

## **Department of Planning and Budget**

### **2023 Fiscal Impact Statement**

**1. Bill Number:** HB1478

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Ballard

**3. Committee:** Courts of Justice

**4. Title:** Crimes by gangs.

**5. Summary:** Expands the definition of a “predicate criminal act” associated with gang activity beyond the crimes currently covered to include any violation punishable as a felony and certain Class 1 misdemeanors. The proposal also increases existing felony penalties and mandatory minimums for certain gang crimes.

**6. Budget Amendment Necessary:** Yes, Item 404.

**7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).

**8. Fiscal Implications:** The proposed legislation elevates the punishment for several gang-related offenses defined in existing code. The punishment for any individual who actively participates or is a member of a criminal street gang and who participates in any predicate criminal act, as defined in § 18.2-46.1, is guilty of a Class 4 felony under this proposal. Additionally, (i) if such individual is 18 years of age or older and has knowledge that the criminal street gang includes a juvenile member or participant or (ii) if such predicate criminal act that the individual participated in is an act of violence is punishable by a Class 3 felony.

A third or subsequent felony conviction of criminal street gang crimes within 10 years is punishable by a Class 2 felony. Any gang activity taking place in gang-free zones is punishable by a mandatory minimum term of imprisonment of five years. Any recruitment of persons for criminal street gangs that takes place on gang-free zones is punishable by a Class 5 felony, or if such recruitment on a gang-free zone is of a juvenile, the offense is punishable by a Class 4 felony. Any individual who uses or threatens to use force to recruit another individual for any criminal street gang activity is punishable by a Class 4 felony.

According to the Virginia Criminal Sentencing Commission (VCSC), between FY 2021 and FY 2022 there were 24 offenders sentenced under a felony conviction for participating in a criminal act to benefit a gang that does not have a juvenile member. Of these offenders, 16.7 percent were sentenced to probation without an active term of incarceration, 20.8 percent received a local-responsible (jail) term with a median sentence of six months, and 62.5

percent received a state-responsible (prison) term with a median sentence of four years. An additional 29 offenders were convicted of criminal street gang participation as an additional offense to a more serious felony, such as first-degree murder or malicious wounding.

During this same period, five offenders were convicted of participation in a criminal act to benefit a gang that had a juvenile member. Of these, one offender was sentenced to probation without an active term of incarceration and the remaining four offenders received state-responsible (prison) terms with a median prison sentence of four years. Another nine offenders were convicted of criminal street gang participation as an additional offense to a more serious felony, such as first or second-degree murder. One offender was convicted of a felony for participating in gang activity that took place in a gang-free zone and received a local-responsible (jail) sentence of 10 months.

There were no convictions for participation in a criminal act to benefit a gang without a juvenile member in a gang-free zone, recruitment of persons for criminal street gang activity, or a third or subsequent gang offense.

The VCSC anticipates this proposal to have an impact on the future state-responsible (prison) bed space needs due to the expansion of the list of crimes that trigger felony penalties for gang participation and the elevation of existing penalties and mandatory minimum terms for gang-related crimes. Pursuant to § 30-19.1:4 of the Code of Virginia, the VCSC estimates the impact to be at least 92 state prison beds by FY 2029 with a fiscal impact of at least \$4,498,630. This is a minimum estimate, as this figure does not include the impact the proposal may have on gang recruitment offenses under § 18.2-46.3 nor does it reflect the potential increase in sentences that may result from the higher penalties that are proposed; the data are insufficient to estimate the impact of those aspects of the proposal. According to the VCSC, the proposal is also expected to increase the future need for local responsible (jail) beds. The net impact on local-responsible (jail) beds is estimated to be at least two beds by FY 2029 with a state cost of \$33,991.

**9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Corrections (DOC), Commonwealth's Attorneys, Public Defenders' Offices, law enforcement agencies, local and regional jails, and local police departments.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.