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Committee Report: Favorable with amendments
House action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **Criminal Law and Procedure - Criminal Gang Offenses**

3 FOR the purpose of authorizing information relating to criminal gang affiliation to be
4 included in a presentence investigation report under certain circumstances;
5 prohibiting a person from threatening ~~another~~ an individual, or a friend or
6 family member of an individual, with physical violence with the intent to coerce,
7 induce, or solicit the ~~other~~ individual to participate in or prevent the ~~other~~
8 individual from leaving a criminal gang; ~~prohibiting a person from using~~
9 ~~physical violence with the intent to coerce, induce, or solicit another to~~
10 ~~participate in or prevent the other from leaving a criminal gang; prohibiting a~~
11 ~~person from threatening to use or using physical violence with the intent to~~
12 ~~coerce, induce, or solicit an individual, or a friend or family member of an~~
13 ~~individual, to participate in or prevent the individual from leaving a criminal~~
14 ~~gang in, on, or within a certain distance of certain school property; establishing~~
15 ~~certain penalties for certain violations of this Act; providing for the application~~
16 ~~of certain provisions of this Act; prohibiting the merging of certain crimes;~~
17 expanding the list of offenses for which a law enforcement agency making an
18 arrest of a child enrolled in a public school system is required to notify the local
19 superintendent to include certain offenses involving gang affiliation; defining
20 certain terms; providing for the construction of this Act; and generally relating
21 to criminal gang offenses.

22 BY repealing and reenacting, with amendments,
23 Article - Correctional Services
24 Section 6-112(b)

1 Annotated Code of Maryland
2 (1999 Volume and 2004 Supplement)

3 BY adding to
4 Article - Criminal Law
5 Section 9-801 through 9-803, inclusive, to be under the new subtitle "Subtitle
6 8. Criminal Gang Offenses"
7 Annotated Code of Maryland
8 (2002 Volume and 2004 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article - Education
11 Section ~~7-303(a)(5)~~ 7-303(a) and (b)
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2004 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Correctional Services**

17 6-112.

18 (b) (1) If a circuit court is satisfied that a presentence investigation report
19 would help the sentencing process, the court may order the Division to complete a
20 report before:

21 (i) sentencing a defendant who is convicted of a felony or of a
22 misdemeanor that resulted in serious physical injury or death to the victim to the
23 jurisdiction of the Division of Correction; or

24 (ii) referring a defendant to the Patuxent Institution.

25 (2) The party that requests the report has the burden of establishing
26 that the investigation should be ordered.

27 (3) If required under § 11-402 of the Criminal Procedure Article, the
28 report shall include a victim impact statement.

29 (4) IF THE DEFENDANT HAS BEEN CONVICTED OF A FELONY OR
30 MISDEMEANOR THAT IS RELATED TO THE DEFENDANT'S MEMBERSHIP IN A GROUP
31 WHOSE MEMBERS, WITH KNOWLEDGE, INDIVIDUALLY OR COLLECTIVELY COMMIT,
32 ATTEMPT TO COMMIT, ENGAGE IN CONSPIRACY TO COMMIT, OR SOLICIT ANOTHER
33 TO COMMIT CRIMINAL ACTS CRIMINAL GANG, AS DEFINED IN § 9-801 OF THE
34 CRIMINAL LAW ARTICLE, THE REPORT MAY INCLUDE INFORMATION REGARDING THE
35 GROUP AFFILIATION OF THE DEFENDANT.

1 Article - Criminal Law

2 SUBTITLE 8. CRIMINAL GANG OFFENSES.

3 9-801.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) "COERCE" MEANS TO COMPEL OR ATTEMPT TO COMPEL ANOTHER BY
7 THREAT OF HARM OR OTHER ADVERSE CONSEQUENCES.8 (C) "CRIMINAL GANG" MEANS A GROUP ~~WHOSE MEMBERS, WITH KNOWLEDGE,~~
9 ~~INDIVIDUALLY OR COLLECTIVELY COMMIT, ATTEMPT TO COMMIT, ENGAGE IN~~
10 ~~CONSPIRACY TO COMMIT, OR SOLICIT ANOTHER TO COMMIT CRIMINAL ACTS OR ANY~~
11 ~~ASSOCIATION OF THREE OR MORE PERSONS:~~12 (1) THAT FORMS TO ENGAGE IN CRIMINAL ACTIVITY, INCLUDING ACTS
13 BY JUVENILES THAT WOULD BE CRIMES IF COMMITTED BY ADULTS, FOR THE
14 PURPOSES OF PECUNIARY GAIN OR TO CREATE AN ATMOSPHERE OF FEAR AND
15 INTIMIDATION EITHER COLLECTIVELY OR WITH KNOWLEDGE OF THE ACTS OF THE
16 MEMBERS OF THE GROUP; AND17 (2) WHOSE MEMBERS HAVE A COMMON IDENTIFYING SIGN, SYMBOL, OR
18 NAME.

19 (D) "SOLICIT" HAS THE MEANING STATED IN § 11-301 OF THIS ARTICLE.

20 9-802.

21 (A) A PERSON MAY NOT THREATEN ~~ANOTHER AN INDIVIDUAL, OR A FRIEND~~
22 ~~OR FAMILY MEMBER OF AN INDIVIDUAL,~~ WITH PHYSICAL VIOLENCE WITH THE
23 INTENT TO COERCE, INDUCE, OR SOLICIT THE ~~OTHER INDIVIDUAL~~ TO PARTICIPATE
24 IN OR PREVENT THE ~~OTHER INDIVIDUAL~~ FROM LEAVING A CRIMINAL GANG.25 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A ~~FELONY~~
26 ~~MISDEMEANOR~~ AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
27 EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$1,000 OR BOTH.28 ~~9-803.~~29 ~~(A) A PERSON MAY NOT USE PHYSICAL VIOLENCE TO COERCE, INDUCE, OR~~
30 ~~SOLICIT ANOTHER TO PARTICIPATE IN OR PREVENT THE OTHER FROM LEAVING A~~
31 ~~CRIMINAL GANG.~~32 ~~(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON~~
33 ~~CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE~~
34 ~~NOT EXCEEDING \$1,000 OR BOTH.~~

1 9-803.

2 (A) A PERSON MAY NOT THREATEN AN INDIVIDUAL, OR A FRIEND OR FAMILY
 3 MEMBER OF AN INDIVIDUAL, WITH OR USE PHYSICAL VIOLENCE TO COERCE,
 4 INDUCE, OR SOLICIT THE INDIVIDUAL TO PARTICIPATE IN OR PREVENT THE
 5 INDIVIDUAL FROM LEAVING A CRIMINAL GANG:

6 (1) IN A SCHOOL VEHICLE, AS DEFINED UNDER § 11-154 OF THE
 7 TRANSPORTATION ARTICLE; OR

8 (2) IN, ON, OR WITHIN 1,000 FEET OF REAL PROPERTY OWNED BY OR
 9 LEASED TO AN ELEMENTARY SCHOOL, SECONDARY SCHOOL, OR COUNTY BOARD OF
 10 EDUCATION AND USED FOR ELEMENTARY OR SECONDARY EDUCATION.

11 (B) SUBSECTION (A) OF THIS SECTION APPLIES WHETHER OR NOT:

12 (1) SCHOOL WAS IN SESSION AT THE TIME OF THE CRIME; OR

13 (2) THE REAL PROPERTY WAS BEING USED FOR PURPOSES OTHER THAN
 14 SCHOOL PURPOSES AT THE TIME OF THE CRIME.

15 (C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
 16 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 4 YEARS OR A
 17 FINE NOT EXCEEDING \$4,000 OR BOTH.

18 (D) NOTWITHSTANDING ANY OTHER LAW, A CONVICTION UNDER THIS
 19 SECTION MAY NOT MERGE WITH A CONVICTION UNDER § 9-802 OF THIS SUBTITLE.

20

Article - Education

21 7-303.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) "CRIMINAL GANG" HAS THE MEANING STATED IN § 9-801 OF THE
 24 CRIMINAL LAW ARTICLE.

25 (3) "Law enforcement agency" means the law enforcement agencies
 26 listed in § 3-101(e) of the Public Safety Article.

27 [(3)] (4) "Local school system" means the schools and school programs
 28 under the supervision of the local superintendent.

29 [(4)] (5) "Local superintendent" means the county superintendent, for
 30 the county in which a child is enrolled, or a designee of the superintendent, who is an
 31 administrator.

32 (5) (6) "Reportable offense" means:

33 (i) A crime of violence, as defined in § 14-101 of the Criminal Law
 34 Article;

1 (ii) Any of the offenses enumerated in § 3-8A-03(d)(4) of the Courts
2 Article;

3 (iii) A violation of § 4-101, § 4-102, § 4-203, or § 4-204 of the
4 Criminal Law Article;

5 (iv) A violation of §§ 5-602 through 5-609, §§ 5-612 through 5-614,
6 § 5-617, § 5-618, § 5-627, or § 5-628 of the Criminal Law Article; [or]

7 (v) A violation of § 4-503, § 9-504, or § 9-505 of the Criminal Law
8 Article; ~~OR~~

9 ~~(VI)~~ (VI) A VIOLATION OF § 6-102, § 6-103, § 6-104, OR § 6-105 OF THE
10 CRIMINAL LAW ARTICLE; OR

11 ~~(VI)~~ (VII) A VIOLATION OF § 9-802 OR § 9-803 OF THE CRIMINAL LAW
12 ARTICLE.

13 (b) If a child enrolled in the public school system is arrested for a reportable
14 offense OR AN OFFENSE THAT IS RELATED TO THE CHILD'S MEMBERSHIP IN A
15 CRIMINAL GANG, the law enforcement agency making the arrest shall notify the local
16 superintendent of the arrest and the charges within 24 hours of the arrest or as soon
17 as practicable.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
19 construed to limit prosecution for a violation of any other provision of law with respect
20 to any activity that constitutes a violation of this Act.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
22 effect October 1, 2005.