



Virginia State Crime Commission

Utilization of Virginia's
Recently Enacted Gang Statutes

December 9, 2008

Overview

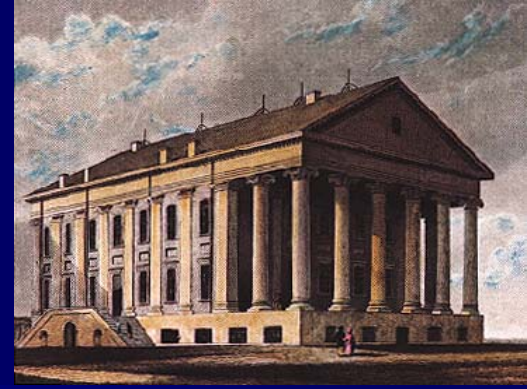


- Overview of VA's Gang Statutes
- Utilization of VA's Gang Statutes
 - Commonwealth's Attorneys' (CA) Survey
 - VA Criminal Sentencing Commission (VCSC) Data
 - Department of Corrections (DOC) Data
- Legislative Proposal
- Discussion



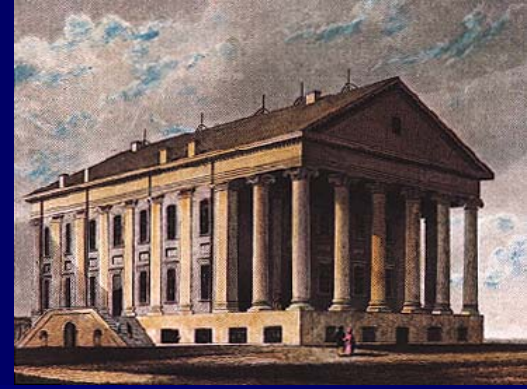
Overview of VA's Gang Statutes

VA's Gang Statutes



- First enacted in 2000.
 - Gang participation & Gang recruitment
- Significant amendments enacted in 2004 & 2005.
- Additional amendments enacted in 2006, 2007, & 2008.
- Main gang statutes set forth in Title 18.2, Chapter 4, Article 2.1 (§ 18.2-46.1 et. seq.).
- Additional gang-related provisions are contained throughout the Code.

VA's Gang Statutes



- Main gang statutes (VA. Code § 18.2-46.1 et. seq.):
 - Definitions (§ 18.2-46.1);
 - Gang participation (§ 18.2-46.2);
 - Gang recruitment (§ 18.2-46.3);
 - Third or subsequent conviction of gang participation or recruitment (§ 18.2-46.3:1);
 - Forfeiture (§18.2-46.3:2); and,
 - Enhanced penalties for gang participation & recruitment in school zones (§ 18.2-46.3:3).

"Criminal Street Gang"

§ 18.2-46.1

- Three or more persons.
- One of its primary objectives or activities is the commission of one or more criminal activities.
- Identifiable name or identifying sign or symbol.
- 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.

"Predicate Criminal Act"

§ 18.2-46.1

- "Act of violence" - defined in § 19.2-297.1.
- Other specifically enumerated offenses.
- The definition is used in the definition of "criminal street gang" and as the "trigger" offense for the crime of gang participation.
- So: As the definition of "predicate criminal act" expands, so too expands the definition of "criminal street gang" and the reach of the gang participation statute.

"Predicate Criminal Act"

§ 18.2-46.1

"Act of Violence"

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

"Predicate Criminal Act"

§ 18.2-46.1

Enumerated Offenses

- Gang recruitment
- Malicious wounding
- Malicious injury to law enforcement
- Procuring prostitution
- Wounding in commission of felony
- Injuries caused by prisoners/probationers
- Assault and battery
- Assault by mob
- Reckless handling of firearms
- Brandishing a machete
- Trespass on church or school property
- Injury to property
- Breaking/defacing a vehicle, etc.
- Entering or setting in motion a vehicle, etc.
- Extortion
- Shooting from vehicle
- Possession of certain weapons on school property
- Certain drug offenses
- Damage to property in violation of local ordinance

Any similar offense under the laws of any state or territory of the U.S., the District of Columbia, or the U.S.

"Predicate Criminal Act"

§ 18.2-46.1

Enumerated Offenses Added Since 2000

2004

- Gang recruitment
- Certain drug offenses
 - § 18.2-248(H)
 - § 18.2-248(H1)
 - § 18.2-248(H2)
 - § 18.2-248.01
 - § 18.255
 - § 18.255.2

2006

- Receiving money for procuring prostitution
- Threats to bomb or damage buildings
- Brandishing a machete (new crime)

2005

- Assault by mob
- Reckless handling of firearms
- Extortion
- Shooting from vehicle
- Carrying a loaded firearm
- Possessing weapons on school property
- Any similar offense under the laws of any other state, D.C., or the U.S.

2007

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

Gang Participation

§ 18.2-46.2

- Class 5 felony;
- For an active participant or member of a criminal street gang;
- To participate in a “predicate criminal act;”
- For the benefit of, at the direction of, or in association with any criminal street gang.
- If the defendant knows the gang includes a juvenile member = Class 4 felony.
- Separate and distinct offense.

Gang Recruitment

§ 18.2-46.3

- Class 6 felony for an adult to recruit a juvenile.
- Class 1 misdemeanor to recruit another, regardless of age of offender or victim.
- Class 6 felony to use or threaten force against an individual, or a member of his family or household, to encourage that individual to join a gang, remain in a gang, or submit to a demand by a gang to commit a felony.

Enhancements

§ 18.2-46.3:1 and § 18.2-46.3:3

■ Three Strikes

- Aimed at combating gang recidivism.
- A third or subsequent violation of the gang statutes constitutes a Class 3 felony (5-20 yrs.).

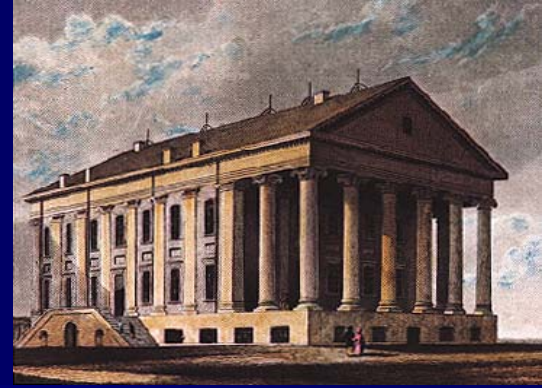
■ Gang-Free School Zones

- For gang participation and gang recruitment committed on school property, within 1,000 feet of school property, or on a school bus.
- Gang participation = mandatory min. 2 yrs.
- Misdemeanor gang recruitment = Class 6 felony.
- Class 6 felony gang recruitment = Class 5 felony.



Utilization of VA's Gang Statutes

CA Survey: Purpose



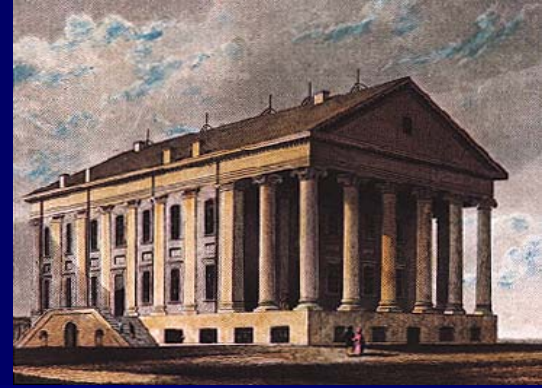
- Establish whether each office prosecuted violations of § 18.2-46.2 or § 18.2-46.3;
- Number of charges and convictions for each statute since 2000;
- Number of forfeitures pursuant to § 18.2-46.3:2 since 2004;
- Number of gang participation and recruitment enhancements since 2005;
- Number and types of criminal street gangs each office obtained convictions for since 2000;
- “Predicate criminal acts” used to prove groups met definition of “criminal street gang;” and,
- “Predicate criminal acts” that constituted the “trigger” offense for the crime of criminal street gang participation.

CA Survey Responses



- Surveys were disseminated to all Commonwealth's Attorneys' Offices.
 - 41% (49 of 120) of offices representing 55 localities responded.
- Since 2000:
 - 53% (26 of 49) of offices prosecuted at least one violation of § 18.2-46.2 or § 18.2-46.3.
 - 47% (23 of 49) of offices had no prosecutions.

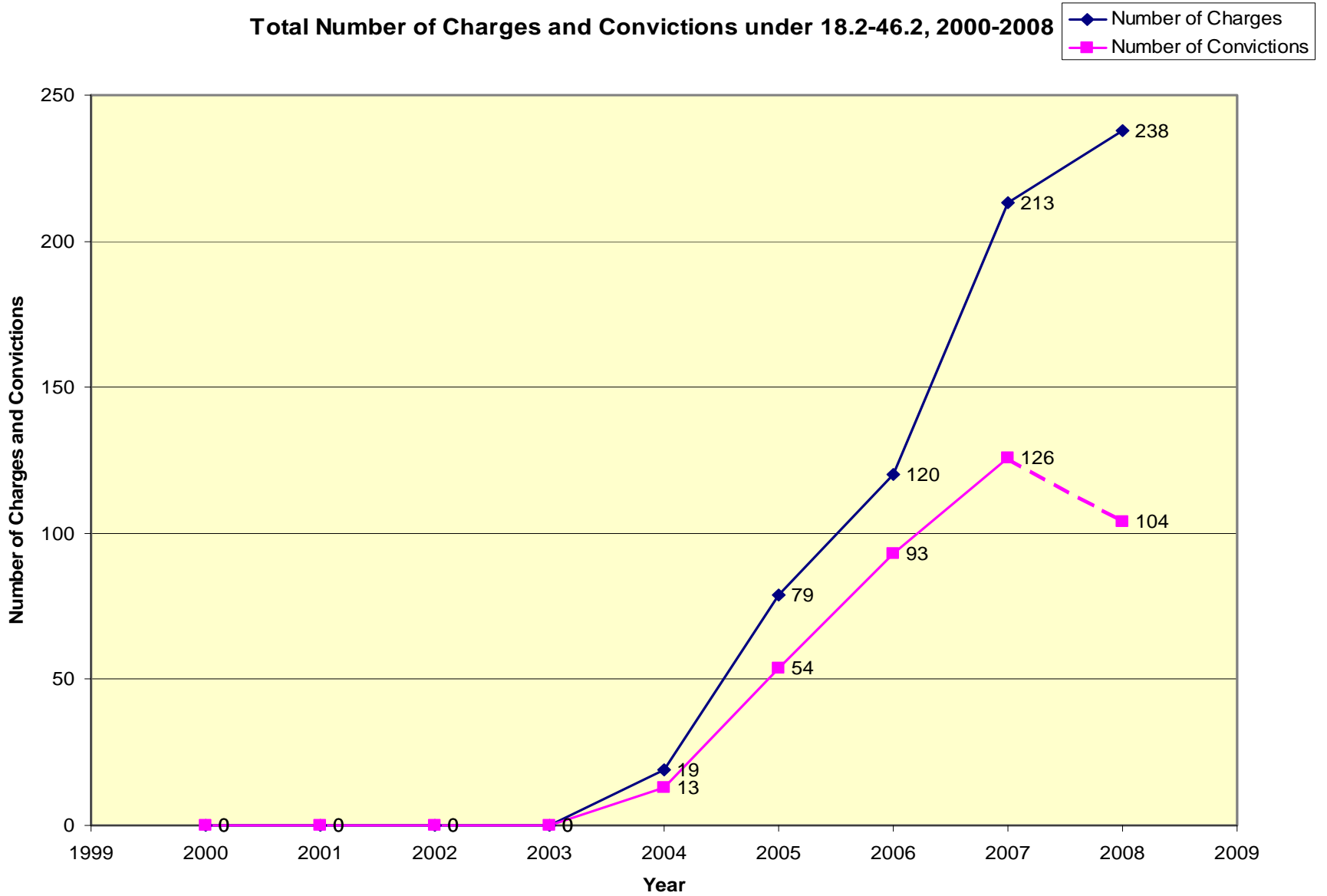
CA Survey Responses



- Localities with at least one prosecution under § 18.2-46.2 or § 18.2-46.3:
 - Cities of: Hampton, Harrisonburg, Manassas/ Manassas Park, Norfolk, Poquoson, Portsmouth, Richmond, Spotsylvania, Staunton, Suffolk, Williamsburg, Winchester, and Virginia Beach.
 - Counties of: Albemarle County, Appomattox County, Arlington County, Chesterfield County, Grayson County, Henrico County, James City County, Lancaster County, Lynchburg County, Middlesex County, Prince Edward County, Prince William County, Rockingham County, Shenandoah County, Spotsylvania County, Stafford County, and York County.



Total Number of Charges and Convictions under 18.2-46.2, 2000-2008



* 2008 figures reflect total number of charges and convictions as of October 1, 2008.

CA Survey:

§ 18.2-46.2 Charges and Convictions by Locality, 2007-08



■ 2008 Charges

- Rockingham/Harrisonburg (41)
- Prince William County (26)
- Hampton (22)
- Richmond City (20)
- Grayson County (20)



■ 2008 Convictions

- Prince William County (18)
- Richmond City (14)
- Norfolk (11)
- Henrico County (8)

■ 2007 Charges

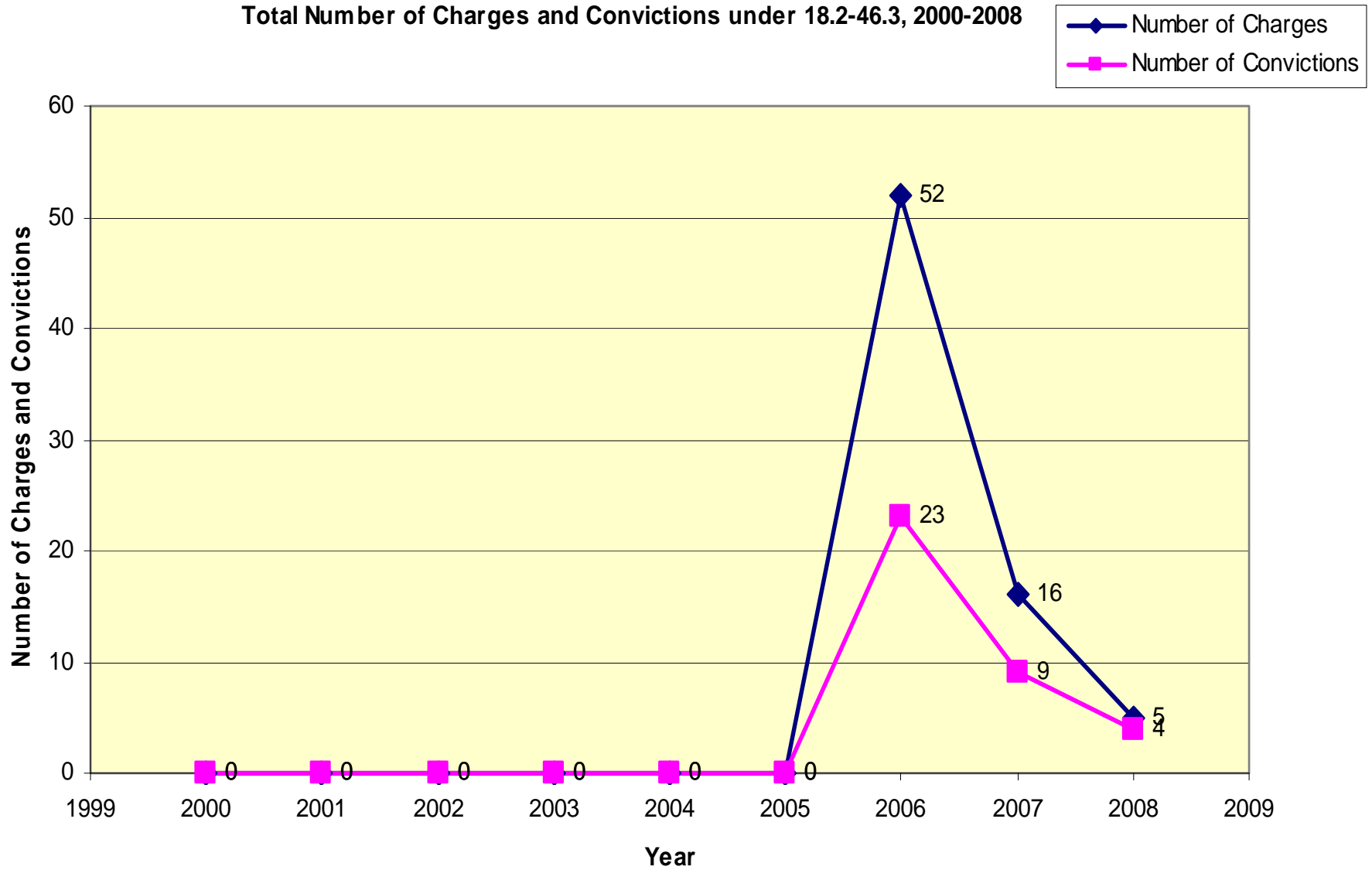
- Prince William County (77)
- Rockingham/Harrisonburg (46)
- Virginia Beach (19)
- Norfolk (17)
- Richmond City (15)



■ 2007 Convictions

- Norfolk (19)
- Prince William County (18)
- Richmond (14)
- Stafford County (9)

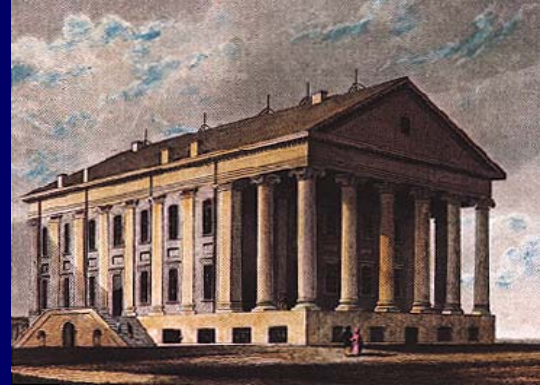
Total Number of Charges and Convictions under 18.2-46.3, 2000-2008



* 2008 figures reflect total number of charges and convictions as of October 1, 2008.

CA Survey:

§ 18.2-46.3 Charges and Convictions by Locality, 2007-08



■ 2008 Charges

- Grayson County (20)
- Rockingham/Harrisonburg (13)
- Hampton (4)



■ 2008 Convictions

- Rockingham/Harrisonburg (6)
- Prince William County (3)
- Henrico County (3)

■ 2007 Charges

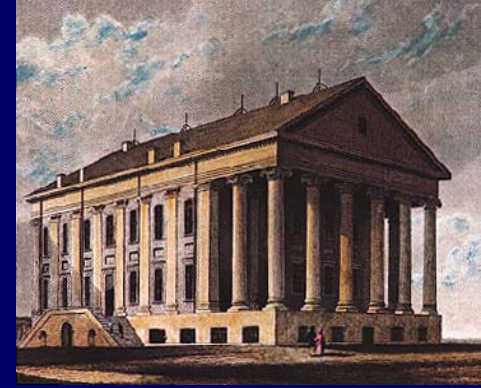
- Rockingham/Harrisonburg (12)
- Norfolk (2)
- Albemarle County (2)



■ 2007 Convictions

- Rockingham/Harrisonburg (8)
- Norfolk (1)
- Prince William County (less than 5)

CA Survey: Third Convictions & Forfeitures



- There have been no Class 3 felony convictions obtained under § 18.2-46.3:1 for a third or subsequent felony conviction of gang participation since 2004.
- There have been TWO Class 3 felony convictions obtained under § 18.2-46.3:1 for a third or subsequent felony conviction of gang recruitment since 2004.
- There have been no forfeitures obtained pursuant to § 18.2-46.3:2 since 2004.

CA Survey: School Zone Enhancements



Type of Charge	2008	2007	2006	2005
Gang Participation Enhancement	21	2	3	5
Gang Recruitment Enhancement	13	1	0	0

* 2008 figures reflect total number of charges as of October 1, 2008.

Predicate Criminal Acts Used to Prove “Criminal Street Gang” Definition



Act of violence

- First and second degree murder and voluntary manslaughter (§ 18.2-30 *et seq.*).
- Mob related felonies (§ 18.2-38 *et seq.*).
- Any kidnapping or abduction felony (§ 18.2-47 *et seq.*).
- Any malicious felonious assault or malicious bodily wounding (§ 18.2-51 *et seq.*).
- Robbery (§ 18.2-58).
- Carjacking (§ 18.2-58.1).

Any violation of

- Gang recruitment (§ 18.2-46.3).
- Malicious wounding (§ 18.2-51).
- Simple assault and battery (§ 18.2-57).
- Assault and battery on family or household member (§ 18.2-57.2).

- Entering property of another for purpose of damaging it (§ 18.2-121).
- Injury to property or monument (§ 18.2-137).
- Breaking, injuring, defacing, or preventing operation of any vehicle, aircraft or boat (§ 18.2-146).
- Transporting drugs into the Commonwealth with the intent to sell or distribute (§ 18.2-248.01).
- Drug-free school zones (§ 18.2-255.2).

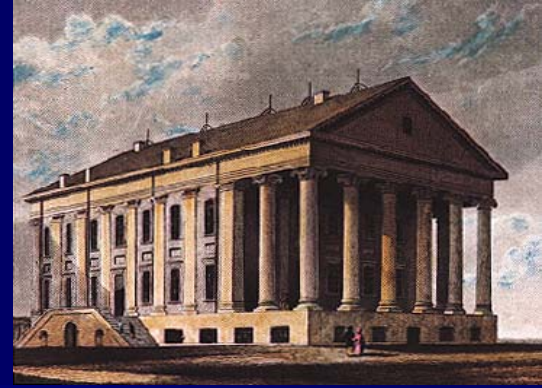
Effective July 1, 2005

- Assault by mob (§ 18.2-42).
- Shooting from vehicle (§ 18.2-286.1).
- Possession of certain weapons on school property (§ 18.2-308.1).

Effective July 1, 2007

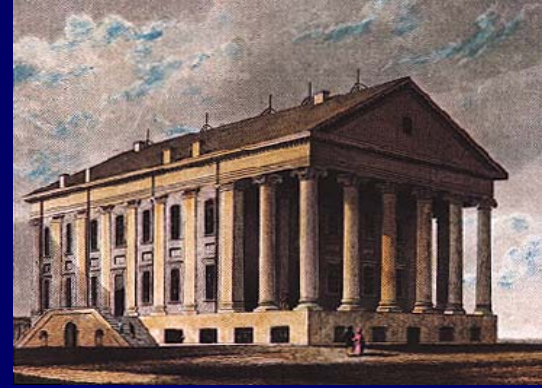
- Use or display of a firearm in commission of a felony (§ 18.2-53.1).

CA Survey: Gangs Identified



- There were over 40 gangs identified by CA offices as having gained convictions against for § 18.2-46.2 or § 18.2-46.3 since 2000.
 - Bloods (20 offices);
 - Crips (13 Offices);
 - MS-13 (6 Offices); and,
 - Gangster Disciples (4 Offices).

Predicate Criminal Acts Used as “Trigger” for Gang Participation (§ 18.2-46.2)



Act of violence

- First and second degree murder and voluntary manslaughter (§ 18.2-30 *et seq.*).
- Mob related felonies (§ 18.2-38 *et seq.*).
- Any kidnapping or abduction felony (§ 18.2-47 *et seq.*).
- Any malicious felonious assault or malicious bodily wounding (§ 18.2-51 *et seq.*).
- Robbery (§ 18.2-58).
- Carjacking (§ 18.2-58.1).
- Except as otherwise provided in § 18.2-67.5:2 and § 18.2-67.5:3, criminal sexual assault punishable as a felony under § 18.2-61 *et seq.*
- Conspiracy to commit any of the above-mentioned offenses.

Any violation of

- Gang recruitment (§ 18.2-46.3).
- Malicious wounding (§ 18.2-51).
- Simple assault and battery (§ 18.2-57).

- Trespass upon church or school property (§ 18.2-128).
- Injury to property or monument (§ 18.2-137).
- Breaking, injuring, defacing, or preventing operation of any vehicle, aircraft or boat (§ 18.2-146).
- Transporting drugs into the Commonwealth with the intent to sell or distribute (§ 18.2-248.01).

Effective July 1, 2005

- Assault by mob (§ 18.2-42).
- Reckless handling of firearms (§ 18.2-56.1).
- Extortion (§ 18.2-59).
- Shooting from vehicle (§ 18.2-286.1).

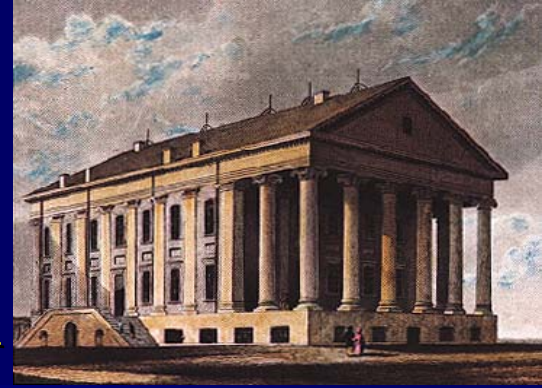
Effective July 1, 2006

- Threats to bomb or damage buildings (18.2-83).

Effective July 1, 2007

- Use or display of a firearm in commission of a felony (18.2-53.1).

Predicate Criminal Acts Not Used for Gang Definition or as “Trigger” for Gang Participation



Act of violence

- Arson in violation of § 18.2-77, when structure is occupied, or a Class 3 felony violation of § 18.2-79.
- Violations as a principal in the second degree or accessory before the fact of the above-mentioned offenses.

Any violation of

- Malicious bodily injury to law-enforcement officer (§ 18.2-51.1).
- Malicious bodily injury by means of caustic substance (§ 18.2-52).
- Shooting, stabbing, or wounding in the commission of a felony (§ 18.2-53).
- Bodily injuries caused by prisoners, parolees, and probationers (§ 18.2-55).
- Injuries to churches, church property, burial grounds, etc. (§ 18.2-127).
- Damage to public buildings (§ 18.2-138).
- Entering or setting in motion vehicle, aircraft, boat, locomotive, or rolling stock (§ 18.2-147).
- Drug offenses under § 18.2-248(H), (H1), or (H2).

- Distribution of drugs to any person under 18 years of age who is at least three years his junior, etc. (§ 18.2-255).
- A second or subsequent felony violation with respect to a controlled substance listed in Schedule I or II of Subsection C of § 18.2-248.
- A second or subsequent felony violation with respect to distribution of marijuana (§ 18.2-248.1).
- Damage or defacement of property in violation of a local ordinance adopted pursuant to § 15.2-1812.2.

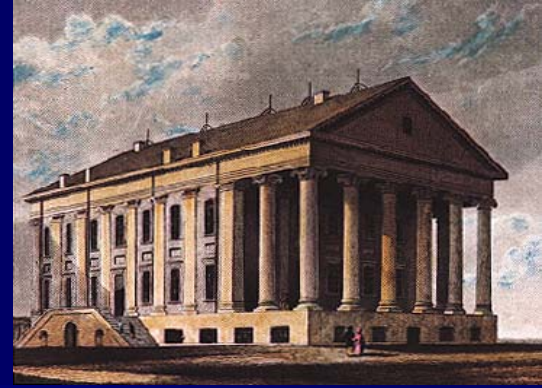
Effective July 1, 2005

- Carrying a loaded firearm (§ 18.2-287.4).
- Any similar offense under the laws of any state or territory of the United States, the District of Columbia, or the United States.

Effective July 1, 2006

- Receiving money for prostitution (18.2-356).
- Brandishing a machete (18.2-282.1).

VCSC Data



- Identified 14 felonies defined within §§ 18.2-46.1, 18.2-46.2, 18.2-46.3 and 18.2-46.3:1.
- Utilized two sources of data:
 - Pre/Post-Sentence Investigation (PSI) system
 - Court Automated Information System (CAIS)
- Of the 14 gang offenses identified, convictions appear for five in the PSI system.

Indictments and Convictions for Gang-Related Offenses in Virginia's Circuit Courts, FY2003 – FY2007¹

Source: Pre/Post-Sentence Investigation (PSI) system

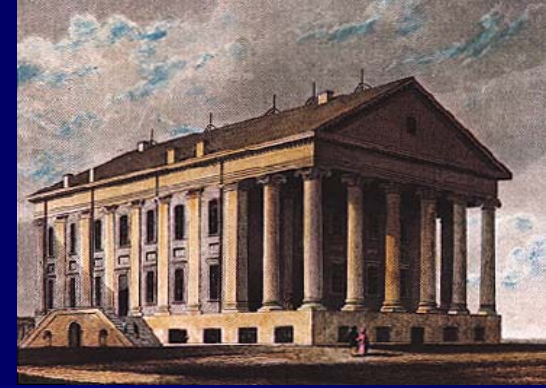
	FY2003 ²			FY2004			FY2005			FY2006 ¹			FY2007 ^{1,3}		
	Total Indictments	Convictions as Primary Offense	Convictions as Additional Offense	Total Indictments	Convictions as Primary Offense	Convictions as Additional Offense	Total Indictments	Convictions as Primary Offense	Convictions as Additional Offense	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.

VCSC: CAIS Data

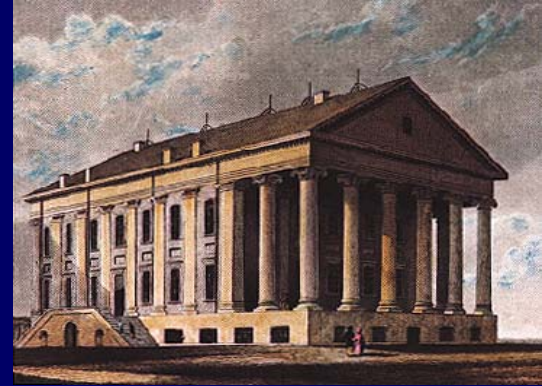


Charges for Gang-Related Offenses in Virginia's Circuit Courts¹ Source: Supreme Court of Virginia's Court Automated Information System (CAIS)

Outcome	FY2006	FY2007
Guilty	38	66
Nolle Prossed	32	23
Not Guilty/Dismissed	2	5
Other	1	1
Total	73	95

¹ Data do not include Fairfax County, Prince William County or the City of Alexandria because these jurisdictions do not participate in the Virginia Supreme Court's CAIS system.

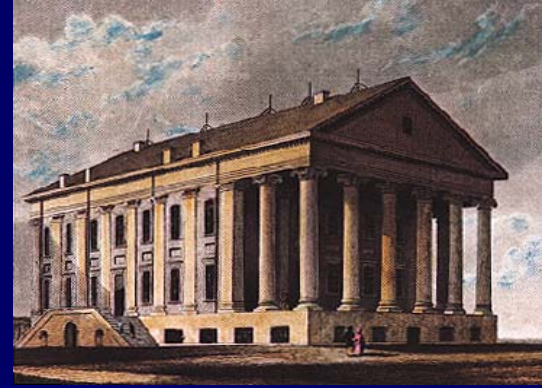
DOC Data



■ Purpose:

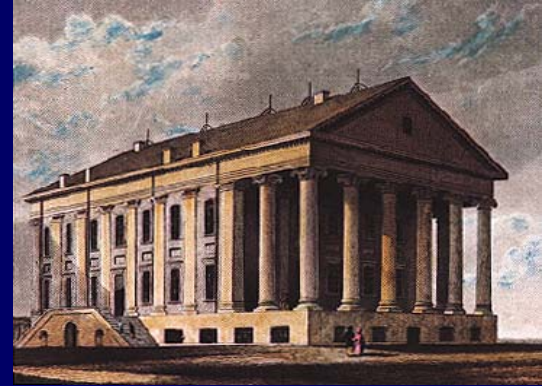
- Identify the total number of offenders under DOC supervision identified by the DOC Security Threat Gang (STG) database, regardless of conviction type;
- Identify the total number and types of gangs identified by the STG database, regardless of conviction type; and,
- Determine the number of individuals under DOC supervision convicted of § 18.2-46.2 and/or § 18.2-46.3.

DOC Data



- There were 6,400 offenders identified by the STG database as of November 19, 2008.
- Gender:
 - 97.9% (6,267 of 6,400) are male; and,
 - 2.1% (133 of 6,400) are female.
- Sentence Type:
 - 89% (5,672 of 6,400) are incarcerated; and,
 - 11% (728 of 6,400) are under community supervision.

DOC Data



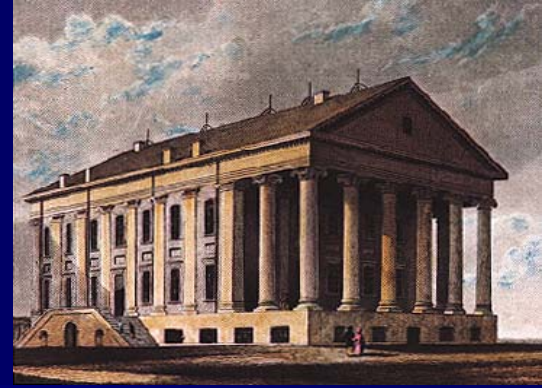
- There were a total of 341 gangs identified in the STG Database.

	Name of Gang	Total Number	Percent of Total
1	Bloods	2,028	31.7%
2	Crip/ Crips	760	11.9%
3	Five Percenter	568	8.9%
4	Gangster Disciples	381	6.0%
5	MS 13	250	3.9%
6	White Supremacy	193	3.0%
7	Aryan Brotherhood	156	2.4%

Top 7 Total 4,336 67.8%

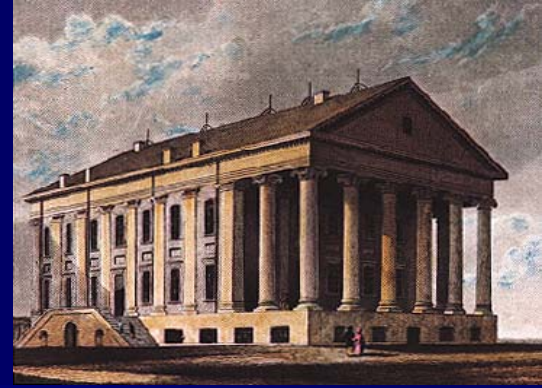
Grand Total 6,400

DOC Data



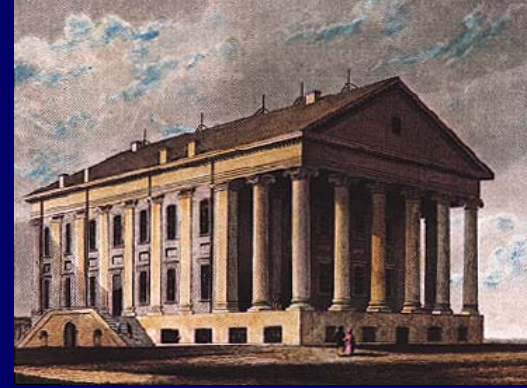
- There were a total of 143 convictions in the Correctional Informational System (CORIS) database FY2006 – FY2009 (as of August 2008).
 - 141 convictions for § 18.2-46.2
 - Gang Participation (135)
 - Gang Participation for gang w/ juvenile member (5)
 - Gang participation in school zone (1)
 - 2 convictions for § 18.2-46.3
 - Adult recruits juvenile (2)
- These numbers only account for those incarcerated.

DOC Data



- According to DOC' s interim database containing Virginia Community Corrections Information System (VACCIS), there are an additional 123 clients under community corrections:
 - 113 convictions for § 18.2-46.2
 - Gang participation (93)
 - Gang participation for gang w/ juvenile member (20)
 - 10 convictions for § 18.2-46.3
 - Adult recruits juvenile (10)

Legislative Proposal



■ Option 1:

- Gang participation crime to be triggered not by “predicate criminal act” but by the commission of any felony or misdemeanor.

■ Option 2:

- Gang participation crime to be triggered by any i) felony, or ii) misdemeanor predicate criminal act.

Legislative Proposal



- For either Option 1 or Option 2, strike offenses from the definition of “predicate criminal act” that have not been, and are unlikely to be in the future, utilized.
 - Retain “act of violence” predicates.
 - Strike:
 - Malicious bodily injury by caustic substance.
 - Injuries to churches, church property, burial grounds.
 - Entering or setting in motion vehicle, aircraft, boat, locomotive, or rolling stock.

Discussion