

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1083
Judiciary

(Delegates Pippy and W. Fisher)

Judicial Proceedings

Criminal Organizations – Penalties and Procedure

This bill makes several changes to Title 9, Subtitle 8 of the Criminal Law Article (currently referred to as criminal gang statutes). The bill (1) replaces references to “criminal gang” with “criminal organization” and makes corresponding changes; (2) expands the list of underlying crimes for criminal gang offenses; and (3) specifies that assets divested from gangs as a result of local investigations and prosecutions must go to local jurisdictions to be used only on specified services and law enforcement-related efforts. The bill also requires the Attorney General, in consultation with the Maryland State’s Attorneys’ Association, to develop a plan for a formal process for oversight of prosecutions under Title 9, Subtitle 8 of the Criminal Law Article. The Attorney General must report to the Governor and the General Assembly on the developed plan by December 31, 2020.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures to the extent that the bill’s provisions increase incarcerations and fines imposed in the District Court.

Local Effect: Minimal increase in local revenues and expenditures to the extent that the bill’s provisions increase incarcerations and fines imposed in the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Title 9, Subtitle 8 of the Criminal Law Article prohibits a variety of activities-related to criminal gangs. 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.

Definitions – § 9-801 of the Criminal Law Article

Criminal Gang and Pattern of Criminal Gang Activity

In addition to the statutes described below, the bill replaces references to “criminal gang” in several statutes with “criminal organization” and references to “criminal gang activity” with “organized crime activity.”

Currently, “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. Under the bill, a “criminal organization” is an enterprise whose members engage in these activities.

Statute defines a “pattern of criminal gang activity” (“pattern of organized crime activity” under the bill) as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.

Underlying Crimes

Under current law, the following offenses are underlying crimes under the criminal gang statutes:

- a crime of violence as defined under § 14-101 of the Criminal Law Article;
- a violation of § 3-203 (second-degree assault), § 3-1102 (sex trafficking); § 3-1103 (forced marriage); § 4-203 (wearing, carrying, or transporting a handgun), § 9-302 (inducing false testimony or avoidance of subpoena), § 9-303 (retaliation for testimony), § 9-305 (intimidating or corrupting juror), § 11-304 (receiving earnings of prostitute), or § 11-307 (house of prostitution) of the Criminal Law Article;
- a felony violation of § 3-701 (extortion), § 4-503 (manufacture or possession of destructive device), § 5-602 (distribution of a controlled dangerous substance), § 5-603 (manufacturing a controlled dangerous substance or equipment), § 5-604(b) (creating or possessing a counterfeit substance), § 5-606 (false prescription), § 6-103 (second-degree arson), § 6-202 (first-degree burglary), § 6-203

- (second-degree burglary), § 6-204 (third-degree burglary), § 7-104 (theft), or § 7-105 (unauthorized use of a motor vehicle) of the Criminal Law Article; or
- a felony violation of § 5-133 (restrictions on possession of regulated firearms) of the Public Safety Article.

The bill adds violations of the following prohibitions in the Criminal Law Article to the definition of “underlying crime”: § 7-113 (embezzlement by fiduciary); § 7-315 (theft – telecommunications-related); § 9-102 (subornation of perjury); § 9-202(a) (bribery of juror); § 9-306 (obstruction of justice); § 9-307 (destruction of evidence); § 9-413 (contraband – for escape); § 9-416 (contraband – controlled dangerous substance); § 9-417 (contraband – telecommunications-related); and § 12-104 (gaming offenses).

The bill also expands the definition of “underlying crime” to include a crime under the laws of another state or the United States that would be considered an underlying crime in this State and the attempted commission of, conspiracy to commit, or solicitation of one of the enumerated underlying crimes.

The bill generally retains the elements and penalties of §§ 9-802, 9-803, and 9-804 of the Criminal Law Article, as described below. However, the bill replaces references to a “criminal gang” with “criminal organization,” within these provisions.

Criminal Gang Activity (General) – § 9-802 of the Criminal Law Article

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. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$10,000.

Criminal Gang Activity (Schools), § 9-803 of the Criminal Law Article

A person may not make the types of threats listed above or use physical violence to engage in the prohibited activities listed above 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 \$20,000 fine. A conviction under § 9-803 may not merge with a conviction under § 9-802.

Participation in a Criminal Gang, § 9-804 of the Criminal Law Article

Currently, a person may not (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity and (2) knowingly and willfully direct or participate in an underlying crime, or act by a juvenile that would be an underlying

crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang. Also, a criminal gang or an individual belonging to a criminal gang may not:

- receive proceeds known to have been derived directly or indirectly from an underlying crime; or
- use or invest, directly or indirectly, an aggregate of \$10,000 or more of the proceeds from an underlying crime in (1) the acquisition of a title to, right to, interest in, or equity in real property or (2) the establishment or operation of any enterprise.

A criminal gang is also prohibited from acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime. A person may not conspire to violate specified prohibitions.

In general, a violator is guilty of a felony, punishable by imprisonment for up to 15 years and/or a \$1,000,000 maximum fine. However, if the offense resulted in the death of a victim, a violator is subject to an increased penalty of imprisonment for up to 25 years and/or a \$5,000,000 maximum fine.

A sentence for a first offense that did not result in the death of a victim may be separate from and consecutive to or concurrent with a sentence imposed for any act establishing the gang violation. However, a sentence imposed for an offense that resulted in the death of a victim or a second or subsequent offense that did not result in the death of a victim must be separate from and consecutive to a sentence imposed for any act establishing the gang violation. The State must file a specified notice at least 30 days before trial in order for a consecutive sentence for a second or subsequent offense to be mandatory.

In addition to any penalties for this offense, on conviction the court may:

- order a person or criminal gang to be divested of any interest in an enterprise or real property;
- order the dissolution or reorganization of an enterprise; and
- order the suspension or revocation of any license, permit, or prior approval granted to the enterprise or person by a unit of the State or political subdivision of the State.

With respect to violations of § 9-804, the Attorney General, at the request of the Governor or the State's Attorney for a county in which a violation or an act establishing a violation occurs, may aid in the investigation of the violation or act and prosecute the violation or act. Under these circumstances, the Attorney General has all the powers and duties of a State's Attorney, including the use of the grand jury in the county, to prosecute the violation.

If violations of § 9-804 are alleged to have been committed in more than one county, the respective State's Attorney of each county, or the Attorney General, may join the causes of action in a single complaint with the consent of each State's Attorney having jurisdiction over an offense sought to be joined. The grand jury may issue subpoenas, summon witnesses, and otherwise conduct an investigation of the alleged criminal gang's activities and offenses in other counties, so long as at least one criminal gang activity of a criminal gang allegedly occurred in the county in which a grand jury is sitting.

Addiction Treatment Divestiture Fund

Currently, the Addiction Treatment Divestiture Fund in the Maryland Department of Health (MDH) is a special fund to support addiction treatment services to persons with substance-related disorders. The fund, which is administered by the Secretary of Health, consists of (1) revenue distributed to the fund from divested assets connected to specified offenses under § 9-804 of the Criminal Law Article; (2) money appropriated in the State budget to the fund; and (3) any other money from any other source accepted for benefit of the fund. Interest earnings are retained by the fund. Expenditures from the fund may be made only in accordance with the State budget.

Under the bill, divested assets are deposited into the fund only if the *State* investigated and prosecuted the criminal organization offense. However, if a *local jurisdiction* investigated and prosecuted the criminal organization offense, the divested assets are to go to the local jurisdiction to be used to (1) support alternatives to incarceration, reentry programs, and addiction treatment services for persons with substance-related disorders; (2) combat criminal organizations through education, training, and resources; or (3) provide assistance to victims of criminal organization-related crimes. If more than one jurisdiction participated in an investigation or a prosecution, any divested assets must be divided in the manner agreed on by the jurisdictions and used as required.

Background: Chapter 145 of 2018 established the Task Force to Study Maryland's Criminal Gang Statutes. Chapter 145 requires the task force to:

- study existing State prohibitions on criminal gang-related activity and the efficacy of existing law in being used to obtain criminal convictions against individuals who engage in criminal gang-related activity; and
- make recommendations regarding changes to State law to better deter, prosecute, and punish criminal gang-related activity and persons convicted of gang-related offenses.

The task force submitted a report of its findings and recommendations to the Governor and the General Assembly on March 2, 2020. The bill reflects some of the task force's recommendations to date.

According to the Maryland Sentencing Guidelines Database, 21 individuals were sentenced to 21 total counts of participating as a member of criminal gang in the commission of crime under § 9-804 of the Criminal Law Article in the State's circuit courts during fiscal 2019. The database also indicates that no individuals were sentenced in the circuit courts during that time for a violation of § 9-804 of the Criminal Law Article resulting in the death of a victim.

State Revenues: General fund expenditures increase minimally to the extent that the bill's provisions increase the number of cases for which fines are imposed in District Court for criminal gang/criminal organization-related convictions.

MDH advises that the Addiction Treatment Divestiture Fund has never received any monies. Thus, the bill's alteration of a portion of the fund's revenue source is not expected to materially affect special fund revenues.

State Expenditures: General fund expenditures increase minimally from additional or extended incarcerations in State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted as a result of the bill 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 \$3,700 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The bill is not expected to materially affect corresponding special fund expenditures for the Addiction Treatment Divestiture Fund.

The Office of the Attorney General advises that it can comply with its responsibilities under the bill using existing budgeted resources.

Local Revenues: Revenues increase minimally to the extent that the bill’s provisions increase the number of cases for which fines are imposed in the circuit courts for criminal gang/criminal organization-related convictions.

For the reasons stated above, the bill’s provisions regarding the Addiction Treatment Divestiture Fund are not expected to materially affect local revenues.

Local Expenditures: Expenditures increase minimally from additional local incarcerations. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

The bill’s provisions regarding the Addiction Treatment Divestiture Fund are not expected to materially affect local expenditures.

Additional Information

Prior Introductions: SB 198 of 2018, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 102, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 745 (Senator Hough) - Judicial Proceedings.

Information Source(s): Baltimore City; Montgomery and Prince George’s counties; Office of the Attorney General; Governor’s Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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