

Virginia State Crime Commission

Gang Statutes

2008

GANG STATUTES

Background

Virginia's principal anti-gang statutes, consisting of necessary definitions, the crime of gang participation, and the crime of gang recruitment, were enacted in 2000. Significant amendments aimed at combating gang-related crime were enacted in 2004 and 2005. Additional amendments were made in 2006, 2007, and 2008.

The principal gang statutes are contained in Title 18.2, Chapter 4, Article 2.1 (§ 18.2-46.1 et. seq.) of the Code of Virginia. These statutes, after the aforementioned amendments, include definitions, the crime of gang participation, the crime of gang recruitment, an enhanced punishment for a third or subsequent conviction of the crimes of gang participation or recruitment, forfeiture of property used in furtherance of committing gang participation or recruitment, and enhanced penalties for gang participation and recruitment in or near school zones. In addition to these principal gang statutes, additional gang-related provisions are contained throughout the Code of Virginia.

The definitions set forth in § 18.2-46.1 are significant to the entire statutory sequence. A "criminal street gang" is defined as a group of three or more persons which has as one of its primary objectives or activities the commission of one or more criminal activities, has an identifiable name or identifying sign or symbol, and the members of which 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." A "predicate criminal act" includes those crimes that consist of an "act of violence," as defined by § 19.2-297.1, as well as additional, specifically enumerated offenses. The definition of "predicate criminal act" has great significance because it serves both as a component of the definition of "criminal street gang" and as the offense that triggers the crime of gang participation in violation of § 18.2-46.2.

The offenses that constitute a "predicate criminal act" by virtue of the definition of "act of violence" include:

- Murder;
- Involuntary manslaughter;
- Mob-related felonies;
- Abduction;
- Malicious felonious assault;
- Malicious wounding;
- Robbery;
- Carjacking;
- Felonious criminal sexual assault;
- Arson; Conspiracy to commit any such offense; and,
- Principle in the second degree or accessory before the fact of any such offense.

The additional, specifically enumerated offenses included in the original definition of "predicate criminal act" when it was enacted into law in 2000, include:

- Malicious wounding;
- Malicious bodily injury to law enforcement officer;
- Malicious bodily injury by means of caustic substance;
- Shooting, stabbing, or wounding in the commission of a felony;
- Bodily injury caused by prisoners, parolees, and probationers;
- Assault and battery;
- Assault and battery on a family or household member;
- Entering property of another for purposes of damaging it;
- Injuries to churches, church property, burial grounds, etc.;
- Trespass upon church or school property;
- Injury to property or monument;
- Damage to public buildings;
- Breaking, injuring, defacing, or preventing operation of any vehicle, aircraft or boat; and,
- Entering or setting in motion a vehicle, aircraft, boat, locomotive, or rolling stock; and, damage or defacement of property in violation of a local ordinance.

These additional, specifically enumerated offenses included in the definition of “predicate criminal act” were added in 2004:

- Gang recruitment;
- Drug offenses in violation of § 18.2-248(H), (H1), or (H2);
- Transporting drugs into the Commonwealth with the intent to sell or distribute;
- Distributing drugs to any person under 18 years of age who is at least three years his junior;
- Violation of drug free school zones;
- A second or subsequent felony violation with respect to a controlled substance listed in Schedule I or II of Subsection C of § 18.2-248 or of § 18.2-248.1; and,
- A second or subsequent felony violation with respect to distribution of marijuana.

These additional, specifically enumerated offenses included in the definition of “predicate criminal act” were added in 2005:

- Assault by mob;
- Reckless handling of firearms;
- Extortion;
- Shooting from vehicle;
- Carrying a loaded firearm;
- Possession of certain weapons on school property; and,
- Any similar offense under the laws of any state or territory of the United States, the District of Columbia, or the United States.

These additional, specifically enumerated offenses included in the definition of “predicate criminal act” were added in 2006:

- Receiving money for procuring prostitution;
- Threats to bomb or damage buildings; and,
- Brandishing a machete.

One additional, specifically enumerated offense included in the definition of “predicate criminal act” was added in 2007:

- Use or display of a firearm in the commission of a felony.

As mentioned, the definition of “predicate criminal act” is a significant element to the crime of gang participation under § 18.2-46.2. That statute makes it a Class 5 felony for an active participant or member of a criminal street gang to participate in a predicate criminal act for the benefit of, at the direction of, or in association with any criminal street gang. The violation rises to a Class 4 felony if the defendant knows that the gang includes a juvenile member. The crime of gang participation constitutes a separate and distinct offense.

The crime of gang recruitment, pursuant to § 18.2-46.3, makes it a Class 6 felony for an adult to recruit a juvenile into a gang, a Class 1 misdemeanor to recruit another into a gang, regardless of the age of the offender or the victim, and a Class 6 felony to use or threaten force against an individual, or a member of his family or household, in order to encourage that individual to join a gang, remain in a gang, or submit to a demand by a gang to commit a felony.

Statutes creating penalty enhancement for certain criminal gang conduct have recently been enacted as well. Section 18.2-46.3:1, which is aimed at combating gang recidivism, makes a third or subsequent violation of gang participation or gang recruitment a Class 3 felony. Section 18.2-46.3:3 creates enhanced penalties for the crimes of gang participation or gang recruitment committed on school property, within 1,000 feet of school property, or on a school bus. When committed in these areas, the crime of gang participation requires a mandatory minimum term of imprisonment of two years, misdemeanor gang recruitment is enhanced to a Class 6 felony, and Class 6 felony gang recruitment is enhanced to a Class 5 felony.

Analysis

A survey was created and issued to all Commonwealth’s Attorneys throughout the Commonwealth for the purpose of establishing whether or not each office prosecuted violations of gang participation and gang recruitment, the number of charges and convictions for each statute since 2000, the number of forfeitures pursuant to § 18.2-46.3:2 since 2004, the number of gang participation and recruitment enhancements since 2005, the number and types of criminal street gangs each office obtained convictions for

since 2000, the “predicate criminal acts” used to prove that a group met the definition of a “criminal street gang,” and the “predicate criminal acts” used as the “trigger” offense for the crime of gang participation under § 18.2-46.2. Forty-one percent (49 of 120) of offices representing 55 localities responded.

The survey revealed that 53 percent (26 of 49) of offices prosecuted at least one violation for either gang participation or gang recruitment. Forty-seven percent (23 of 49) of offices had no prosecutions. The localities that prosecuted at least one such case included the cities of Hampton, Harrisonburg, Manassas, Norfolk, Poquoson, Portsmouth, Richmond, Spotsylvania, Staunton, Suffolk, Williamsburg, Winchester, and Virginia Beach and the counties of Albemarle, Appomattox, Arlington, Chesterfield, Grayson, Henrico, James City, Lancaster, Lynchburg, Middlesex, Prince Edward, Prince William, Rockingham, Shenandoah, Spotsylvania, Stafford, and York.

The survey revealed a marked increase in the number of charges and convictions for the crime of gang participation that coincides with the amendments made to the anti-gang laws beginning in 2004. For instance, in 2007 there were 213 charges and 126 convictions for gang participation as compared to only 19 charges and 13 convictions in 2004. In 2008, most of the charges for gang participation occurred in Rockingham County/City of Harrisonburg, Prince William County, the City of Hampton, the City of Richmond, and Grayson County. The most convictions occurred in Prince William County, the City of Richmond, the City of Norfolk, and Henrico County.

The survey also revealed a marked increase in the number of charges and convictions for the crime of gang recruitment that coincides with the amendments made to the anti-gang laws beginning in 2005. It also uncovered a marked decrease after peaking in 2006. It appears that the decrease in the number of charges and convictions for the crime of gang recruitment coincides with the decrease in available funding of anti-gang efforts. It is likely that the decrease in funding did not similarly impact charges and convictions for gang participation because that crime is connected to a “trigger” offense that must be investigated and prosecuted anyway. Gang recruitment, on the other hand, is a crime unrelated to any

“trigger” offense and thus, necessitates its own investigation and prosecution that will not otherwise occur. In 2008, most of the charges for gang recruitment occurred in Grayson County, Rockingham County/City of Harrisonburg, and the City of Hampton. The most convictions occurred in Rockingham County/City of Harrisonburg, Prince William County, and Henrico County.

The survey revealed that, to date, there have been no Class 3 felony convictions obtained under § 18.2-46.3:1 for a third or subsequent felony conviction of gang participation since the statute’s enactment in 2004. There have been two Class 3 felony convictions under the statute for a third or subsequent felony conviction of gang recruitment since 2004. The survey also revealed that there have been no forfeitures obtained by Commonwealth’s Attorneys pursuant to § 18.2-46.3:2 since 2004. The use of the school zone enhancements has increased significantly since the statute’s enactment in 2005. As of October 1, 2008, the enhancement has been used with regard to 21 gang participation charges and 13 gang recruitment charges for 2008 alone.

Commonwealth’s Attorneys’ offices obtained convictions against more than 40 gangs for violations of gang participation or gang recruitment. The gangs with the highest number of convictions included the Bloods (20 offices), the Crips (13 offices), MS-13 (6 offices), and the Gangster Disciples (4 offices).

A main purpose of the survey was to ascertain what offenses included in the definition of “predicate criminal act” pursuant to § 18.2-46.1 are, and are not, being used. Of the specifically enumerated offenses that have existed as part of the definition since 2000, the following have not been used:

- Malicious bodily injury to law enforcement officer;
- Malicious bodily injury by means of caustic substance;
- Shooting, stabbing, or wounding in the commission of a felony;
- Bodily injury caused by prisoners, parolees, and probationers;
- Injuries to churches, church property, burial grounds, etc.;
- Damage to public buildings;

- Entering or setting in motion a vehicle, aircraft, boat, locomotive, or rolling stock; and,
- Damage or defacement of property in violation of a local ordinance.

Data from the Virginia Criminal Sentencing Commission (“VCSC”) was also reviewed. Two sources of data were utilized; the Pre-Post Sentence Investigation (“PSI”) system and the Court Automated Information System (“CAIS”). Additionally, staff reviewed information provided by the Virginia Department of Corrections (“DOC”) for the purpose of determining the total number of offenders under DOC supervision identified by DOC’s Security Threat Gang (“STG”) database, regardless of the crime of which the individual was convicted, the total number and types of gangs identified by the STG database, regardless of conviction type, and the number of individuals under DOC supervision convicted of gang participation and/or gang recruitment. Detailed analyses of the aforementioned datasets are included in the 2008 Interim Executive Summary of Activities.

Conclusion

The study revealed that the utilization of Virginia’s gang statutes has increased significantly since the enactment of the 2004 amendments. Also revealed is the fact that most, but not all, of the specifically enumerated offenses that have been included in the definition of “predicate criminal act” since the creation of the statutory sequence in 2000 have been used by law enforcement and prosecutors. A state-wide review of the data reveals that the jurisdictions which have the highest number of charges filed for violations of gang statutes are not always the jurisdictions with the highest conviction rates for those offenses. Finally, the study has shown that the number of charges and convictions for violations of the gang statutes cannot be used as an accurate indication of the number of gangs and gang members that exist in the Virginia Department of Corrections or, for that matter, throughout Virginia.