

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 397

An Act to amend and reenact §§ 18.2-46.1, 18.2-46.2, 18.2-46.3:1, and 18.2-46.3:3 of the Code of Virginia, relating to crimes by gangs.

[S 1207]

Approved March 23, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-46.1, 18.2-46.2, 18.2-46.3:1, and 18.2-46.3:3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-46.1. Definitions.

As used in this article unless the context requires otherwise or it is otherwise provided:

"Act of violence" means those felony offenses described in *subsection C of § 17.1-805* or subsection A of § 19.2-297.1.

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § ~~18.2-31~~, 18.2-42, 18.2-46.3, ~~18.2-51~~, ~~18.2-51.1~~, ~~18.2-51.2~~, ~~18.2-51.3~~, ~~18.2-51.6~~, ~~18.2-52~~, ~~18.2-52.1~~, 18.2-53, ~~18.2-53.1~~, ~~18.2-55~~, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, ~~18.2-89~~, ~~18.2-90~~, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, ~~18.2-279~~, ~~18.2-282.1~~, ~~18.2-286.1~~, 18.2-287.4, ~~18.2-289~~, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, ~~18.2-355~~, ~~18.2-356~~, ~~18.2-357~~, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3, 18.2-346.01, 18.2-348, or 18.2-349; (iv) a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1 or a conspiracy to commit a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

§ 18.2-46.2. Prohibited criminal street gang participation; penalty.

A. Any person who actively participates in or is a member of a criminal street gang and who knowingly and willfully participates in any predicate criminal act committed for the benefit of, at the direction of, or in association with any criminal street gang ~~shall be~~ is guilty of a Class ~~5~~ 4 felony. However, (i) if such participant in or member of a criminal street gang is ~~age eighteen~~ 18 years of age or older and knows or has reason to know that such criminal street gang also includes a juvenile member or participant or (ii) if such predicate criminal act is an act of violence as defined in § 18.2-46.1, he ~~shall be~~ is guilty of a Class 4 3 felony.

B. Violation of this section shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

§ 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes.

Upon a felony conviction of § 18.2-46.2 or § 18.2-46.3, where it is alleged in the warrant, information or indictment on which a person is convicted that (i) such person has been previously convicted twice under any combination of § 18.2-46.2 or § 18.2-46.3, within 10 years of the third or subsequent offense, and (ii) each such offense occurred on different dates, such person is guilty of a Class ~~3~~ 2 felony.

§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone; penalties.

Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school or institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii) on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of any publicly owned or operated community center or any publicly owned or operated recreation center is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years to be served consecutively with any other sentence. A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class ~~6~~ 5 felony, except that any person 18 years of age or older who violates subsection A of

§ 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is at least \$437,679 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.