

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 587
Judiciary

(Delegates McDonough and Impallaria)

Criminal Law - Gang Activity - Jurisdiction over Juvenile Offenders

This bill establishes that the juvenile court does not have jurisdiction over a child who is at least 16 years old who is alleged to have committed an act that would be a crime if committed by an adult that the child committed as a member of a criminal gang.

Fiscal Summary

State Effect: Minimal. Although this bill may result in additional sentences of incarceration for juveniles who are members of criminal gangs, it is not expected to significantly affect incarceration costs for the Division of Correction.

Local Effect: Minimal. It is assumed that any additional caseload for the circuit courts could be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: As defined in § 9-801 of the Criminal Law Article, “criminal gang” means 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.

“Child” means an individual under the age of 18 years. In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations.

The juvenile court does not have jurisdiction over children at least 16 years old who are alleged to have committed a violent crime, children 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if a transfer is believed to be in the interests of the child or society (“reverse waiver”). Reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. The District Court also has the authority to transfer cases to juvenile court under certain circumstances. In addition, the juvenile court may waive jurisdiction over a child alleged to be delinquent who is 15 or older, or who is younger than 15 and is charged with committing an act which if committed by an adult, would be punishable by death or life imprisonment.

If a child at least 16 years old is alleged to have committed a violent crime, or was previously convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, the adjudication of delinquency and the disposition of charges are reportable to the Central Repository. Children that fall into this category who were not fingerprinted at the time of arrest are subject to court-ordered fingerprinting at a disposition hearing or within three days after the disposition hearing.

Chapter 313 of 2005 created several new offenses related to criminal gang activity. Prior to the passage of this Act, statute did not directly address participation in criminal gang activity.

Under Chapter 313, a person is prohibited 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.

A person is also prohibited from 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. Chapter 313 also 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.

Background: The proliferation of gang activity in Maryland had prompted several initiatives designed to address the problem.

In May 2006, the U.S. Attorney General provided \$30 million in grants to the states through its Project Safe Neighborhoods (PSN) program to support anti-gang efforts nationwide and requested that U.S. Attorneys throughout the nation host local Gang Prevention Summits. A Maryland Gang Summit was held in June 2006. At the summit, the Governor announced the establishment of a coordinating committee to create a statewide database of gang activity in order to adequately assess the extent of the gang problem. Maryland has secured \$2 million in federal funds other than PSN grants to create a statewide anti-gang initiative.

The Governor's Office of Crime Control and Prevention and the Maryland U.S. Attorney's Office offered \$15,000 grants for counties to assess local gang-related problems and develop a strategy to address them. Thus far, 12 counties and Baltimore City have applied for the grants.

Noting the growing organization structure of gangs, federal prosecutors are increasingly opting to prosecute gang members under the Racketeering Influences and Corrupt Organizations Act (RICO), enacted in 1970 and traditionally used against the Mafia. To obtain a RICO conviction, prosecutors must prove that the crimes committed by the gang members were part of an organized criminal enterprise. In August 2005, 22 members of the predominantly West-coast gang MS-13 were indicted in Maryland on federal racketeering and other related charges, including murder, assault, and rape. Many states, including California, Florida, New Jersey, and Washington have enacted "mini-RICOs" to address gang problems at the state level.

Additional Comments: The Judiciary advises that the language in the bill regarding "an act that would be a crime if committed by an adult" may create an ambiguity in the statute as to whether such acts are crimes if committed by a child, particularly a child over 16.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Police, Office of the Public Defender, Department of Public Safety and Correctional

Services, Prince George's County, Wicomico County, Department of Legislative Services

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