

Legislation Passed by the **2005** Virginia General Assembly Aimed at Combating Gangs and Gang Violence

I. Attorney General's Legislative Package

Gang Definitions (Virginia Code § 18.2-46.1)

Adds the following offenses to the definition of "predicate criminal act:"

- Assault by mob (§ 18.2-42; Class 1 misdemeanor)
- Reckless handling of firearms (§ 18.2-56.1; Class 1 misdemeanor)
- Extortion (§ 18.2-59; Class 5 felony)
- Shooting from vehicle (§ 18.2-286.1; Class 5 felony)
- Carrying a loaded firearm (§ 18.2-287.4; Class 1 misdemeanor)
- Possession of certain weapons on school property (§ 18.2-308.1; Class 1 misdemeanor/Class 6 felony).
- Any similar offense under the laws of any state or territory of the United States, the District of Columbia, or the United States.

Gang-Free School Zones (§ 18.2-46.3:3)

Establishes gang-free school zones in which enhanced penalties apply for violations of the gang statutes. The legislation is intended to protect our children by deterring gang activity in the "safe haven" in which children congregate.

- Creates a new statute (§ 18.2-46.3:3) that will enhance the punishment for violations of § 18.2-46.2 (gang participation) and § 18.2-46.3 (gang recruitment) when such violations are committed within the designated areas.
- Currently, a violation of § 18.2-46.2 (gang participation) constitutes a Class 4 (2-10 yrs.) or 5 felony (1-10 yrs.). A conviction carries no mandatory minimum. The new statute will provide that the punishment for the offense of gang participation, when committed within a designated area, will carry a mandatory minimum sentence of 2 years.
- Currently, a violation of § 18.2-46.3 (gang recruitment) constitutes a Class 1 misdemeanor, unless the offense is committed by an adult against a juvenile or involves the use of force or threat of force, in which case the offense is a Class 6 felony (1-5 yrs.). The proposed statute will enhance the misdemeanor penalty to a Class 6 felony (1-5 yrs.) and the Class 6 felony to a Class 5 felony (1-10 yrs.).
- The proposed language ensures that the enhancements shall apply to any person committing such an offense within the designated areas regardless of where such person may have intended to commit the offense.

Disclosure of victim/witness information in gang cases (§ 19.2-11.2)

- Amends § 19.2-11.2 to allow a witness in a criminal prosecution under § 18.2-46.2 or § 18.2-46.3 to request that their residential address, telephone number, and place of employment not be disclosed. Currently, the statute only allows for such a request by the crime victim.
- Adds counsel for the defendant to the list of those who, upon the request of the witness or crime victim, are prohibited from disseminating the residential address, telephone number, or place of employment of the witness or victim.

Enjoining Gangs as Public Nuisances (§ 48-7 et seq.)

- Amends Chapter 2 of Title 48 (§ 48-7 et seq.) to facilitate the abatement of criminal street gang activity in communities so plagued by such activity that citizens are deprived of their basic Constitutional liberties.
- Provides that criminal street gang activity is a nuisance that may be enjoined and abated.
- Provides that a suit brought to enjoin criminal street gang activity may be brought against the criminal street gang as an unincorporated association and in the name by which it is commonly known.
- A suit for injunctive relief against a gang may be brought by the Attorney General or the Attorney for the Commonwealth.
- The legislation is intended to restore basic Constitutional liberties and security to the law-abiding citizens of communities ravaged by gang violence.
- The objectives of gang injunctions are to discourage gang membership, improve the use of law enforcement resources, improve the quality of life of residents, and to suppress gang activity and reduce crime.

Gangs as a “continuing criminal enterprise” (§ 18.2-248)

- Provides that a person is engaged in a “continuing criminal enterprise” if he commits a felony violation of § 18.2-248, with respect to a controlled substance classified in Schedule I or II, for the benefit of, at the direction of, or in association with any criminal street gang as defined in § 18.2-46.1.
- Note: Virginia Code § 18.2-31(10) includes the willful, deliberate and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined by § 18.2-248(I).

Mandatory minimum fine for gang graffiti (§ 15.2-1812.2)

- Provides that the penalty for a violation of a local graffiti ordinance shall include a mandatory minimum fine of \$500.00 if the violation was committed for the benefit of, at the direction of, or in association with any criminal street gang.

II. Additional Gang-Related Legislation

Board of Education guidelines and model policies to address gang –related activity (§ 22.1-279.6)

- The guidelines and model policies developed for codes of student conduct to aid local school boards in the implementation of such policies shall include standards for school board policies on gang-related activity.

Criminal street gang reporting (§ 52-8.6)

- When it is determined by a law-enforcement agency, regional jail, the Department of Correction, or a regional multijurisdictional law-enforcement task force, that a person is a member of a criminal street gang, the agency shall enter the person's name and other gang-related information into the Organized Criminal Gang File of the Virginia Criminal Information Network of the Department of State Police and the Violent Criminal Gang File of the National Crime Information Center maintained by the FBI.