# Use of

# ANTI-GANG

## Statutes Contained in the Code of Virginia


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# Introduction

In June 2006, Governor's Executive Order 15 formalized Virginia's Interagency Anti-Gang Workgroup to monitor the progress of Virginia's gang initiatives and to make recommendations for strengthening Virginia's anti-gang activities. In 2007, the Interagency Anti-Gang Task Force asked DCJS to examine the use and effectiveness of certain gang legislation that was enacted during the last several years.

The gang-related statutes that were examined are listed below in Table 1. The full text of each statute is contained in the Appendix.

**Table 1**
**Gang Statutes Examined**

| Statute | Statute Description |
|---|---|
| 18.2-46.1 | Defines "criminal street gang" |
| 18.2-46.2 | Prohibits criminal street gang participation |
| 18.2-46.3 | Prohibiting recruiting persons into a criminal street gang |
| 18.2-46:3:1 | Penalty enhancement for 3rd or subsequent conviction for criminal street gang crimes |
| 18.2-46:3:2 | Forfeiture of profit from criminal street gang activity |
| 18.2-46:3:3 | Enhanced penalty for criminal street gang activity in school zone |
| 18.2-55.1 | Prohibits hazing of youth gang members |
| 18.2-248 | Distributing drugs in association with criminal street gang activity is engaging in continuing criminal enterprise |
| 18.2-513 | Criminal street gang is an enterprise for purpose of the Virginia Racketeer Influenced and Corrupt Organization Act |
| 19.2-120 | Rebuttable presumption against bail when charged with a gang crime, courts consider gang membership when setting bail |
| 19.2-299 | Gang membership included in pre-sentence reports |
| 16.1-269.2(B) | Transfer hearing reports include evidence of gang affiliation |
| 15.2-1812.2(A) | Enhanced penalty for graffiti associated with criminal street gang activity |
| 16.1-273(A) | Social history reports include evidence of gang affiliation |
| 16.1-330.1 | Juvenile committing gang-related crime eligible for serious habitual offender designation |
| 19.2-303 | Gang membership considered in sentence suspension decisions |
| 48-7 | Property used in furtherance of gang activity may be abated |

DCJS examined the use of the above statutes in two ways:

- Surveying law enforcement agencies and Commonwealth's Attorneys offices to gather information on how often these groups report using the gang statues, and on their impressions of how effective they believe the statutes are in reducing gang activity.
- Examining conviction data from the Virginia Criminal Sentencing Commission to identify how often charges, convictions, and sentences have occurred under the gang statutes.

# Law Enforcement and Commonwealth's Attorneys Use and Perceptions of Gang Statutes

Law enforcement agencies and Commonwealth's Attorneys offices throughout the state were surveyed to solicit information about the statutes from persons involved in the enforcement and prosecution of gang-related crime. A total of 120 Commonwealth's Attorneys and 216 personnel from law enforcement agencies were asked to complete the survey.

A total of 74 surveys was returned, 50 (68%) by police departments and 24 (32%) by Commonwealth's Attorneys. The low survey return rate of 22% limits interpretation of the data, because the small number of responses may not be representative of all law enforcement agencies and Commonwealth's Attorneys offices in Virginia.

The survey questions were broken down into 3 general sections:

- Each individual gang statute
- Application of gang statutes in general
- Training for personnel involved in managing gang problems

The total sample was broken down into subgroups to determine if there were significant differences in the responses from law enforcement agencies (LE) and from Commonwealth's Attorneys offices (CA). Additionally, responses were compared for differences between respondents who identified themselves as "gang specialists" or non-specialists. The term "gang specialist" is used to describe respondents who were either members of designated gang units (law enforcement), or whose job responsibilities specifically included the prosecution of gang cases (Commonwealth's Attorneys). Fifty percent of the law enforcement sample (25) and 54% of the Commonwealth's Attorney sample (13) were gang-specialists.

For many questions on the survey, respondents had the opportunity to provide additional comments or suggestions for improving the statutes. Comments were read and grouped on the basis of their content. Comments are reported for a statute if a significant percentage of respondents provided feedback about the statute (12% of law enforcement respondents or 15% of Commonwealth's Attorneys respondents), or if the comment was considered especially insightful. A full list of the written comments is available upon request from Dr. John Schuiteman at the Department of Criminal Justice Services at (804) 371-0864.

## How Often Statutes are Used and Their Effectiveness

The first section of the survey asked questions to determine the following regarding each of the statutes listed in Table 1:

- Have respondents used the statute?
- Do they feel that the statute is effective in combating gang crime?
- How do they think the statute could be improved?

To assess the effectiveness of the statutes, people were asked how much they agree with the statement, "From my perspective, this statute is an effective tool for combating gang crime." Respondents rated their agreement on a scale from 1-5, where *1=Strongly Disagree* and *5=Strongly Agree*. Scores were then averaged for each group to reflect a rating, where higher average ratings indicate that respondents view the statute as being more effective.

Table 2 lists all the statutes surveyed, along with the overall percentage of people who have used the statute and the overall average rating given for its effectiveness.

## Table 2
## Use and Effectiveness of Gang Statutes

| Statute | Statute Description | Percent Who Used Statute | Effectiveness Rating (1-5) |
|---|---|---|---|
| 18.2-46.1 | Defines "criminal street gang" | 53%* | 3.96* |
| 18.2-46.2 | Prohibits criminal street gang participation | 50%* | 4.22 |
| 18.2-46.3 | Prohibiting recruiting persons into a criminal street gang | 29%* | 3.93* |
| 18.2-46:3:1 | Penalty enhancement for 3rd or subsequent conviction for criminal street gang crimes | 4% | 3.96 |
| 18.2-46:3:2 | Forfeiture of profit from criminal street gang activity | 3% | 3.96 |
| 18.2-46:3:3 | Enhanced penalty for criminal street gang activity in school zone | 17% | 4.16 |
| 18.2-55.1 | Prohibits hazing of youth gang members | 10% | 3.78 |
| 18.2-248 | Distributing drugs in association with criminal street gang activity is engaging in continuing criminal enterprise | 11% | 4.01 |
| 18.2-513 | Criminal street gang is an enterprise for purpose of the Virginia Racketeer Influenced and Corrupt Organization Act | 0% | 3.86 |
| 19.2-120 | Rebuttable presumption against bail when charged with a gang crime, courts consider gang membership when setting bail | 27%* | 4.24 |
| 19.2-299 | Gang membership included in pre-sentence reports | 40%* | 4.37 |
| 16.1-269.2(B) | Transfer hearing reports include evidence of gang affiliation | 24%* | 4.25 |
| 15.2-1812.2(A) | Enhanced penalty for graffiti associated with criminal street gang activity | 10% | 4.06 |
| 16.1-273(A) | Social history reports include evidence of gang affiliation | 26%* | 4.29* |
| 16.1-330.1 | Juvenile committing gang-related crime eligible for serious habitual offender designation | 6% | 4.19 |
| 19.2-303 | Gang membership considered in sentence suspension decisions | 16%* | 4.21* |
| 48-7 | Property used in furtherance of gang activity may be abated | 0% | 4.09 |

** Significant differences occur between groups (i.e., CA or LE, Gang or Non-gang)*

Fifty percent or more of the respondents said that they have used two of the statutes above, 18.2-46.1 and 18.2-46.2. By contrast, 11 of the 17 gang statutes above were used by fewer than 25% of the respondents. For clarity in reporting, those statutes that were used by less than 25% of either law enforcement personnel or Commonwealth's Attorneys are not included in further analyses presented below.

### Differences in Law Enforcement and Commonwealth's Attorneys Use of Statutes

Some of the responses for either utilization or effectiveness had significant differences between groups (i.e., LE vs. CA, or Gang vs. Non-gang). Where differences occur in the utilization of gang statutes, Commonwealth's Attorneys are more likely to use them than those in law enforcement. Also, people who are assigned to gang units are more likely to utilize the statutes than those who are not. Table 3 details the differences in utilization that were found for 8 statutes between these sub-groups.

## Table 3
## Significant Differences in Use of Gang Statutes

| Statute | Statute Description | Percent Who Used Statute | | | | |
|---|---|---|---|---|---|---|
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | -- | | -- | |
| 18.2-46.1 | Defines "criminal street gang" | 53%* | Gang 85% | Non-gang 36% | Gang 79% | Non-gang 19% |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | -- | | -- | |
| 18.2-46.2 | Prohibits criminal street gang participation | 50%* | Gang 69% | Non-gang 27% | Gang 83% | Non-gang 19% |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | -- | | -- | |
| 18.2-46.3 | Prohibiting recruiting persons into a criminal street gang | 29%* | Gang -- | Non-gang -- | Gang 54% | Non-gang 8% |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | 58% | | 12% | |
| 19.2-120 | Rebuttable presumption against bail when charged with a gang crime, courts consider gang membership when setting bail | 27%* | Gang 77% | Non-gang 36% | Gang -- | Non-gang -- |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | 75% | | 22% | |
| 19.2-299 | Gang membership included in pre-sentence reports | 40%* | Gang 92% | Non-gang 55% | Gang -- | Non-gang -- |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | 42% | | 15% | |
| 16.1-269.2(B) | Transfer hearing reports include evidence of gang affiliation | 24%* | Gang -- | Non-gang -- | Gang -- | Non-gang -- |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | 54% | | 12% | |
| 16.1-273(A) | Social history reports include evidence of gang affiliation | 26%* | Gang -- | Non-gang -- | Gang -- | Non-gang -- |
| | | Overall | Commonwealth's Attorney | | Law Enforcement | |
| | | | 29% | | 10% | |
| 19.2-303 | Gang membership considered in sentence suspension decisions | 16%* | Gang -- | Non-gang -- | Gang -- | Non-gang -- |

There are 4 statutes, detailed below in Table 4, where effectiveness ratings differ significantly between subgroups. For two statutes, the differences occur between Commonwealth's Attorneys and law enforcement personnel, and for the other two, the difference is between Commonwealth's Attorneys who are gang specialists and those who are not.

**Table 4**
**Significant Differences in Effectiveness of Gang Statutes**

| Statute | Statute Description | Ratings of Effectiveness | | | | |
|---|---|---|---|---|---|---|
| 18.2-46.1 | Defines "criminal street gang" | OVERALL 3.96* | Commonwealth's Attorney -- | | Law Enforcement -- | |
| | | | Gang 4.08 | Non-gang 3.45 | Gang -- | Non-gang -- |
| 18.2-46.3 | Prohibiting recruiting persons into a criminal street gang | OVERALL 3.93* | Commonwealth's Attorney 3.59 | | Law Enforcement 4.09 | |
| | | | Gang -- | Non-gang -- | Gang -- | Non-gang -- |
| 16.1-273(A) | Social history reports include evidence of gang affiliation | OVERALL 4.29* | Commonwealth's Attorney -- | | Law Enforcement -- | |
| | | | Gang 4.54 | Non-gang 3.91 | Gang -- | Non-gang -- |
| 19.2-303 | Gang membership considered in sentence suspension decisions | OVERALL 4.21* | Commonwealth's Attorney 3.96 | | Law Enforcement 4.35 | |
| | | | Gang -- | Non-gang -- | Gang -- | Non-gang -- |

## How Statutes Could be Improved

Respondents were asked if they saw a need for new gang statutes in addition to the ones listed in Table 1. Only 18% (12) said that additional gang statutes were needed.

As mentioned above, respondents could make comments about how each statute could be improved. Only four statutes generated enough comments to analyze, which are reported below.

### *18.2-46.1: Defines "criminal street gang:"*

Eighteen respondents commented, with the majority (12) viewing the definition as overly restrictive. Most suggested that more predicate offenses be included (specifically, weapons offenses, breaking & entering, shooting at dwellings, felony obstruction of justice, possessing a firearm while on juvenile probation, and arson of an unoccupied structure). Two respondents argued for an expanded definition of the term "act of violence" (i.e. "unlawful wounding" should be included because it would "help in getting home-grown groups defined as gangs"). One advocated removal of the words "primary objective," so gangs could be defined at an earlier point in their formation.

### *18.2-46.2: Prohibits criminal street gang participation:*

Nine respondents commented, with three arguing for additional predicate offenses and three advocating mandatory minimum sentencing. Two said that proving a crime was committed for the "benefit of" or "at the direction of" a gang was overly difficult, and one Commonwealth Attorney said that "the statute is extremely complicated and requires a lot of training and work to get comfortable with."

In addition, one Commonwealth Attorney argued that there was an "anomaly within 18.2-46.1 and 18.2-46.2" because of the terms "active participant" and "member." With 18.2-46.2, a defendant can be convicted as an "active participant," but this conviction cannot be used as a predicate act for future prosecutions unless it is shown that the defendant was a "member." Section 18.2-46.1 says predicate acts must be committed by "members" and not "active participants," even though the courts generally do not distinguish in their sentencing orders which term in 18.2-46.2 the defendant is being convicted under.

This respondent suggests that the definition of "criminal street gang" in 18.2-46.1 be amended to read "whose members *or active participants* individually or collectively...." With this change, prosecutors would be able to meet the burden of the statute with a certified copy of the predicate act, as well as a copy of the conviction under 18.2-46.2, instead of needing an expert to testify that the defendant in the predicate act was a "member" of the gang.

#### *18.2-46.3: Prohibits recruiting persons into a criminal street gang:*

Nine respondents commented, with two complaining that an adult can bring juveniles in as founding gang members, yet the adult can't be prosecuted because the gang has not yet met the criteria for a "criminal street gang." Another respondent suggested making the status of "recruitee" illegal, because some of the acts committed for induction into the gang are not chargeable offenses (i.e., a "beat-in" or "sex-in").

#### *19.2-120: Rebuttable presumption against bail when charged with a gang crime, courts consider gang membership when setting bail*

Six people commented on this question, most of whom were Commonwealth Attorneys. Three said that some statutory guidance to the bench is needed to help in the determination of what is, and is not, evidence that might overcome the presumption against bail. One argued that this statute is only helpful for adults, because the issue with juveniles is a detention order, rather than bail. He or she recommended that the statute be changed so "gang membership" is considered when deciding on a detention order.

## Application of Statutes

In addition to assessing their opinions about the specific gang statutes, the survey also asked respondents other questions related to gangs in their area.

#### *Gangs that Fail to Meet Gang Requirements*

Sixty-six percent (48) said that their jurisdiction had groups that exhibited characteristics of gangs, but they did not meet the statutory definitions. When asked what aspects of the statutory definition the groups were not meeting, 43 people responded. Fifty-six percent (24) of these cited a lack of predicate offenses, especially acts of violence, as the reason their groups failed to qualify as gangs. Twelve percent (5) described a lack of requisite organization in their local groups; 12% (5) said their groups did not wear gang colors, attire, symbols or signs; and 7% (3) said that group behaviors were not primarily gang-related.

#### *Tools/Provisions Used to Fight Gangs other than the Gang Statutes*

Fifty-one percent (37) of respondents said that their jurisdiction used initiatives and/or statutory provisions other than the gang statutes to address gang problems. Thirty-four of these gave specific comments about the tools/provisions used. Seventeen mentioned other state or federal offenses with which suspected gang members or gang associates were charged. These included carrying a concealed weapon, weapon brandishing, auto theft, burglary, drug violations, RICO, loitering and anti-graffiti offenses.

Thirty-two percent (11) of respondents described teen anti-gang education programs, community policing efforts, anti-gang forums, and special anti-gang presentations as alternative tools. Three (9%) noted juvenile probation programs that promised lighter sentences if offenders cut their ties to gangs.

#### *Judges' Requirements for Predicate Acts*

Respondents were asked if judges in their jurisdiction require all predicate acts to have been committed by gang members from the same gang set, rather than allow predicate acts from a larger, affiliated gang. (For example, in prosecuting a member of the C-town Crew, a local group affiliated with the Bloods, would judges require all predicate acts to have been committed by members of the C-town Crew - not the Bloods generally?)

Only 27% (16) responded that judges require all predicate acts to be committed by members of the same gang set. There appears to be some confusion and lack of consistency in the understanding and practice of which predicate acts should be admitted in this situation.

### *Effect of Statutes on Sentencing*

Slightly less than half of respondents (43% or 24) thought that the gang statutes made a difference in judges' sentences in their jurisdiction. Nineteen people gave further explanation with comments. Most (53%) indicated that the statutes have resulted in increased or harsher sentences for gang members or persons affiliated with gangs.

Forty-two percent (8) could not discern an impact, primarily because no gang cases have, as yet, been prosecuted in their jurisdictions. One person said the statutes were too complicated and one said that it varied with different judges.

### *Use and Effect of Gang Statutes*

Respondents were given a list of statements related to the use and effect of the statutes in their jurisdictions. They were asked to rate their level of agreement with each statement, with the scale ranging from 1-5, with *1=Strongly Disagree* to *5=Strongly Agree.* Table 5 lists these statements, along with the average level of agreement respondents reported.

**Table 5**
**Statements Concerning Gang Occurrence and Statutes**

| Statement | Level of Agreement (1-5) |
|---|---|
| My jurisdiction has an identified criminal street gang problem as defined in Virginia Code 18.2-46.1 | 3.66 |
| My jurisdiction considers state gang statutes when making charging decisions. | 3.74 |
| My jurisdiction is currently prosecuting defendants under state gang statutes. | 3.31 |
| Using the state gang statutes requires too much time and resources. | 2.43 |
| My jurisdiction would prosecute gang activity more frequently if criminal activity in furtherance of gangs enhanced penalties rather than forming the basis for separate charges. | 3.23 |
| The existence of the gang statutes has helped to reduce gang activity in my jurisdiction. | 2.89 |
| Use of the gang statutes has removed gang members from my jurisdiction by incarcerating them. | 3.24 |
| The gang statutes provide appropriate punishment for gang activity. | 3.07 |
| Use of the gang statutes has pushed gang members from my jurisdiction into neighboring jurisdictions. | 2.70 |
| Use of the gang statutes by other communities has driven gang members into my jurisdiction. | 2.85 |
| More charges are being brought under the gang statutes in my jurisdiction this year than in previous years. | 2.89 |
| More cases are being prosecuted under the gang statutes in my jurisdiction this year than in previous years. | 2.89 |
| More cases are resulting in conviction under the gang statutes in my jurisdiction this year than in previous years. | 2.81 |

The survey also asked participants to rate how often gang charges in their jurisdiction were handled at the federal level. On a scale from 1-5, where *1=Never* and *5=Always*, the average overall rating was 1.59 (falling between "Never" and "Rarely"). This scale was also used to answer how often their jurisdiction used the threat of prosecution under gang charges to reach plea agreements for non-gang charges. Again, the rating for this was low at 1.75.

## Training in Use of Statutes

Respondents were asked if they thought more training is needed to make the current gang statutes more effective. In turn, the questions directed them to think of a specific group that would or should be the recipient of this training, namely law enforcement, prosecutors, juvenile probation officers and judges. Table 6 lists the percentage of people overall who think that each group would benefit from further training.

## Table 6
## Estimates of Additional Training Needed

| Group to Receive Training | Percent Who Think More Training is Needed |
|---|---|
| Law enforcement | 92% |
| Prosecutors | 78% |
| Probation/Parole officers | 66% |
| Judges | 82% |

*Respondents were then asked to give suggestions for what type of training each group should receive.*

### Training Proposed for Law Enforcement Personnel

A total of 70 suggestions were given for law enforcement-related training.

- Twenty-one (30%) advocated training on how to identify gangs and gang activity (signs, symbols, colors, culture).
- Seventeen (24%) suggested training on how to conduct gang crime investigations. Most implied that law enforcement personnel need to know more about the evidentiary requirements of successful gang-crime prosecutions, how to interpret statutory language, the lessons learned from case studies, etc.
- Thirteen (19%) were pleas for the training of law enforcement personnel who weren't gang specialists (violent crime investigators, patrol officers, rural policemen, etc.). Several suggested that more gang related training be conducted in the basic academies and more be offered for in-service credit.

### Training Proposed for Commonwealth's Attorneys

Fifty-four suggestions were given for additional gang statute training classes for Commonwealth's Attorneys.

- Twenty-six (48%) comments advocated training on how to use the statutes in the investigation and prosecution of gang-related crimes (specifically, the evidentiary requirements of gang prosecution, the use and prosecution of predicate offenses, clarification of vague statutory phrases and terms, and the use of grand-juries and search warrants).
- Fourteen (26%) suggested that Commonwealth's Attorneys need to be able to identify gangs and gang members, to know about gang history and culture, and to know the latest trends in gang criminal activity.
- Five (9%) suggested the need for joint training that placed prosecutors, law enforcement, and probation personnel in the same classroom.
- Four (7%) advocated more basic gang training for rural-based Commonwealth's Attorneys.

### Training Proposed for Juvenile Probation Officers

Respondents provided 38 comments about needed training for juvenile probation officers.

- Twenty-one (55%) comments advocated basic gang awareness training to inform probation officers about gang signs and symbols, tattoos, colors, history and culture, rituals and organization.
- Six (16%) indicated a concern about information sharing. Two Commonwealth's Attorneys referred specifically to problems concerning the inclusion of gang affiliation information in pre-sentence reports (*Code* 19.2-299). One also advocated training on using *Code* sections 19.2-303 and 19.2-306 for gang members' revocations.
- Five (13%) comments suggested general training classes on the gang statutes or the elements of gang crime investigation.
- Two (5%) suggested training on how to interrogate suspected gang members in a positive, yet proactive, manner.

### *Training Proposed for Judges*

Forty comments were made concerning training for judges.

- Nineteen (48%) suggested training on gang-awareness (gang signs, activities, crimes, culture, history, witness intimidation and relationships between gang subgroups).
- Nine (23%) comments indicated that training is needed to make judges aware of the seriousness of the gang problem.
- Five (13%) comments advocated general training on the current gang statutes. One stated that judges should be able to "identify the laws, explain their practical importance, and understand that to abide by these laws is in line with the constitution and other legal provisions."
- Four (10%) advocated training on how to conduct investigations into gang-related crimes. One suggested that judges need to understand the roles that prosecutors and defense attorneys play in such investigations.
- Two (5%) comments by Commonwealth's Attorneys concerned the judges' understanding of the applicability of the statutes. One said "the statutes are applicable even if the person is not identified with the more common gangs." Another claimed that most judges were surprised *Corado v. Commonwealth* (allowed) use of predicate offenses where (the) defendant did not know the gang member whose convictions were being used for the predicates.

## Additional Comments about Gang Statutes

At the end of the survey, respondents were given the opportunity to comment on any other aspects concerning gang activity or anti-gang efforts. Twenty-six comments were received. The majority of the comments (69% or 18) revealed that there was little gang activity in the respondents' jurisdictions.

### Three comments warrant specific mention:

1. One law enforcement respondent stated that crimes being committed by gang members are no different just because they are being committed by a gang. He or she recommended that crimes themselves need to be better prosecuted, instead of the fact that the crime was being committed by gang members.
2. One Commonwealth attorney noted that a loophole needs to be closed concerning juveniles, because it's a drain of Commonwealth and judicial resources when a felony case has to be tried twice, simply because of the age of the defendant. He or she stated that, after a 3-5 hour bench trial in JDR on a gang charge, the defendant can appeal the case de-novo, and it has to be retried as a full-day jury trial.
3. Another Commonwealth Attorney commented that legislation is needed to lengthen the detention of juveniles held on felony charges. He or she complained that it was almost impossible to prepare for any gang-related felony trial in the 21 days allowed for juveniles.

# Court Information on Use of Gang Statutes

The Virginia Criminal Sentencing Commission has previously reviewed Virginia sentencing and conviction data to examine how often individuals have been convicted under various gang statutes. These reviews did not include all of the gang statutes listed in Table 1, but they do provide information on convictions for some of the major statues.

Some of the gang statutes in Table 1 are procedural, not criminal, and do not result in a chargeable criminal offense (e.g., statutes directing that information on gang activity be included in pre-sentence investigation or social reports). The use of these procedural statutes will not show up in the criminal sentencing and conviction data.

## Convictions Under the Statutes

Table 7 presents the number of indictments and convictions (as a primary or additional offense) recorded on pre- and post-sentence investigation reports during FY 2003 – FY 2007 under the following statutes:

- § 18.2-46.2 (class 5 felony): Participation in criminal act for benefit or at direction of a gang.
- § 18.2-46.2 (class 4 felony): Participation in criminal act for benefit or at direction of a gang that has a juvenile member.
- § 18.2-46.2 (class 5 felony with 2-year mandatory minimum): Participation in criminal act for benefit or at direction of a gang within school zone.
- § 18.2-46.3(A) (class 6 felony): Recruitment by an adult of a juvenile for a gang.
- § 18.2-46.3(B,a) (class 6 felony): Use of force/threats to encourage gang membership.

Pre-Sentence Investigation Reports are typically ordered by a circuit court judge and are prepared for the judge to review prior to an offender's sentencing date. In cases without a pre-sentence investigation report, a post-sentence investigation report may be completed. The counts should be considered conservative, because pre/post sentence investigation reports are done for most, but not all, felony convictions.

Table 7 shows the following concerning indictments and convictions for the offenses above:

- The most frequent conviction statute among those above was "Participation in criminal act for benefit or at direction of a gang." Eighty percent of the 2003 – 2007 indictments and convictions in Table 7 were for this offense.
- Thirteen percent of the 2003 – 2007 indictments and convictions were for "Participation in criminal act for benefit or at direction of a gang that has a juvenile member."
- One percent or fewer of the indictments and convictions were for Participation in criminal act for benefit or at direction of a gang within school zone or for Use of force/threats to encourage gang membership.

## Table 7
## Indictments and Convictions for Gang-Related Offenses in Virginia's Circuit Courts, FY2003 – FY2007[1]
## Source: Pre/Post-Sentence Investigation (PSI) System

| | FY2003[2] | | | FY2004 | | | FY2005 | | | FY2006[1] | | | FY2007[1,3] | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total Indictments | Convictions as Primary Offense | Convictions as Additional Offense | Total Indictments | Convictions as Primary Offense | Convictions as Additional Offense | Total Indictments | Convictions as Primary Offense | Convictions as Additional Offense | Total Indictments | Convictions as Primary Offense | Convictions as Additional Offense | Total Indictments | Convictions as Primary Offense | Convictions as Additional Offense |
| Participation in criminal act for benefit or at direction of a gang (§ 18.2-46.2) – Class 5 felony | 8 | 3 | 5 | 25 | 13 | 11 | 34 | 15 | 18 | 26 | 8 | 17 | 60 | 31 | 23 |
| Participation in criminal act for benefit or at direction of a gang that has a juvenile member (§ 18.2-46.2) – Class 4 felony | 2 | 1 | 0 | 0 | 0 | 0 | 10 | 2 | 8 | 1 | 0 | 0 | 13 | 6 | 6 |
| Participation in criminal act for benefit or at direction of a gang within school zone (§ 18.2-46.2) – Class 5 felony with a 2-year mandatory minimum | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Recruitment by an adult of a juvenile for a gang (§ 18.2-46.3(A)) Class 6 felony | 6 | 5 | 1 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 4 | 1 | 2 |
| Use of force/threats to encourage gang membership (§ 18.2-46.3(B,a)) Class 6 felony | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| TOTAL | 16 | 9 | 6 | 26 | 14 | 11 | 44 | 17 | 26 | 27 | 8 | 17 | 79 | 39 | 32 |

[1] FY2006 and FY2007 PSI data are incomplete.
[2] In FY2003, one sentencing event is counted twice because it involved convictions for two different gang crimes.
[3] In FY2007, one sentencing event is counted twice because it involved convictions for two different gang crimes.

## Court Charges Under the Statutes

The Sentencing Commission examined FY 2006 – FY 2007 circuit court data from the Supreme Court of Virginia. The Supreme Court's Court Automated Information System (CAIS) records each charge and count individually. CAIS data does not break out the individual gang statutes under which the charges were brought. Instead, all gang statutes are grouped together. However, the data do provide some information on the total number of charges and dispositions brought under the gang statutes. This information is presented in Table 8 below.

**Table 8**
**Charges for Gang-Related Offenses in Virginia's Circuit Courts**

| Outcome | FY 2006 | FY 2007 |
|---|---|---|
| Guilty | 38 | 66 |
| Nolle Prossed | 32 | 23 |
| Not Guilty / Dismissed | 2 | 5 |
| Other | 1 | 1 |
| **Total** | **73** | **95** |

*Note: Data do not include Fairfax County, Prince William County or the City of Alexandria because these jurisdictions do not participate in the Supreme Court's CAIS system.*

The data above show that 52% of the charges in FY 2006 and 69% of the charges in FY 2007 resulted in a guilty finding. The total number of both charges and guilty findings increased from FY 2006 to 2007.

### Juvenile Adjudications Under the Statutes

The Department of Juvenile Justice (DJJ) provided the Sentencing Commission with aggregate data on the numbers of juveniles committed to DJJ facilities and under DJJ probation based on adjudications under the gang statutes. Like the Supreme Court data, counts are aggregated as gang offenses and not broken out by specific statutes. However, they do provide some insight into the numbers of juveniles being adjudicated under the statutes.

**Table 9**
**Juvenile Adjudications Under Gang Statutes FY 2002 – 2007**

| Fiscal Year | Commitments to DJJ | | On DJJ Probation |
|---|---|---|---|
| | By J&DR court | By circuit court | |
| 2002 | 0 | 0 | 1 |
| 2003 | 4 | 0 | 8 |
| 2004 | 3 | 0 | 7 |
| 2005 | 9 | 0 | 19 |
| 2006 | 16 | 5 | 38 |
| 2007 | 18 | 9 | 46 |

Generally, the data in Table 9 above show that the number of juvenile adjudication under the gang statutes steadily increased from 2003 to 2007.

# Summary

The data available for examining the use of Virginia's gang statutes is limited. Information from the surveys of law enforcement and Commonwealth's Attorneys is limited due to the small number of responses received from these groups, and cannot be considered representative of how these groups are using the statutes statewide. Sentencing and conviction data from the Pre- and Post-Sentence Investigation Reports is limited, because only several of the major gang statutes are included in that data, and these reports are done for most, but not all, felony conviction cases. Case data from the Supreme Court and adjudication data from the Department of Juvenile Justice are limited because the counts for the various gang statutes are combined and the use of individual statutes cannot be examined.

Given the above limitations, the data available indicate the following concerning the use of Virginia's gang statutes:

## Use of gang statutes by law enforcement and Commonwealth's Attorneys

- Overall, it appears that the gang statutes are used infrequently. Among the 17 gang statutes examined, only two were reported used by more than 50% of the respondents. Eleven of the 17 statutes were used by less than 25% of respondents, and seven were used by 10% or fewer of the respondents.
- Most of the gang statutes were perceived as effective tools for combating gang activity, even the statutes that were rarely used.
- Generally, Commonwealth's Attorneys were more likely than law enforcement to report using the gang statutes, although this only occurred with the statutes related to procedural, rather than chargeable offenses.
- Persons who identified themselves as "gang specialists" reported using the gang statutes more often than persons who were not identified as gang specialists.
- The gang statutes *most* frequently cited as being used were 18.2-46.1 (Defines "criminal street gang") and 18.2-46.2 (Prohibits criminal street gang participation).
- The gang statutes *least* frequently cited as being used were 18.2-513 (Criminal street gang is an enterprise for purpose of the Virginia RICO Act) and 48.7 (Property used in furtherance of gang activity may be abated).

## Convictions and sentencing based on the gang statutes

- A total of 193 indictments and 180 convictions under five of gang statutes were recorded in Pre/Post-Sentence Investigation Reports during FY 2003-2007.
- 80% of the FY 2003-2007 indictments and convictions recorded in Pre/Post-Sentence Investigation Reports were under the offense defining "Participation in a criminal act for benefit or at direction of a gang" (18.2-46.2).
- The total number of both charges and guilty findings based on gang statutes increased from 73 in 2006 to 95 in 2007, according to data from the Supreme Court of Virginia.
- Fifty-two percent of the charges in FY 2006 and 69% of the charges in FY 2007 that were based on gang statutes resulted in a guilty finding.
- The number of juvenile adjudications under the gang statutes increased from FY 2003 to 2007.

# Appendix

## Text of Gang Statutes
**(For ease of reading, the mention of gangs in the text is bolded)**

§ 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 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 § 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-52, 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, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, subsection H, H 1 or H 2 of § 18.2-248, § 18.2-248.01, 18.2-255, 18.2-255.2, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-308.1, or 18.2-356; (iii) a second or subsequent felony violation of subsection C of § 18.2-248 or of § 18.2-248.1; (iv) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (v) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

*(2000, c. 332; 2004, cc. 396, 435, 462, 867; 2005, cc. 764, 813; 2006, cc. 262, 319, 844, 895; 2007, c. 499.)*

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

A. Any person who actively participates in or is a member of a **criminal street gang** and 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. However, if such participant in or member of a **criminal street gang** is age eighteen years or older and knows or has reason to know that such **criminal street gang** also includes a juvenile member or participant, he shall be guilty of a Class 4 felony.

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

*(2000, c. 332.)*

## § 18.2-46.3. Recruitment of persons for **criminal street gang**; penalty.

A. 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. Any person age 18 years or older who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile to actively participate in or become a member of what he knows to be a **criminal street gang** is guilty of a Class 6 felony.

B. Any person who, in order to encourage an individual (a) to join a **criminal street gang**, (b) to remain as a participant in or a member of a **criminal street gang**, or (c) to submit to a demand made by a **criminal street gang** to commit a felony violation of this title, (i) uses force against the individual or a member of his family or household or (ii) threatens force against the individual or a member of his family or household, which threat would place any person in reasonable apprehension of death or bodily injury, is guilty of a Class 6 felony. The definition of "family or household member" set forth in § 16.1-228 applies to this section.

*(2000, c. 332; 2004, cc. 396, 435.)*

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

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

*(2004, cc. 396, 435, 847.)*

## § 18.2-46.3:2. Forfeiture.

All property, both personal and real, of any kind or character used in substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from, any conduct in violation of any provision of this article is subject to civil forfeiture to the Commonwealth. Further, all property, both personal and real, of any kind or character used or intended to be used in substantial connection with, during the course of, derived from, traceable to, or realized through, including any profit or interest derived from, **criminal street gang** member recruitment as prohibited under § 18.2-46.3 is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall utilize the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article. The application of one civil remedy under the article does not preclude the application of any other remedy, civil or criminal, under this article or any other provision of the Code.

*(2004, cc. 396, 435.)*

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

Any person who violates § 18.2-46.2 (i) upon the property, including buildings and grounds, of any public or private elementary, secondary, or postsecondary school, or any public or private two-year or four-year institution of higher education; (ii) upon public property or any property open to public use within 1,000 feet of such school property; or (iii) on any school bus as defined in § 46.2-100 is guilty of a felony punishable as specified in § 18.2-46.2, and shall be sentenced to a mandatory minimum term of imprisonment of two years. A person who violates subsection A of § 18.2-46.3 upon any property listed in this section is guilty of a Class 6 felony, except that any person 18 years of age or older who violates subsection A of § 18.2-46.3 upon any property listed in this section, when such offense is committed against a juvenile, is guilty of a Class 5 felony. Any person who violates subsection B of § 18.2-46.3 upon any property listed in this section is guilty of a Class 5 felony. It is a violation of this section if the person violated § 18.2-46.2 or 18.2-46.3 on the property described in clauses (i) through (iii) regardless of where the person intended to commit such violation.

*(2005, cc. 764, 813.)*

## § 18.2-55.1. Hazing of **youth gang members** unlawful; criminal liability.

It shall be unlawful to cause bodily injury by hazing (i) any member of a **criminal street gang** as defined in § 18.2-46.1, or (ii) a person seeking to become a member of a **youth gang** or **criminal street gang**. Any person found guilty of hazing is guilty of a Class 1 misdemeanor. For the purposes of this section, "hazing" means to recklessly or intentionally endanger the health or safety of a person or to inflict bodily injury on a person in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a **youth gang** or **criminal street gang** regardless of whether the person so endangered or injured participated voluntarily in the relevant activity.

*(2004, c. 850; 2005, c. 843.)*

## § 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than $500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than $500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000.

Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than $1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:

1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;

2. 500 grams or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in subdivisions 2a through 2c;

3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain cocaine base; or

4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:

a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;

b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so;

c. The offense did not result in death or serious bodily injury to any person;

d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and

e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than $500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than $500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000. Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner whose property is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production. This restitution may include the person's or his estate's estimated or actual expenses associated with cleanup, removal, or repair of the affected property.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

E1. Any person who violates this section with respect to a controlled substance classified in Schedule III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall be guilty of a Class 5 felony.

E2. Any person who violates this section with respect to a controlled substance classified in Schedule IV shall be guilty of a Class 6 felony.

E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule V or an imitation controlled substance which imitates a controlled substance classified in Schedule V, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I, II, III or IV shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

   a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least $100,000 but less than $250,000 in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than $1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received $250,000 or more in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

   a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

   b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

   c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

   d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;

4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or

5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and either (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources or (iii) such violation is committed, with respect to methamphetamine or other 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.

J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium metal, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

K. The term "methamphetamine precursor drug," when used in this article, means a drug or product containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers.

*(Code 1950, § 54-524.101:1; 1972, c. 798; 1973, c. 479; 1974, c. 586; 1975, cc. 14, 15; 1976, c. 614; 1977, c. 409; 1978, cc. 177, 779; 1979, c. 435; 1982, cc. 276, 462; 1985, c. 569; 1986, c. 453; 1988, c. 355; 1990, c. 82; 1991, c. 13; 1992, cc. 685, 737, 756; 1995, c. 538; 1999, c. 722; 2000, cc. 1020, 1041; 2004, c. 461; 2005, cc. 174, 759, 796, 923, 941; 2006, cc. 697, 759.)*

## § 18.2-513. Definitions.

As used in this chapter, the term:

"**Criminal street gang**" shall be as defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, **criminal street gang**; or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" shall be as defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-355, 18.2-357, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, §§ 18.2-516, 32.1-314, or § 58.1-1017; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

*(2004, cc. 883, 996.)*

## § 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

   1. He will not appear for trial or hearing or at such other time and place as may be directed, or

   2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

   1. An act of violence as defined in § 19.2-297.1;

   2. An offense for which the maximum sentence is life imprisonment or death;

   3. A violation of § 18.2-248, 18.2-248.01, 18.2-255 or 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

   4. A violation of § 18.2-308.1, 18.2-308.2, or 18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

   5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

   6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

   7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;

   8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;

   9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5 or 18.2-46.7;

   10. A violation of § 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction; or

   11. A second or subsequent violation of § 16.1-253.2 or a substantially similar offense under the laws of any state or the United States.

C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6.

D. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a **criminal street gang** as defined in § 18.2-46.1, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

E. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

*(1975, c. 495; 1978, c. 755; 1979, c. 649; 1987, c. 390; 1991, c. 581; 1993, c. 636; 1996, c. 973; 1997, cc. 6, 476; 1999, cc. 829, 846; 2000, c. 797; 2002, cc. 588, 623; 2004, cc. 308, 360, 406, 412, 461, 819, 954, 959; 2005, c. 132; 2006, c. 504; 2007, cc. 134, 386, 745, 923.)*

## § 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a **criminal street gang** as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence

of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a **criminal street gang** may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that **criminal street gang**.

*(Code 1950, § 53-278.1; 1952, c. 233; 1972, c. 516; 1974, c. 121; 1975, cc. 371, 495; 1979, c. 286; 1980, c. 733; 1981, c. 263; 1983, c. 541; 1987, c. 676; 1989, c. 169; 1991, cc. 43, 229; 1992, c. 77; 1993, cc. 466, 492; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 687, 778; 1997, c. 691; 1998, cc. 783, 840; 1999, cc. 891, 903, 913; 2001, c. 647; 2003, cc. 146, 613; 2004, cc. 308, 459, 819; 2005, cc. 188, 219, 631; 2006, cc. 99, 863, 914, 916.)*

## § 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a **criminal street gang** as defined in § 18.2-46.1, shall be made by the probation services or other qualified agency designated by the court. Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth shall provide notice to the designated probation services or other qualified agency of the need for a transfer report. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

*(1994, cc. 859, 949; 1999, c. 350; 2005, cc. 590, 843.)*

## § 15.2-1812.2. Willful and malicious damage to or defacement of public or private facilities; penalty.

A. Any locality may by ordinance make unlawful the willful and malicious damage to or defacement of any public buildings, facilities and personal property or of any private buildings, facilities and personal property. The penalty for violation of such ordinance is a Class 1 misdemeanor. The punishment for any such violation in which the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any **criminal street gang,** as that term is defined by § 18.2-46.1, shall include a mandatory minimum fine of $500.

B. Upon a finding of guilt under any such ordinance in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying the ordinance in subsequent proceedings.

C. The ordinance shall direct that the community service, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the locality, and may include clean-up, beautification, landscaping or other appropriate community service within the locality. Any ordinance adopted pursuant to this section shall make provision for a designee of the locality to supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant. The court shall also receive and consider the recommendations of the supervisor of community service in the locality concerning the plan.

D. Notwithstanding any other provision of law, no person convicted of a violation of an ordinance adopted pursuant to this section shall be placed on probation or have his sentence suspended unless such person makes at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in § 19.2-305.1.

E. If a locality seeks to clean or cover the defacement, it shall give notice to the owner and lessee, if any, of any private building or facility that has been defaced that, within 15 days of receipt of such notice, if the owner or lessee does not clean or cover the defacement or object to the removal of the defacement, the locality may clean or cover the defacement at the locality's expense.

*(1995, c. 251, § 18.2-138.1; 1997, cc. 445, 461; 2004, c. 462; 2005, c. 614.)*

## § 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may, and for the purposes of § 16.1-278.7 shall, include the physical, mental and social conditions, including an assessment of any affiliation with a **criminal street gang** as defined in § 18.2-46.1, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

*(Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, cc. 559, 627; 1993, c. 603; 1998, cc. 783, 840; 1999, cc. 350, 891, 913; 2000, cc. 1020, 1041; 2005, c. 843; 2007, c. 510.)*

## § 16.1-330.1. Serious or Habitual Offender Comprehensive Action Program; definition; disclosure of information; penalty.

A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault or malicious wounding, or a felony violation of a **gang-related crime** pursuant to Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, or (ii) convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if committed by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to this article and, notwithstanding the limitations of this subsection, may continue to supervise persons who were being supervised on July 1, 1993. Juvenile offenders under SHOCAP supervision at the time of their eighteenth birthday who have been committed to state care pursuant to § 16.1-278.8 (14) or § 16.1-285.1 may continue to be supervised by SHOCAP until their twenty-first birthday.

B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system which enables 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. Each SHOCAP shall supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice. Any county or city which

establishes a SHOCAP committee shall, within 45 days of such action, notify the Department of Criminal Justice Services. The Department shall issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.2 and any regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv) Title 63.2 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

*(1993, cc. 465, 927; 1996, c. 293; 1999, c. 508; 2004, c. 418.)*

## § 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has

been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a **criminal street gang**, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a **criminal street gang**, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

*(1975, c. 495; 1982, cc. 458, 636; 1983, c. 431; 1984, c. 32; 1992, c. 391; 1993, c. 448; 2006, cc. 436, 483, 853, 914; 2007, cc. 259, 528.)*

## § 48-7. Houses and contents are nuisances subject to abatement.

Any person who shall knowingly erect, establish, continue, maintain, use, own, occupy or lease any building, erection, place, or area used for the purpose of lewdness, assignation, prostitution, or activities of a **criminal street gang**, as **criminal street gang** is defined in § 18.2-46.1 in the Commonwealth is guilty of a nuisance, and the building, erection, place, or area, the ground itself, in or upon which such lewdness, assignation, prostitution, or **criminal street gang** activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

*(Code 1919, § 1521; 2005, cc. 764, 813.)*