal street gang by clear and convincing evidence, the court shall order the agency to remove the person's name and any other information from the databases and any other systems that contain gang information or affiliation. If a person whose information has been entered into the databases or any other systems that contain gang information or affiliation has not been found guilty of any criminal offenses in furtherance of or intended to benefit the criminal street gang within five years of the entry of his information, then VSP or the other agency shall automatically remove his information from the databases and provide written notification, in English and Spanish, to such person of such removal.

Additionally, on or before July 1, 2022, and annually thereafter, a state or local law-enforcement agency, regional jail, DOC, DJJ, or a regional multijurisdictional law-enforcement task force that has submitted such information to the databases within the preceding five years shall submit a report to the Department of Criminal Justice Services (DCJS) that contains the following information, disaggregated by gang with the name of the gang redacted and by race for the preceding 12 months: (i) the number of persons the agency added to the databases or any other systems that contain gang information or affiliation; (ii) the number of requests for removal of a person's information from the databases the agency received; (iii) the number of requests for removal that the agency granted, the number of requests for removal that the agency denied, and the number of requests for removal pending; (iv) the number of persons the agency automatically removed from the databases or any other systems that contain gang information or affiliation; (v) the number of persons determined by the agency to be members of a criminal street gang and so notified by the agency; (vi) the number of persons determined by the agency to be members of a criminal street gang whom the agency did not so notify and the reason such persons were not given such notice; (vii) the number of persons who contested the determination that they are a member of a criminal street gang upon being notified; and (viii) how many determinations that a person is a member of a criminal street gang the agency reversed after reviewing the written documentation contesting such determination and how many such determinations the agency affirmed. On or before November 1, 2022, and annually thereafter, DCJS shall publish the total number of people included in the Organized Gang File of VCIN and the information

submitted by each agency pursuant to this subsection on the Department of Criminal Justice Service's website.

- 6. Budget Amendment Necessary:** Yes, Item 426.
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** Upon further review of the proposed legislation, the Department of State Police (VSP) believes the provisions of the bill will have a fiscal impact on the agency's operations. According to VSP, there are thousands of gang members identified in numerous databases and other systems. This would require additional positions to receive requests from individuals whose information is in these databases, assess the reported information related to an individual's involvement in a gang, track compliance with specific timelines and court proceedings, identify parents or legal guardians of reported gang members who are underage, coordinate legal issues, develop reports to DCJS as required in the bill, and comply with court orders pertaining to gang database entries. VSP also anticipates additional resources to support personnel who can conduct training to ensure troopers accurately and consistently report such data as required by law. VSP estimates it would need one first sergeant position at an annual cost of \$143,398 (salary and benefits), 10 special agent positions at an annual cost of \$121,641 annually, and one administrative position, at an annual cost of \$71,859, to comply with the provisions of the proposed legislation.

There is no anticipated fiscal impact as a result of the provisions of this bill on the Department of Juvenile Justice (DJJ), the Virginia Alcoholic Beverage Control Authority (ABC), or the Division of Capitol Police (DCP), according to those agencies. According to the Department of Criminal Justice Services (DCJS), any additional workload as a result of the proposed legislation can be absorbed within the agency's existing resources. Any potential fiscal impact on other state and local law enforcement agencies is indeterminate at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Department of Criminal Justice Services, Department of Juvenile Justice, Department of Corrections, Department of Motor Vehicles, Virginia Alcoholic Beverage Control Authority, Department of Conservation and Recreation, College and University Police Departments, Division of Capitol Police, Department of Wildlife Resources, Marine Resources Commission, Virginia Lottery, Office of the State Inspector General, Sheriff's offices, and local law enforcement agencies.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.