

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 849

(Delegate Kelley, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law and Procedure - Criminal Gang Offenses

This bill creates new offenses relating to criminal gang activity.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. It is assumed that the bill's reporting responsibilities could be handled with existing budgeted resources.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions. It is assumed that the bill's reporting responsibilities in connection with reports to local school superintendents would be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from threatening an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000. As a separate crime, the bill also prohibits making such threats in a school vehicle or within 1,000 feet of a school. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for four years and/or a \$4,000 fine. A conviction for the latter offense may not merge

with a conviction for the former offense. The bill's provisions may not be construed to limit prosecution for a violation of any other provision with respect to any activity that constitutes a violation of these provisions.

The bill authorizes prior felony or misdemeanor convictions, if related to the defendant's membership in a criminal gang, to be included in a presentence investigation report for a court by the Division of Parole and Probation. In addition, the bill adds violations of these provisions, as well as arson and malicious burning, to the list of offenses that must be reported to the local superintendent of schools if a public school student is arrested and charged with the offense.

"Criminal gang" is defined as a group or any association of three or more persons: (1) that forms to engage in criminal activity, including acts by juveniles that would be crimes if committed by adults, for the purposes of pecuniary gain or to create an atmosphere of fear and intimidation either collectively or with knowledge of the acts of the members of the group; and (2) whose members have a common identifying sign, symbol, or name.

Current Law: Statute does not directly address participation in criminal gang activity.

Chapter 339 of 2000 revoked, except for death penalty proceedings, the distinction between an accessory before the fact and a principal in a crime. Proceedings against an accessory before the fact are allowed: (1) in the same manner as a principal; (2) regardless of proceedings or dispositions concerning a principal in the crime; and (3) in any county where the act of accessoryship occurred or where a principal may be tried.

Formerly a common law offense, the felony of accessory after the fact was codified by Chapter 167 of 2001. That Act provides that, unless another penalty is provided by law, the penalty for the offense is the lesser of imprisonment not exceeding five years or a penalty not exceeding the maximum penalty provided by law for committing the crime.

A person, with the intent to extort or gain money, property, or anything of value from another, may not verbally threaten to: (1) accuse any person of a crime that may be charged by indictment under the laws of the State or of anything that, if true, would bring the person into contempt or disrepute; or (2) injure the person or property of anyone. A violator is guilty of a felony and subject to imprisonment for not less than 2 years and not more than 10 years.

A person or group may not engage in an act or conduct solely to coerce or intimidate another person to contribute or donate any money, goods, materials, or services to a social, economic, or political association or organization. A violator is guilty of a

misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a fine of \$100. Each day on which a violation occurs is a separate violation.

If a circuit court is satisfied that a presentence investigation report would help the sentencing process, the court may order the Division of Parole and Probation to complete such a report.

Reportable offenses to school superintendents include crimes of violence, crimes not within the original jurisdiction of the juvenile court, certain weapon and drug offenses, and possession of explosives and bomb threats. If a child enrolled in a public school system is arrested for any of these offenses, the law enforcement agency making the arrest must notify the local superintendent of schools of the arrest and the charges within 24 hours or as soon as practicable. The State's Attorney must promptly notify the superintendent of the disposition of a reportable offense. Information about a reportable offense obtained by a local superintendent must be used to provide appropriate educational programming and related services to the child committing the offense and to maintain a safe school environment for students and personnel. Information may only be transmitted to the principal of the school the child attends and a limited number of other school personnel who need to know.

Background: Criminal street gangs continue to be a problem in Montgomery and Prince George's counties, with similar concerns relating to neighborhood drug gangs in Baltimore City.

Eight states are known to have passed substantive criminal prohibitions addressing criminal street gangs: Alaska, California, Florida, Louisiana, Mississippi, Nevada, New Mexico, Ohio, and (in 2004) Virginia. In addition, the federal government has enhanced penalty provisions attached to such activity.

Under California's criminal law provisions, any person who actively participates in any criminal street gang activity with knowledge that its members engage in a pattern of such activity, and who willfully assists in any felonious criminal conduct by members of that gang, is subject to imprisonment for up to three years. California similarly prohibits the solicitation or recruitment of persons to participate in criminal street gang activity; the use of threats of physical violence two or more times in a 30-day period with the intent to coerce, induce, or solicit participation in a criminal street gang; and the actual use of physical force for such ends.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of

inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: SB 488 (Senator Jacobs, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2005
ncs/jr Revised - House Third Reader - March 28, 2005

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