

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1416  
Judiciary

(Delegates Mitchell and Clippinger)

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**Crimes - Gang-Free Zones - Penalties for Gang Activity**

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This bill makes several changes to the statutory prohibition on criminal gang activity near a school. The bill expands the prohibition to (1) apply to real property meeting requirements specified in existing statute that is near a postsecondary school; (2) criminal gang activity that occurs in, on, or within 1,000 feet of property operated by a State or local transit authority or the Washington Metropolitan Area Transit Authority (WMATA) and used for the public as a bus, light rail, or Metro stop or station; or (3) criminal gang activity that occurs in, on, or within 1,000 feet of a State or local recreation area or park.

The bill also increases the penalties for this offense from imprisonment for up to 4 years and/or a \$4,000 maximum fine to imprisonment for up to 10 years and/or a \$10,000 maximum fine.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing budgeted State resources.

**Local Effect:** Minimal increase in local revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing budgeted local resources.

**Small Business Effect:** None.

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## Analysis

**Current Law:** The Criminal Law Article defines a “criminal gang” as a group or association of three or more persons whose members (1) individually or collectively engage in a pattern of criminal gang activity; (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and (3) have in common an overt or covert organizational or command structure.

Under the prohibition on criminal gang activity near a school, a person may not threaten an individual, or a friend or family member of an individual, with or use physical violence to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang (1) in a school vehicle or (2) in, on, or within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or county board and used for elementary or secondary education, regardless of whether or not school was in session or the real property was being used for nonschool purposes at the time of the offense.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to four years and/or a \$4,000 maximum fine. A conviction for criminal activity near a school may not merge with a conviction for criminal gang activity in general.

Under the prohibition on criminal gang activity outside of school property, a person may not threaten 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.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$1,000 maximum fine.

Participation in a criminal gang is a separate offense, which is classified as a felony and subject to penalties ranging from imprisonment for up to 10 years and/or a \$100,000 maximum fine to imprisonment for up to 20 years and/or a \$100,000 maximum fine. Additional penalty provisions apply.

**Background:** According to the Judiciary, during calendar 2013 (1) no violations were filed in the District Court or the circuit courts for criminal gang activity near a school and (2) one violation was filed in the District Court (in Baltimore City) for criminal gang activity outside of school property.

**State Revenues:** General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalty due to people being committed to State correctional facilities for longer periods of time. The number of people subject to the bill's enhanced penalty is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland State Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Department of Natural Resources, Maryland Higher Education Commission, Department of Juvenile Services, Montgomery County, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

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