

Virginia State Crime Commission

Gang Statutes

2007

GANG STATUTES

In 2000, Virginia created for the first time a series of statutes aimed specifically at punishing criminal gang behavior. Article 2.1, titled “Crimes by Gangs,” was added to Chapter 4 of Virginia’s Criminal Code. It created a definition of a criminal street gang, made it a crime to recruit a person into a criminal street gang, and made it a crime for a gang member to engage in certain criminal acts on behalf of, or in association with, a criminal street gang.

The definition of a criminal street gang, provided in Va. Code § 18.2-46.1, contains four parts: a group or association of three or more people; a primary objective to engage in the commission of criminal activities; an identifiable name or identifying sign or symbol; and members who have “individually or collectively...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.”

Also provided in Va. Code § 18.2-46.1 is a definition of “predicate criminal act,” which consists of a list of various criminal statutes and a reference to all of the “acts of violence” listed in Va. Code § 19.2-297.1. No crime is created by Va. Code § 18.2-46.1. It is the next statute, Va. Code § 18.2-46.2, that makes it a crime for a gang member to engage in “any predicate criminal act committed for the benefit of, at the direction of, or in association with” a criminal street gang.

Over the past eight years, there have been numerous bills introduced to modify § 18.2-46.1. Staff examined all of the gang statutes in Article 2.1 to determine if any structural changes might be possible to improve the statutes and eliminate the need for constant modifications.

Because of the way Va. Code § 18.2-46.2 is written, it is not a “gang crime” if a gang member within the definition of a “predicate criminal act.” For instance, if a gang member were to engage in grand larceny, at the specific request of a gang leader, he could not be prosecuted under Va. Code § 18.2-46.1, because grand larceny is not included in the list of crimes defined as “predicate criminal acts.” The gang member could only be prosecuted for the act of grand larceny. By contrast, if a gang member were to commit a misdemeanor assault on behalf of his gang, that would result in two criminal charges—assault, and

criminal street gang participation in violation of Va. Code § 18.2-46.1, as assault is a “predicate criminal act.”

There are two consequences to limiting “gang crime” prosecutions to “predicate criminal acts.” One, illustrated above, is that there are many felonies a gang member can commit on behalf of his gang, yet not be subject to a charge under Va. Code § 18.2-46.1. The second is that every time the legislature wishes to expand the number of crimes for which criminal street gang participation charges could be available; they modify the definition of “predicate criminal act.” This, in turn, changes the actual definition of a “criminal street gang,” and expands the reach of the gang participation statute set forth in Va. Code § 18.2-46.2. While the original definition of a criminal street gang was crafted so as to limit the number of groups or associations that would meet the legal definition, changes in the definition have resulted in a gradual expansion of the definition over the previous eight years. In 2000, when the definition was first created, there were only 15 predicate criminal acts that qualified, in addition to the “acts of violence” listed in Va. Code § 19.2-297.1. To date, there are 33 criminal acts that qualify, in addition to “acts of violence.”

The list of “predicate criminal acts” now includes offenses such as domestic assault, which are not generally thought of as being “gang crimes.” The danger of expanding the list of “predicate criminal acts” in this manner is that, with a sufficiently large list, groups of people that probably would not be thought of as a criminal street gang will nevertheless meet the legal definition. For instance, a family that lives together, and derives much of their income from drug dealing, could theoretically meet the definition in Va. Code § 18.2-46.1, even though they do not otherwise engage in behaviors commonly associated with a criminal street gang.

One way to remedy this situation would be to leave the existing definition of “predicate criminal act” as is, and modify the wording of Va. Code § 18.2-46.2. By making it a “gang crime” for a gang member to engage in any felony or certain specified misdemeanors on behalf of his gang, the legislature could ensure that all gang related offenses are recognized as such and punished, and prevent the definition of a “criminal street gang” from becoming so expansive as to incorporate groups of people that probably should not be thought of as “criminal street gangs.” This simple solution would only require a brief modification to Va. Code § 18.2-46.2, and if enacted, would eliminate the need to frequently amend Va. Code § 18.2-46.1.

