

SENATE BILL 198

E1

EMERGENCY BILL

8lr0131
CF HB 102

By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Hershey, Hough, Jennings, Norman, Ready, Reilly, Salling, Serafini, and Waugh**

Introduced and read first time: January 17, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Gang Offenses – Penalties, Procedure, and Elements**

3 FOR the purpose of providing that the juvenile court does not have jurisdiction over a
4 certain child alleged to have committed a certain criminal gang offense under certain
5 circumstances; altering penalties for certain criminal gang offenses; providing that
6 certain sentences imposed shall be consecutive to certain sentences; altering the
7 elements of a certain criminal gang offense; requiring certain local jurisdictions to
8 use certain divested assets for certain purposes under certain circumstances;
9 providing that a certain underlying crime is considered to have been committed in a
10 certain county for purposes of venue; altering certain definitions; repealing a certain
11 definition; making this Act an emergency measure; and generally relating to
12 criminal gang offenses.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–8A–03(d)(4)
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2017 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Criminal Law
20 Section 9–801, 9–802, 9–803, 9–804(a) and (g), and 9–807
21 Annotated Code of Maryland
22 (2012 Replacement Volume and 2017 Supplement)

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

25 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-8A-03.

2 (d) The court does not have jurisdiction over:

3 (4) A child at least 16 years old alleged to have committed any of the
4 following crimes, as well as all other charges against the child arising out of the same
5 incident, unless an order removing the proceeding to the court has been filed under §
6 4-202 of the Criminal Procedure Article:

7 (i) Abduction;

8 (ii) Kidnapping;

9 (iii) Second degree murder;

10 (iv) Manslaughter, except involuntary manslaughter;

11 (v) Second degree rape;

12 (vi) Robbery under § 3-403 of the Criminal Law Article;

13 (vii) Second degree sexual offense under § 3-306(a)(1) of the Criminal
14 Law Article;

15 (viii) Third degree sexual offense under § 3-307(a)(1) of the Criminal
16 Law Article;

17 (ix) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of
18 the Public Safety Article;

19 (x) Using, wearing, carrying, or transporting a firearm during and
20 in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;

21 (xi) Use of a firearm under § 5-622 of the Criminal Law Article;

22 (xii) Carjacking or armed carjacking under § 3-405 of the Criminal
23 Law Article;

24 (xiii) Assault in the first degree under § 3-202 of the Criminal Law
25 Article;

26 (xiv) Attempted murder in the second degree under § 2-206 of the
27 Criminal Law Article;

28 (xv) Attempted rape in the second degree under § 3-310 of the
29 Criminal Law Article;

1 (xvi) Attempted robbery under § 3–403 of the Criminal Law Article;
2 [or]

3 (xvii) A violation of § 4–203, § 4–204, § 4–404, or § 4–405 of the
4 Criminal Law Article; OR

5 (XVIII) A CRIMINAL GANG OFFENSE UNDER TITLE 9,
6 SUBTITLE 8 OF THE CRIMINAL LAW ARTICLE;

7 Article – Criminal Law

8 9–801.

9 (a) In this subtitle the following words have the meanings indicated.

10 (b) “Coerce” means to compel or attempt to compel another by threat of harm or
11 other adverse consequences.

12 (c) “Criminal gang” means a group or association of three or more persons whose
13 members:

14 (1) [individually or collectively engage in a pattern of criminal gang
15 activity] CONSTITUTE AN ONGOING ENTITY;

16 (2) have as one of their primary objectives or activities the commission of
17 one or more underlying crimes, including acts by juveniles that would be underlying crimes
18 if committed by adults; and

19 (3) have in common an overt or covert organizational or command
20 structure.

21 (d) “Enterprise” includes:

22 (1) a sole proprietorship, partnership, corporation, business trust, or other
23 legal entity; or

24 (2) any group of individuals associated in fact although not a legal entity.

25 (e) [“Pattern of criminal gang activity” means the commission of, attempted
26 commission of, conspiracy to commit, or solicitation of two or more underlying crimes or
27 acts by a juvenile that would be an underlying crime if committed by an adult, provided the
28 crimes or acts were not part of the same incident.

29 (f) “Solicit” has the meaning stated in § 11–301 of this article.

1 **[(g)] (F)** “Underlying crime” means:

2 (1) a crime of violence as defined under § 14–101 of this article;

3 (2) a violation of § 3–203 (second degree assault), § 4–203 (wearing,
4 carrying, or transporting a handgun), **§ 9–102 (SUBORNATION OF PERJURY), § 9–202(A)**
5 **(BRIBERY OF JUROR)**, § 9–302 (inducing false testimony or avoidance of subpoena),
6 § 9–303 (retaliation for testimony), § 9–305 (intimidating or corrupting juror), **§ 9–306**
7 **(OBSTRUCTION OF JUSTICE), § 9–307 (DESTRUCTION OF EVIDENCE), § 9–412**
8 **(CONTRABAND – IN GENERAL), § 9–413 (CONTRABAND – FOR ESCAPE), § 9–414**
9 **(CONTRABAND – WEAPON), § 9–416 (CONTRABAND – CONTROLLED DANGEROUS**
10 **SUBSTANCE), § 9–417 (CONTRABAND – TELECOMMUNICATIONS–RELATED),** § 11–303
11 (human trafficking), § 11–304 (receiving earnings of prostitute), or § 11–306(a)(2), (3), or
12 (4) (house of prostitution) of this article;

13 (3) a felony violation of § 3–701 (extortion), § 4–503 (manufacture or
14 possession of destructive device), § 5–602 (distribution of CDS), § 5–603 (manufacturing
15 CDS or equipment), § 5–604(b) (creating or possessing a counterfeit substance), § 5–606
16 (false prescription), § 6–103 (second degree arson), § 6–202 (first degree burglary), § 6–203
17 (second degree burglary), § 6–204 (third degree burglary), § 7–104 (theft), or § 7–105
18 (unauthorized use of a motor vehicle) of this article; [or]

19 (4) a felony violation of § 5–133 of the Public Safety Article;

20 **(5) A CRIME UNDER THE LAWS OF ANOTHER STATE OR OF THE**
21 **UNITED STATES THAT WOULD BE A CRIME LISTED IN ITEMS (1) THROUGH (4) OF**
22 **THIS SUBSECTION IF COMMITTED IN THIS STATE; OR**

23 **(6) THE ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, OR**
24 **SOLICITATION OF A CRIME LISTED IN ITEMS (1) THROUGH (5) OF THIS SUBSECTION.**

25 9–802.

26 (a) A person may not threaten an individual, or a friend or family member of an
27 individual, with physical violence with the intent to coerce, induce, or solicit the individual
28 to participate in or prevent the individual from leaving a criminal gang.

29 (b) A person who violates this section is guilty of a misdemeanor and on conviction
30 is subject to imprisonment not exceeding [2] 5 years or a fine not exceeding \$10,000 or both.

31 **(C) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE**
32 **TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED UNDER ANY**
33 **OTHER PROVISION OF LAW.**

34 9–803.

1 (a) A person may not threaten an individual, or a friend or family member of an
2 individual, with or use physical violence to coerce, induce, or solicit the individual to
3 participate in or prevent the individual from leaving a criminal gang:

4 (1) in a school vehicle, as defined under § 11–154 of the Transportation
5 Article; or

6 (2) in, on, or within 1,000 feet of real property owned by or leased to an
7 elementary school, secondary school, or county board of education and used for elementary
8 or secondary education.

9 (b) Subsection (a) of this section applies whether or not:

10 (1) school was in session at the time of the crime; or

11 (2) the real property was being used for purposes other than school
12 purposes at the time of the crime.

13 (c) A person who violates this section is guilty of a misdemeanor and on conviction
14 is subject to imprisonment not exceeding [4] 10 years or a fine not exceeding \$20,000 or
15 both.

16 [(d) Notwithstanding any other law, a conviction under this section may not merge
17 with a conviction under § 9–802 of this subtitle.]

18 **(D) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE**
19 **TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED UNDER ANY**
20 **OTHER PROVISION OF LAW.**

21 9–804.

22 (a) A person may not[:

23 (1) participate in a criminal gang knowing that the members of the gang
24 engage in a pattern of criminal gang activity; and

25 (2)] knowingly and willfully direct or participate in an underlying crime, or
26 act by a juvenile that would be an underlying crime if committed by an adult, committed
27 for the benefit of, at the direction of, or in association with a criminal gang.

28 (g) (1) This subsection applies to a violation of § 5–602, § 5–603, § 5–604(b), §
29 5–606, § 5–612, § 5–613, § 5–614, or § 5–617 of this article.

30 (2) Assets divested under this section and derived from the commission of,
31 attempted commission of, conspiracy to commit, or solicitation of a crime described in

1 paragraph (1) of this subsection, either in whole or in part:

2 **(I) IF THE STATE INVESTIGATED AND PROSECUTED A**
 3 **VIOLATION DESCRIBED IN THIS SUBSECTION**, shall be deposited in the Addiction
 4 Treatment Divestiture Fund established under § 8–6D–01 of the Health – General Article;
 5 **OR**

6 **(II) IF A LOCAL JURISDICTION INVESTIGATED AND**
 7 **PROSECUTED A VIOLATION DESCRIBED IN THIS SUBSECTION, SHALL BE USED BY**
 8 **THE LOCAL JURISDICTION TO:**

9 **1. SUPPORT ALTERNATIVES TO INCARCERATION,**
 10 **REENTRY PROGRAMS, AND ADDICTION TREATMENT SERVICES FOR PERSONS WITH**
 11 **SUBSTANCE–RELATED DISORDERS;**

12 **2. COMBAT CRIMINAL GANGS THROUGH EDUCATION,**
 13 **TRAINING, AND RESOURCES; OR**

14 **3. PROVIDE ASSISTANCE TO VICTIMS OF GANG–RELATED**
 15 **CRIMES.**

16 **(3) IF MORE THAN ONE JURISDICTION PARTICIPATED IN AN**
 17 **INVESTIGATION OR A PROSECUTION, ANY DIVESTED ASSETS SHALL BE DIVIDED IN**
 18 **THE MANNER AGREED ON BY THE JURISDICTIONS AND USED AS PROVIDED IN**
 19 **PARAGRAPH (2) OF THIS SUBSECTION.**

20 9–807.

21 For purposes of venue, any violation of this subtitle **AND ANY UNDERLYING CRIME**
 22 is considered to have been committed in any county:

23 (1) in which any act was performed in furtherance of a violation of this
 24 subtitle;

25 (2) that is the principal place of the operations of the criminal gang in the
 26 State;

27 (3) in which a defendant had control or possession of proceeds of a violation
 28 of this subtitle or of records or other material or objects that were used in furtherance of a
 29 violation; or

30 (4) in which a defendant resides.

31 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act is an emergency
 32 measure, is necessary for the immediate preservation of the public health or safety, has

1 been passed by a ye and nay vote supported by three-fifths of all the members elected to
2 each of the two Houses of the General Assembly, and shall take effect from the date it is
3 enacted.