

SENATE BILL NO. 1207

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on February 2, 2023)

(Patron Prior to Substitute--Senator McDougle)

A BILL 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.

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-

27 346.01, 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
 28 conspiracy to commit a felony violation of § 4.1-1101, 18.2-248, or 18.2-248.1; (v) any violation of a
 29 local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws
 30 of another state or territory of the United States, the District of Columbia, or the United States.

31 **§ 18.2-46.2. Prohibited criminal street gang participation; penalty.**

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

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

43 **§ 18.2-46.3:1. Third or subsequent conviction of criminal street gang crimes.**

44 Upon a felony conviction of § 18.2-46.2 or-§ 18.2-46.3, where it is alleged in the warrant,
 45 information or indictment on which a person is convicted that (i) such person has been previously
 46 convicted twice under any combination of § 18.2-46.2 or-§ 18.2-46.3, within 10 years of the third or
 47 subsequent offense, and (ii) each such offense occurred on different dates, such person is guilty of a Class
 48 ~~3~~2 felony.

49 **§ 18.2-46.3:3. Enhanced punishment for gang activity taking place in a gang-free zone;
 50 penalties.**

51 Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of
 52 any public or private elementary, secondary, or postsecondary school or institution of higher education;
 53 (ii) upon public property or any property open to public use within 1,000 feet of such school property; (iii)

54 on any school bus as defined in § 46.2-100; or (iv) upon the property, including buildings and grounds, of
55 any publicly owned or operated community center or any publicly owned or operated recreation center is
56 guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum
57 term of imprisonment of two years to be served consecutively with any other sentence. A person who
58 violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class-~~6~~5 felony,
59 except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property
60 listed in this section, when such offense is committed against a juvenile, is guilty of a Class-~~5~~4 felony.
61 Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of
62 a Class-~~5~~4 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the
63 property described in clauses (i) through (iii) regardless of where the person intended to commit such
64 violation.

65 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
66 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
67 **appropriation is at least \$437,679 for periods of imprisonment in state adult correctional facilities**
68 **and cannot be determined for periods of commitment to the custody of the Department of Juvenile**
69 **Justice.**

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