

Virginia Gang Legislative History

2000-2010

Virginia began arming law enforcement with the tools necessary to fight gangs in 2000 with the implementation of Code Section 18.2-46.1. This statute created the definition of a Criminal Street Gang:

“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 acts¹, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.”²

In addition to providing a definition, the General Assembly enacted Code Section 18.2-46.2, which outlines that any person 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 guilty of a Class 5 felony.” In addition, this statute provides that if any member of the gang is a juvenile, the participant will be guilty of a Class 4 Felony. Another special feature of this statute is the fact that it allows that any “violation of this section shall constitute a separate and distinct offense.”³

As many saw the advantage and utility of the gang statute, it became clear that more could be done to give the Commonwealth an advantage in its on-going fight against Gangs. In 2004, the General Assembly added the following statutes to strengthen the code:

- Code Section 18.2-46.3 sought to combat gang recruitment. This statute provides that “Any person who solicits, invites, recruits, encourages or otherwise causes or attempts to cause another to actively participate in or become a member of what he knows to be a criminal street gang is guilty of a Class 1 misdemeanor.” Additionally, this statute states that if any person over 18 attempts to recruit a juvenile, the Class 1 misdemeanor will be increased to a Class 6 Felony. Along with recruitment, this statute seeks to target individuals who use force or threats (against an individual or family of the individual) as a recruitment tool or deterrent against leaving a gang, is guilty of a Class 6 Felony.⁴
- Code Section 18.2-46.3:1 applied the ‘Three Strikes’ rule to gang offenses,

¹ A predicate criminal act is any ‘Act of Violence’-defined in Virginia Code Section 19.2-297.1, along with other specifically enumerated offenses.

² Virginia Code Section 18.2-46.1- <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-46.1>.

³ Virginia Code Section 18.2-46.2 (b)

⁴ Virginia Code Section 18.2-46.3 (b)

- Code Section 18.2-16.3:2 allowed for the Forfeiture of Assets to the Commonwealth of those convicted of gang offenses.
- Code Section 16.1-330.1 applied SHOCAP (Serious or Habitual Offender Comprehensive Action Program) statute to gang members. This enabled “the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts.”⁵
- Code Section 18.2-460 applied the Witness Intimidation statute to gang members.
- Code Section 18.2-55.1 created a ‘hazing’ or recruitment of gang members statute.
- Code Section 18.2-308 created the Machetes as Concealed Weapons statute.
- Code Section 19.2-215.1 applied the Multi-jurisdictional Grand Jury statute to gang cases.
- Code Section 19.2-120 applied the Presumption Against Bail statute to offenders who are gang members.
- Code Section 19.2-66 allowed gang affiliation to be included in pre-sentencing reports.
- Code Section 18.2-512 *et seq* added Gang Crimes to the Racketeer Influenced & Corrupt Organization (RICO) Act.

The legislative attack on gangs continued in 2005 as the General Assembly added the following statutes:

- Code Section 18.2-46.3:3 added the Gang-Free School Zone Statute, which enhanced the penalty for any gang crime committed within a 1,000 feet of a school zone.
- Code Section 16.1-260, 19.2-83.1, and 22.1-279.6 created the Gang in Schools Statute regarding the reporting of gang activity of students.
- Code Section 15.2-1812.2 adds additional penalties to the Graffiti Statute if the graffiti is done for the benefit of the gang.
- Code Section 52-8.6 created Criminal Street Gang Reporting, which states that gang affiliation should be entered into a shared database such as VCIN or NCIC
- Code Section 18.2-248 added the Capital Punishment statute in reference to offenses committed by gang members and for the benefit or at the direction of the gang.

In 2005, the following were added as predicate criminal acts:

- Reckless handling of firearms
- Extortion
- Shooting from a vehicle
- Carrying a loaded firearm
- Possessing weapons on school property

⁵ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+16.1-330.1>

Seeking to further extend the reach of the Gang Statues, the General Assembly enacted the following statutes from 2006-2009:

- Code Section 18.2-282.1 created the Brandishing a Machete statute.
- Code Section 16.1-309.1 created the Juvenile Affiliation statute, which allowed for the release of information of a juvenile involved in a gang-related act.
- Code Sections 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 required the reporting of gang activity in different agencies.
- Code Section 2.2-511 created the Gang Prosecutions statute, which allowed the Office of the Attorney General to criminally prosecute gang cases.
- Code Section 4.1-225 applied the ABC License Suspension or Revocation statute to facilities that allowed gang congregation.
- Code Section 53.1-10 created the Gang Affiliation of Inmates Statute.

From 2006-2009 the following were added as predicate criminal acts:

- Receiving money for procuring prostitution
- Threats to Bomb or Damage Buildings
- Use or Display of a Firearm in the Commission of a Felony

The Attorney General is committed to the fight against gangs in Virginia. The Office continues to communicate with localities and will adjust and propose new legislation as it arises.