



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 307

(Patron— Peake)

LD#: 26102181

Date: 12/30/2025

Topic: Gang predicate offenses, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$520,889 (9 beds)
- **Local Adult Correctional Facilities:**
At least \$2,557 (1 partial bed)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

* Provided by the Department of Juvenile Justice

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 18.2-46.1 to expand the definition of a “predicate criminal act” associated with gang activity beyond the crimes currently covered to include any violation of § 18.2-308 (concealed weapon violations) and a misdemeanor violation of § 18.2-282 (brandishing or pointing a firearm).

The proposal affects several gang-related offenses defined in the *Code of Virginia*. Under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 4 felony. If the predicate crime is an act of violence (as defined in § 17.1-805(C) or § 19.2-297.1(A)), the offender is guilty of a Class 3 felony. If the offender is 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 3 felony. In addition, § 18.2-46.3:3 provides enhanced penalties for violations of § 18.2-46.2 occurring (i) upon the property of any public or private 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 a school bus; or (iv) on the property of a publicly owned or operated community center or recreation center. Under § 18.2-46.3:1, a third or subsequent conviction for a gang offense is elevated to a Class 2 felony.

All of the crimes in Article 2.1 (Crimes by Gangs) of Title 18.2 were created by the 2000 session of the General Assembly and enacted in July of the same year. Additions to the definition of a “predicate criminal act” and other revisions were made by the 2004, 2005, 2006, 2007, 2012, 2013, 2014, 2015, 2019, 2021, and 2023 General Assemblies.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal years 2024 and 2025, a felony conviction under § 18.2-46.2 for participating in a criminal act to benefit a gang that does not have a juvenile member was the primary, or most serious, offense for 20 offenders. Of these offenders, 10.0% were sentenced to probation without an active term of incarceration and 10.0% received a local-responsible (jail) term with a median sentence of nine months. The remaining 80.0% of offenders received a state-responsible (prison) term with a median sentence of 4.5 years. Another 18 offenders were convicted of this gang crime as an additional offense accompanying a more serious felony, such as first-degree murder or malicious wounding.

During the same period, nine offenders were convicted under § 18.2-46.2 for participation in a criminal act to benefit a gang having a juvenile member (as the primary offense). Of these, two offenders (22.2%) were sentenced to probation without an active term of incarceration, and one offender (11.1%) was sentenced to one day in jail. The remaining six offenders (66.7%) received prison terms with a median prison sentence of 4.3 years. Another two offenders were convicted of this gang crime as an additional offense to a more serious felony, such as first or second-degree murder.

One offender was convicted of a felony under § 18.2-46.3:3 during the two-year period for participation in a criminal act to benefit a gang having a juvenile member in a gang-free zone (as the primary offense). This offender was sentenced to probation without an active term of incarceration. One additional offender was convicted of this crime as an additional offense to a more serious felony.

Three offenders were convicted under § 18.2-46.2(ii) for participation in a criminal act to benefit a gang where the predicate crime was an act of violence (as the primary offense). All three offenders received prison terms with a median prison sentence of seven years. Another two offenders were convicted of this crime as an additional offense to a more serious felony, such as first or second-degree murder.

There were no convictions under for recruitment of persons for a criminal street gang (several felonious acts defined under § 18.2-46.3), or a third or subsequent gang offense under § 18.2-46.3:1.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the list of predicate crimes that trigger felony penalties for several gang related crimes defined under §§ 18.2-46.2, 18.2-46.3:1, and 18.2-46.3:3. Therefore, it is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least 9 beds statewide by FY2032. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$520,889. 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; the data are insufficient to estimate the impact of that aspect of the proposal.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY27	FY28	FY29	FY30	FY31	FY32
1	3	5	7	8	9

Local adult correctional facilities. 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 one partial bed by FY2032 (state costs: \$2,557; local costs: \$3,974).

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-46.2 (participation in a criminal act to benefit a gang) are covered by the Sentencing Guidelines. Other gang-related offenses under Article 2.1 of Title 18.2 are not covered as the primary (or most serious) offense; however, a conviction under one of these provisions may augment the Guidelines recommendation (as an additional offense) 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, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 is at least \$520,889 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety and Homeland Security's Committee on Offender Population Forecasting in 2025.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety and Homeland Security's Committee on Offender Population Forecasting and approved in 2025.
3. Cost per prison bed was assumed to be \$58,189 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2024 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$58.26 per day or \$21,279 per year. The local cost was calculated by using the daily expenditure cost of \$154.31 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$90.55 per day or \$33,073 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. The increase in the number of offenders sentenced for a gang-related offense under Article 2.1 of Title 18.2 as a result of the proposal was estimated using conviction data for felony acts of violence, as well as for the current and proposed predicate crimes. According to FY2024 and FY2025 Circuit Court Case Management System (CMS) data, 8,405 offenders were sentenced for an act of violence, 12,384 offenders were sentenced for a felony crime currently listed as a predicate crime, and 145 offenders were sentenced for a proposed felony predicate crime. On the other hand, according to General District Court CMS data for the same period, 8,348 offenders were sentenced for a misdemeanor currently listed as a predicate crime, and 2,269 offenders were sentenced for a proposed misdemeanor predicate crime. Therefore, the net effect on the number of gang-related convictions associated with the proposed predicate crimes was assumed to be an increase of approximately 8 percent $((\text{proposed misdemeanors} + \text{proposed felonies}) / (\text{current misdemeanors} + \text{current acts of violence} + \text{current felonies}) = (2,269 + 145) / (8,348 + 8,405 + 12,384) = 2,414 / 29,137 = 0.083)$.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2026, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rate at which inmates in Department of Corrections' facilities were earning sentence credits as of August 29, 2025. For affected offenders, this rate was 9.5%.
3. It was assumed that prosecutors would charge all eligible offenders with a gang offense.
4. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for a gang-related offense under Article 2.1 of Title 18.2.

Limitations

1. The projection is a minimum estimate because it does not include the impact the proposal may have on gang recruitment offenses under § 18.2-46.3; the data are insufficient to estimate the impact of that aspect of the proposal.

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