

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 816
Judiciary

(Delegate B. Wilson, *et al.*)

Courts - Evidence - Membership in or Association With a Criminal Gang

This bill establishes that in a civil or criminal proceeding, specified evidence is probative of the existence of or membership in a criminal gang and is admissible.

Fiscal Summary

State Effect: Any increase in the workload for the Judiciary as a result of additional evidence being admissible in court proceedings can be handled with existing budgeted resources. The extent to which the bill results in additional convictions is dependent on prosecutorial use of the bill's provisions and judicial determinations regarding the evidence presented. However, any additional convictions resulting from this bill are assumed to be minimal and do not materially affect incarceration costs for the Department of Public Safety and Correctional Services.

Local Effect: Minimal. Any increase in the workload for the circuit courts as a result of additional evidence being admissible in court proceedings can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: In a criminal or civil proceeding, any competent evidence that is probative of an individual's membership in or association with a criminal gang is admissible for the purpose of establishing the individual's membership in or association with a criminal gang, including the following:

- self-admission by the individual;
- identification of the individual as a gang member from a reliable source;
- identification of the individual as a gang member from an untested source;
- wearing by the individual of an identifying gang tattoo or body marking;
- association by the individual with validated gang members;
- wearing by the individual of gang attire;
- use by the individual of gang hand or body signs, signals, symbols, logos, graffiti, documents, code, or social media; and
- being arrested with a validated gang member.

“Criminal gang” has the meaning stated in § 9-801 of the Criminal Law Article.

A “validated gang member” means an individual meeting at least two of the criteria mentioned above.

Current Law: The Maryland Rules generally follow the Federal Rules of Evidence (FRE). Maryland Rule 5-402, which is substantively consistent with FRE 402, establishes that unless otherwise provided by constitutions, statutes, rules, or by decisional law not inconsistent with the Maryland Rules, all relevant evidence is admissible.

Under § 9-801 of the Criminal Law Article, a “criminal gang” is defined 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.

An “underlying crime” is (1) a “crime of violence” as defined under § 14-101 of the Criminal Law Article or (2) other specified crimes.

There are several gang offenses contained in statute; the offenses vary based on the level of an individual’s involvement in a gang, the nature of the gang activity, or the location of the gang activity.

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 *2013 Maryland Gang Threat Assessment* by the Maryland Coordination and Analysis Center within the Governor's Office of Crime Control and Prevention, Maryland communities are experiencing an overall increase in the presence of gangs, gang members, and gang activities. According to the assessment, the following are challenges to gang enforcement by law enforcement: (1) the lack of a mandated central repository for gang-related investigative information in the State; (2) the difficulty in investigating and identifying gang members; and (3) limited funding and manpower for a specialized unit.

Additional Information

Prior Introductions: SB 639 of 2008, a similar bill, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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min/kdm

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