Task Force to Study Maryland's Criminal Gang Statutes 2019 One-Time Report

Chapter 145(2) of 2018 (Senate Bill 1137)

Chairman: Senator Michael Hough

Submitted by:
Governor's Office of Crime Prevention, Youth, and Victim Services

Contact: Anthony Baranauskas
410-697-9382 | Anthony.Baranauskas@Maryland.gov

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Acknowledgements

This *Task Force to Study Maryland's Criminal Gang Statutes 2019 One-Time Report* is the result of hard work, valuable input, and dedication from numerous stakeholders. Everyone was exceptionally generous with their time and supportive feedback. Their participation in the *Task Force to Study Maryland's Criminal Gang Statutes*, as well as their feedback, suggestions, and recommendations were invaluable for its final report. The completion, timeliness, and comprehensiveness of this report would not have been possible without their active participation and support.

Roster of Members

The *Task Force to Study Maryland's Criminal Gang Statutes* included various members and representatives, and a Chair appointed by Governor Hogan.

Senator Michael Hough
Chair, Maryland Senate

Senator William Smith
Maryland Senate

Delegate Wanika Fisher
Maryland House of Delegates

Delegate Jesse Pippy
Maryland House of Delegates

Lt. Colonel Dave Ruel
Maryland State Police

Bill Sage
Maryland Department of Public Safety and Correctional Services

Robin Brady-Slifer
Maryland Department of Juvenile Services

Katie Dorian
Office of the Attorney General

Mary Siegfried
Office of the Public Defender

Judge William Tucker
Maryland Judiciary

Carl J. Kotowski
Governor's Office of Crime Prevention, Youth, and Victim Services

Scott Shellenberger
Maryland State's Attorney's Association

Chief Hank Stawinski III
Prince George's County Police Department

Michael Yeagy
Maryland Retailers Association

Toni Holness
American Civil Liberties Union

Anthony McNeil
General Public

Nicole Hanson
Out for Justice

Holly C. Wilcox, PhD
Johns Hopkins

James Trusty
Ifrah Law PLLC

Introduction

Chapter 145 of 2018 (Senate Bill 1137), *Criminal Law - Prohibitions, Prosecutions, and Corrections*, created a Task Force to Study Maryland's Criminal Gang Statutes (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.[1]

Chapter 145 of 2018 also charged the Task Force to submit a report to the Governor and the General Assembly by June 30, 2020, as it relates to its findings and recommendations.

In accordance with Chapter 145 of 2018, this *Task Force to Study Maryland's Criminal Gang Statutes 2019 One-Time Report* provides information on numerous topics that the group discussed, to include prohibitions on criminal gang activity and the federal and State statutes used in gang prosecutions. The latter includes definitions for the Racketeer Influenced and Corrupt Organizations (RICO) Act, and § 9-804 of the Criminal Law Article. This report also includes summary information for each Task Force meeting, held throughout the State, which encapsulates the presentations made, and the key discussion points. For the final meeting, members of the Task Force submitted 18 recommendations for consideration, to include the following:

1. Terminology Change
2. No Change to the Current Law
3. Expand List of Underlying Crimes
4. Definition of a Gang Member
5. "Association in Fact" language from Federal RICO Statute
6. Validation Periods
7. Standard Validation Criteria
8. Revalidations
9. Sharing Gang-Related Evidence for Validation
10. Prevention of Youth Gang Involvement
11. Incentivize Gang Disassociation
12. Gang Involved Youth
13. Funding for Community Based Crime Intervention Programs
14. Witness Protection and Victim Resources

[1] Maryland General Assembly. (2018). *Chapter 145 of 2018 (Senate Bill 1137), Criminal Law - Prohibitions, Prosecutions, and Corrections*.

Background

There is a significant gang presence throughout the State of Maryland to include - based on validated gang-related activity and gang membership - street gangs, local gangs, and national/international gangs. Some of the national/international gangs in Maryland include the Mara Salvatrucha (MS-13), the Bloods, the Crips, and the Latin Kings; whereas, prison-based gangs include the Black Guerrilla Family (BGF) and the Dead Man Incorporated (DMI). Motorcycle gangs are also present in different parts of the State to include the Pagan's Motorcycle Club (Pagans), the Hells Angels Motorcycle Club (Hells Angels), and the Outlaws Motorcycle Club (Outlaws).

Given the significant gang presence in Maryland, and its implication on violence and corruption, there are many prosecutorial challenges. For example, and since the passage of anti-gang statutes in 2007 and amendment in 2010, there have only been 88 convictions under the statute with 31 in Baltimore City, 29 in Prince George's County, 12 in Montgomery County, nine in Frederick County, and a small amount in other counties. Most of the convictions resulted from lower level gang members. In contrast, a single federal RICO prosecution of a gang typically involves as many as 20 to 50 defendants.

Federal Statute

RICO is a United States federal law that provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization (18 U.S.C. §§ 1961-1968). Passed in 1970, RICO focuses specifically on racketeering and allows the leaders of an organization to be tried for the crimes they ordered others to do or assisted them in doing. RICO closes a perceived loophole that allows a person who instructed someone else to commit a crime, for example murder, to be exempt from prosecution because they did not actually commit the crime. Under RICO, a person who has committed "at least two acts of racketeering activity" from a list of 35 crimes, within a 10 year period, can be charged with racketeering if such acts are related in one of four ways to an enterprise. An enterprise may be a group of people who have associated together for a common purpose of engaging in a course of conduct over a period of time. Those found guilty of racketeering can be fined up to $25,000 and sentenced to 20 years in prison per racketeering count. In addition, the defendant must forfeit all ill-gotten gains and interest in any business gained through a pattern of racketeering activity.

The threat of a RICO indictment can force a defendant to plead guilty to lesser charges because the seizure of assets makes it difficult to provide for their families and/or pay for their legal defense. A RICO charge is considered easy to prove in court since it focuses on patterns of behavior as opposed to criminal acts.

Maryland Statutes

In Maryland, Criminal Law Article § 9-804 is the most often used in prosecuting criminal gang activity. Specifically, § 9-804 of the Criminal Law Article states the following:

(a) 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.

(b) A criminal gang or an individual belonging to a criminal gang may not:
  (1) receive proceeds known to have been derived directly or indirectly from an underlying crime; and
  (2) use or invest, directly or indirectly, an aggregate of $10,000 or more of the proceeds from an underlying crime in:
    (i) the acquisition of a title to, right to, interest in, or equity in real property; or
    (ii) the establishment or operation of any enterprise.

(c) A criminal gang may not acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime.

(d) A person may not conspire to violate subsection (a), (b), or (c) of this section.

(e) A person may not violate subsection (a) of this section that results in the death of a victim.

(f) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years or a fine not exceeding $1,000,000 or both.

  (ii) A person who violates subsection (e) of this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding $5,000,000 or both.

  (2) (i) A sentence imposed under paragraph (1)(i) of this subsection for a first offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing a violation of this section.

(ii) A sentence imposed under paragraph (1)(i) of this subsection for a second or subsequent offense, or paragraph (1)(ii) of this subsection shall be separate from and consecutive to a sentence for any crime based on the act establishing a violation of this section.

(iii) A consecutive sentence for a second or subsequent offense shall not be mandatory unless the State notifies the person in writing of the State's intention to proceed against the person as a second or subsequent offender at least 30 days before trial.

(3) In addition to the other penalties provided in this subsection, on conviction the court may:

(i) order a person or criminal gang to be divested of any interest in an enterprise or real property;

(ii) order the dissolution or reorganization of an enterprise; and

(iii) 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 a political subdivision of the State.

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

(2) Assets divested under this section and derived from the commission of, attempted commission of, conspiracy to commit, or solicitation of a crime described in paragraph (1) of this subsection, either in whole or in part, shall be deposited in the Addiction Treatment Divestiture Fund established under § 8-6D-01 of the Health - General Article.

(h) A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

(i) (1) 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 of this section occurs, may:

(i) aid in the investigation of the violation or act; and

(ii) prosecute the violation or act.

(2) In exercising authority under paragraph (1) of this subsection, 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.

(3) Notwithstanding any other provision of law, in circumstances in which violations of this section 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.

(j) Notwithstanding any other provision of law and provided at least one criminal gang activity of a criminal gang allegedly occurred in the county in which a grand jury is sitting, 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.

Task Force Study

In accordance with Chapter 145 of 2018, the Task Force met six times in different parts of the State to study Maryland's prohibitions on criminal gang-related activity, and to make recommendations to better deter, prosecute, and punish criminal gang-related activity. Senator Hough, Chair of the Task Force, also invited experts to each meeting to share their knowledge and experience with existing prohibitions on criminal gang-related activity.[2]

First Task Force Meeting

The first Task Force meeting occurred on March 3, 2019, in Annapolis. At this initial meeting, the charge to the members was given as follows: study existing State prohibitions on criminal gang-related activity and the existing law being used to obtain convictions and make recommendations to better deter, prosecute and punish persons convicted of gang offenses. The Montgomery County State's Attorney's Office provided a presentation on the State statutes relating to criminal gang-related activity. In particular, information was presented on the challenges to prove a pattern of criminal gang activity under § 9-804 of the Criminal Law Article, and the definition of a criminal gang and their organizational structure. The Maryland State Police also briefed members on the current gang situation in the State. The brief included information on street, local, and national gangs, and the use of social media by gangs to coordinate their activities.

Second Task Force Meeting

The second Task Force meeting occurred on April 30, 2019, in Baltimore. At this meeting, the United States Attorney's Office, District of Maryland (USAO) provided a presentation on the federal statutes used to prosecute criminal gang-related activity, to include RICO. The legal aspects of the RICO statute were explained as well as the elements to prove a RICO conspiracy. The differences between RICO and Maryland gang statutes were also discussed, and how the proof of membership or association in an enterprise is sometimes easier to establish under RICO. In addition, the group discussed prosecuting State cases on a federal level, the "labeling" of a gang versus an enterprise under RICO, and a description of the RICO Review Unit at the

[2] For more information, please see the approved meeting minutes in the Appendices.

Department of Justice. Furthermore, representatives from the Federal Bureau of Investigation (FBI) briefed members on the current gang situation from a federal perspective.

Third Task Force Meeting

The third Task Force meeting occurred on July 22, 2019, in Montgomery County. At this meeting, the Office of the Public Defender provided a presentation on gang statutes and criminal laws. Specifically, the Office of the Public Defender indicated that the criminal gang statute should be used to ensure there is no infringement on constitutional rights. Information was also presented on the issues with the definition of a criminal gang, and how people are perceived to be gang members. For example, and excluding a situation when a crime has been committed, a person should not be prosecuted for the clothes they wear or admissions of gang affiliation to "connect" based on race or demographics. The Department of Public Safety and Correctional Services also presented on the predominant gangs within the State's prison system, the reason why inmates join gangs in prison, and the manner in which they become a gang member.

Fourth Task Force Meeting

The fourth Task Force meeting occurred on September 13, 2019, in Prince George's County. At this meeting, the Office of the Attorney General provided a presentation on gang statutes, and the prosecution of gangs and organized crime cases. The three elements of § 9-804 were explained which is the most commonly used statute in prosecuting gang cases. Although the gang statutes have a higher threshold to meet for a conviction, the statutes must be used with discretion. There was discussion about not prosecuting because of the high burden of proof, witness intimidation in gang cases and sufficient resources for victim and witness relocation. Out for Justice briefed on the reasons why people joined gangs and the impact the 1994 Federal Crime Bill and war on drugs had on communities of color. The concerns regarding racial disparities in incarceration and criminal sentencing were explained. There was discussion about gang member's names and affiliations in government databases and the impact that has when a person leaves the gang. Comments made by three individuals from the public included their personal experience in the legal system, issues with databases for gang members and how decisions are made regarding witness relocation.

Fifth Task Force Meeting

The fifth Task Force meeting occurred on November 5, 2019, in Frederick County. At this meeting, the Frederick County State's Attorney's Office provided information on their use of current gang statutes in prosecutions in the county. Specifically, the difficulty in using the current statutes because there are too many elements to prove beyond a reasonable doubt not only for the crime but to convince juries the crime was gang-related. A suggestion was made that

the State create a list of expert witnesses to use when prosecuting gang crimes. The American Civil Liberties Union (ACLU) presented on concerns from the viewpoint of criminal defendants. Constitutional definitions and applications of statutory vagueness and overbreadth were explained. Prior proposed statutes could be considered violations of the 1st Amendment based on vagueness and overbreadth. It was proposed that any new statute should focus less on increasing penalties for those in gangs and more on solutions to prevent individuals from joining them. There was discussion on victim and witness relocation funding and diversion programs for juveniles in gangs before they commit acts of violence.

Sixth Task Force Meeting

The sixth and final Task Force meeting occurred on December 16, 2019, in Annapolis. At this meeting, members discussed and voted on 18 unique recommendations (*as explained in Recommendations*).

Recommendations

Chapter 145 of 2018 charged the Task Force to study existing State prohibitions on criminal gang-related activity, and to report its findings and recommendations to the Governor and the General Assembly by June 30, 2020. Pursuant to this Act, the Task Force identified **18** recommendations regarding Maryland's criminal gang statutes (*as explained below*).

#1: Terminology Change

The Attorney General's Office proposed that the term "gang" be changed to "criminal organization" throughout the various sections of the Criminal Law and Criminal Procedure Articles (including within the definitions section). This change would reflect a more accurate description of what the alleged criminal activity actually is, rather than a label of "gang" which might not be appropriate. This change would also bring it more in line with the federal RICO charge, which is what Maryland's statute was modeled after. It is important to note that the federal RICO law uses the term "enterprise," but that term is already used and defined in a particular way within Maryland's statute; therefore it will likely be better to use another general term, such as "criminal organization."

The Task Force voted to **approve**.

#2: No Change to the Current Law

The ACLU, Out for Justice, and the Office of the Public Defender proposed no change to the current law, based on the following presentations (*as illustrated below*).

- The ACLU's presentation to the Task Force showed no evidence that enhanced prosecution will deter gang involvement, prevent violence, or yield any public safety benefits of any kind.
- Out for Justice's presentation to the Task Force provided no evidence that intensified focus on prosecution will unequivocally discourage or prevent gang involvement, violence, or increase public safety.
- The Office of the Public Defender's presentation to the Task Force indicated that, until sufficient evidence shows existing penalties are insufficient or that Maryland's specialty offenses are making any particular difference, no changes to Maryland's laws should be made.

The Task Force voted to **deny**.

#3: Expand List of Underlying Crimes

Senator Hough proposed to expand the list of underlying crimes as introduced in the Governor's bill, *Senate Bill 198 (2018), Criminal Gang Offenses - Penalties, Procedure, and Elements (First Reader)*. If enacted, Senate Bill 198 (2018) would have added financial crimes to the list of underlying crimes.

The Task Force voted to **approve** the offenses in the introduced Senate Bill 198 (2018) listed in **BOLD** on page 4, lines 4-10 which are as follows: **§ 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), § 9–414 (CONTRABAND – WEAPON), § 9–416 (CONTRABAND – CONTROLLED DANGEROUS SUBSTANCE), and § 9–417 (CONTRABAND – TELECOMMUNICATIONS–RELATED)** and financial crimes.

#4: Definition of a Gang Member

The Department of Public Safety and Correctional Services proposed that the law properly define the meaning of a gang member - *what makes a gang member a gang member?* After the Task Force moved to change the name "gang" to "criminal organization," the members elected not to make any further changes to the definition.

The Task Force decided **not to vote** on this recommendation due to lack of information.

#5: Replicate the "Association in Fact" Language from the Federal RICO Statute

One of the Task Force members, having expertise relevant to the work of the Task Force, proposed to replicate the "association in fact" language from the federal RICO statute. Because law enforcement efforts to dismantle groups are challenged when gangs change names and affiliations, the federal RICO statute's use of "criminal enterprise" - which is an element that includes "association in fact" language - can defeat the camouflage of using different names over time. As the USAO described in its presentation on April 30, 2019, the government must prove beyond a reasonable doubt that the defendant was connected to the enterprise in some meaningful way, and that the USAO knew of the existence of the enterprise and of the general nature of its activities (*as described in Appendix B: Second Task Force Meeting Minutes*). Beyond that, the pattern of racketeering activity has to be attributable to the same enterprise, so if meaningful changes exist (dissociations and re-associations) within the enterprise, then a jury could find the government's proof lacking. Similarly, RICO (18 U.S.C. Sec. 1961, et seq.) requires proof that the criminal enterprise has continuity and structure, but it does not require a perfectly identifiable command structure. For the last 30 years, federal gang prosecutions around the country have included challenges to the sufficiency of the proof of gangs alleged to be criminal enterprises, and even without the highly-defined structure of the Mafia, the courts have consistently upheld these convictions.

The Task Force voted to **approve**.

#6: Validation Periods

Currently, 28 CFR Part 23 establishes the retention period for any shared information regarding security threat group (i.e., gang) validations. However, there is no defined legal validation period for anyone identified as a gang member within the State of Maryland, meaning that as long as the information is not shared outside of the validating agency, there is no legal requirement regarding validation periods. Because of this, the Department of Public Safety and Correctional Services proposed to extend the 28 CFR Part 23 requirements to make all gang validations a period of no more than five years, even if the information is shared or not outside of the validating agency. If enacted, an agency would not be able to label a person as a gang member in an official capacity, and no historical information would need to be destroyed. Validations, however, could be extended by another five years if additional evidence is submitted during the original validation period.

The Task Force decided **not to vote** on this recommendation.

#7: Standard Validation Criteria

The Department of Public Safety and Correctional Services proposed that the State of Maryland utilize a standardized, statewide validation criterion using a point system. The Department of Public Safety and Correctional Services' validation system, for example, has been used in State and federal courts and while it should be revised, it should also serve as a model.

The Task Force decided **not to vote** on this recommendation.

#8: Revalidations

The Department of Public Safety and Correctional Services proposed the use of a different validation point system for revalidations. The revalidation of an expired validation with 12 months of the expiration date would only require five points instead of ten, as the other five points would be used for "previous validation within 12 months." This would streamline the revalidations process of known gang members who actively engage in gang-related criminal behavior but have taken the necessary steps to conceal their membership due to their previous validation.

The Task Force decided **not to vote** on this recommendation.

#9: Sharing of Gang-Related Evidence for Validation

The Department of Public Safety and Correctional Services proposed that the law should prohibit the use of expired validation evidence used by the original validating agency to validate the same gang member again by another agency. For example, while an allied agency may request evidence used for a validation that has since expired from the original validating agency, that agency cannot then use that same expired information to validate the same individual within their jurisdiction. The information can only be used for investigative purposes only.

The Task Force decided **not to vote** on this recommendation.

#10: Prevention of Youth Gang Involvement

Early action to prevent the recruitment of youth into criminal gangs is a key strategy for reducing the negative impact of criminal gangs in Maryland. In reviewing Maryland's criminal gang statutes and recommending steps to reduce gang violence in Maryland, the Department of Juvenile Services proposed that the Task Force consider measures to prevent gang involvement and identify effective programs for youth who are gang involved. The Department of Juvenile Services, for example, has implemented a gang identification and prevention policy which sets a procedure to identify youth involved in gangs for both safety and treatment planning. That

information is one of many factors used to help identify the needs and behaviors of the youth in order to assess and connect youth to appropriate programs and treatment modalities. The Task Force should identify and evaluate evidence-based programs that are effective interventions to prevent youth gang involvement.

The Task Force voted to **approve**.

#11: Incentivize Gang Disassociation

The ACLU and Out for Justice proposed greater incentives for persons to disassociate from gangs, including opportunities for early release, diminution credits, expungement, shielding of records, etc, based on the following presentations (*as illustrated below*).

- The ACLU's presentation to the Task Force identified the difficulties of disassociating from a gang. In other areas of the criminal legal system, incentives have yielded enormous public safety benefits—the corrections community often lauds the use of diminution credits and parole as an effective tool for incentivizing good behavior in prisons and jails.
- Out for Justice's presentation to the Task Force indicated that the criminal legal system employs the use of incentives to increase public safety measures; however, there exists less incentives for gang disassociation.

The Task Force decided **not to vote** on this recommendation.

#12: Gang Involved Youth

The Department of Juvenile Services proposed that the Task Force identify and evaluate evidence-based programs that are designed to intervene and serve youth that are just and gang involved to reduce the likelihood of gang involvement.

The Task Force voted to **approve** without the words "evidence-based."

#13: Funding for Community-Based Crime Intervention Programs

The ACLU and Out for Justice proposed greater financial resources for community-based programs that disrupt the cycle of violence, such as Safe Streets, and based on the following presentations (*as illustrated below*).

- The ACLU's presentation to the Task Force identified several crime intervention programs, like Safe Streets, that have yielded public safety benefits—both in disentangling persons from the criminal legal system and deterring violence.
- Out for Justice's presentation to the Task Force identified that more trauma-informed care, parental supports, culturally relevant programs, and neighborhood watches could be

alternatives to incarceration and assist in decreasing gang involvement and violence. To this point, many community-based crime interventions programs, like Safe Streets, have produced increased measures for public safety by deterring violence and assisting in disassociation from gangs by former gang members. Initiatives like Safe Streets are successful because staff members are residents of the community, formerly incarcerated, or formerly gang-involved and have been able to reform.

The Task Force voted to **approve**.

#14: Witness Protection and Victim Resources

One Task Force member, the ACLU, and Out for Justice proposed increased financial support for witness protection and crime victim services, based on the following presentations (*as illustrated below*).

- One Task Force member indicated that many prosecutors (or ex-prosecutors) with experience prosecuting gang cases have noted the difficulty of securing and safeguarding testimony from civilian witnesses and cooperating defendants. The Witness Security Program, or "Witsec," was established during the same timeframe as the RICO statutes and has proven to be a critical component to the government's success in disrupting and dismantling criminal enterprises. Even short-term relocation can have a significant effect in bolstering the prosecution's chance of keeping witnesses available for trial. The larger gangs have a documented history of successful witness intimidation and retaliation, including the notorious fire-bombing of houses in Baltimore. Although Maryland designates some funds for short-term Witness Relocation, the challenge is funding for long-term relocation. This is especially needed for witnesses and defendants who testify against more established criminal organizations. Not every witness or cooperator will want to remove himself or herself from the neighborhood, but a more established, less ad hoc, state program could make a big difference in gang prosecutions.
- The ACLU's presentation to the Task Force included a call for increased financial support for witness protection and crime victim support services from at least two prosecutorial agencies—the Attorney General's Office and the Frederick County State's Attorney. At the fourth meeting, the general public raised concerns about the inadequacy of witness protection services, which seems to leave witnesses at significant risk for violent retaliation (*as described in Appendix D: Fourth Task Force Meeting Minutes*).
- Out for Justice's presentation to the Task Force included statements provided by the Attorney General's Office and the Frederick County State's Attorney as it relates to the need for greater financial support for witness protection and crime victim support services. The fourth meeting, which occurred on September 13, 2019, included public outcry and testimony that the level of efficiency regarding witness protection services is

severely lacking which increases opportunity for witnesses to be victims of retaliation (*as described in Appendix D: Fourth Task Force Meeting Minutes*). Given this challenge, Out for Justice specifically recommended that the Task Force work to increase resources for witness protection and victim support services to incentivize victims and witnesses to cooperate without fear of retaliation. This support should also be extended to victims of violence who have a criminal record and their families.

The Task Force voted to request additional statewide funding for Witness Protection and Victim Resources, and to request the Maryland States Attorney's Association to explain how they distribute the funding. Additionally, the Task Force voted to ensure those with prior criminal records will not be prohibited from receiving funding.

#15: Expert Witness List

One Task Force member, having expertise relevant to the work of the Task Force, proposed the use of an expert witness list, based on prior discussions regarding this need. At a prior meeting, a few presenters from the State's Attorney's Office (primarily Frederick County) indicated that they were struggling to obtain expert witness testimony to use in gang trials. Particularly, if the State prosecutors do not have an insider (i.e., cooperating defendant) the need for expert testimony to assist a jury in understanding a gangs history, rules, colors, purpose, etc. can be absolutely critical. Although funding may not be available, leadership at the Attorney General's Office or the State's Attorney's Offices - where list-serves, virtual libraries, points of contact, and transcripts are available - can be gathered so a local Assistant State's Attorney has some immediate options to obtain expert testimony. While Maryland prosecutors are apparently struggling to find and utilize quality expert witnesses in gang cases, their federal counterparts have been using expert testimony successfully for decades.

The Task Force voted to **approve.** This will be a non-legislative issue with the Maryland State Attorney's Association working with the Attorney General's Office to maintain an expert witness list.

#16: Oversight

One Task Force member, having expertise relevant to the work of the Task Force, indicated that many non-law enforcement members of the Task Force have experienced "quality control" issues with enhanced gang prosecutions. There was a common interest for Maryland to mimic the federal RICO Review Unit to have some expertise brought to bear on each gang prosecution prior to indictment. If creating new authority for the Attorney General's Office or the Maryland State Attorney's Association is impractical, the State should create a core of experts whose guidance can be sought out by Assistant State's Attorneys (or the State's Attorney's Office). Although this process will require additional time because the State's Attorney's Offices will

need to submit each case for review, this process will resemble the federal procedure. For instance, offices that had a lot of experience with RICO cases complained about the timely nature of the review process; however, most Assistant United State's Attorney's also recognized how it helped to present the best case that would withstand appellate scrutiny. The availability of a centralized review unit or assistance of possible gang statute prosecutions would generally be helpful.

The Task Force voted to **approve**. The Maryland State Attorney's Association and the Attorney General's Office will work together to implement a procedure for a formal oversight process.

#17: Mandating Consecutive Sentences

One Task Force member, having expertise relevant to the work of the Task Force, proposed that if the state statutory scheme is to be a tool for either holding gang members and leaders accountable for their horrific influence on our communities or, for related practical reasons to exert leverage over possible cooperating individuals who can shed light on the gang's operations, criminal history, and structure, then mandating consecutive sentences is critical.

The Task Force voted to **deny**.

#18: Increased Penalty

Senator Hough proposed to increase the penalty from two years to five.

The Task Force voted to **deny**.

Appendices

Appendix A: First Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

Amoss Hearing Room
4th Floor of the Miller Senate Office Building, Annapolis, Maryland
Wednesday, March 6, 2019, 3:00 p.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Wanika Fisher, Maryland House of Delegates; Delegate Jesse Pippy, Maryland House of Delegates; Lt. Colonel David Ruel, Maryland State Police; Michael D. Moore, representative for Bill Sage, Department of Public Safety and Correctional Services; Gavin Patashnick, Department of Juvenile Services; Katie Dorian, Attorney General's Office; Mary Siegfried, Office of the Public Defender; Judge William Tucker, Maryland Judiciary; Carl J. Kotowski, Governor's Office of Crime Control and Prevention; Michael Yeagy, Maryland Retailers Association; Toni Holness, American Civil Liberties Union; Anthony McNeil, Farming4Hunger; Nicole Hanson, Out for Justice; and James Trusty, Ifrah Law PLLC.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: Steven Clark, Legislative Aide for Senator Hough; Jeff Zuback, Governor's Office of Crime Control and Prevention; Cierra Rodgers, Governor's Office of Crime Control and Prevention; Andy Baranauskas, Governor's Office of Crime Control and Prevention; Don Hogan, Governor's Office of Crime Control and Prevention; Rachel Kesselman, Governor's Office of Crime Control and Prevention; John McCarthy, Montgomery County State's Attorney's Office; Richard Weiss, Montgomery County State's Attorney's Office; Bernie Fowler, Farming4Hunger; Luke Pinton, Chief of Staff for Senator William C. Smith, Jr.; and more.

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Welcome and Introductions

Senator Hough called the meeting to order at 3:06 p.m. He welcomed everyone to the initial *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting and mentioned that everyone should have a beautiful binder that the Governor's Office of Crime Control and Prevention put together, to include an agenda. Senator Hough mentioned Chapter 145 of 2018 which created the Task Force with specific appointees, and its charge for members to:

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1. 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
2. Make recommendations regarding changes to State law to better deter, prosecute, and punish criminal gang-related activity and persons convicted of gang-related offenses.

Senator Hough mentioned that the Task Force must submit their findings and recommendations to the Governor and the General Assembly on or before June 30, 2020. Because of this, he said it would be good to wrap-up the Task Force's findings by the end of December 2019.

Introductions of Task Force Members

Senator Hough invited members to introduce themselves.

Issues with Current State Statutes & Gang Task Force Development

Senator Hough invited Mr. McCarthy and Mr. Mays to present on the State statutes relating to criminal gang-related activity, and its issues which resulted in the development of the Task Force. Mr. McCarthy thanked Senator Hough and mentioned that Mr. Mays was unavailable due to a personal matter and that his colleague, Mr. Weiss, would present in his place.

Mr. McCarthy provided some background information on the bill, and mentioned that he was with the Maryland State's Attorney's Association (MSAA) when the bill was presented in 2007. At that time, it was opposed by all 24 State's Attorney's because they felt it was not helpful based on its provided language, and there was no legislative scheme by which the crimes would have to be proven. Since this time, it has been used approximately 11-12 times in the past 12 years. The statute was barely used - maybe in two trials - because it provided very little guidance.

In reference to regional gang problems in Maryland, Mr. McCarthy said they are vastly different. He mentioned prior discussions on issues in Baltimore City versus those in the Metropolitan Area, and also provided an example in Montgomery County. He indicated that 27 murders had occurred in Montgomery County in one year; however, there were no ties to Baltimore City.

Mr. McCarthy invited his colleague, Mr. Weiss to present to the Task Force. Mr. Weiss informed the Task Force that, based on his experience, he would present on the existing law, current challenges they see while working with police, and suggestions on how to improve the statute. He also mentioned that the binders included the full text of the current statutes, and that the power point presentation captured parts of the statutes.

In reference to § 9-804(a) of the Criminal Law Article, Mr. Weiss mentioned the need to identify that the committed crime was one of the underlying crimes, and that the crime was committed at the direction or in association with the gang (*see slide #3*).

Mr. Weiss indicated that Maryland's definition of a criminal gang, found in § 9-801 of the Criminal Law Article, is similar to the federal definition (*see slide #4*). He believes this is where Maryland's definition originally came from. The remaining definition is the underlying crime, found in § 9-801(g) of the Criminal Law Article (*see slide #6*).

Mr. Weiss said § 9-802, § 9-803, and § 9-805 of the Criminal Law Article are not used often.

Challenges with the Current Law

In reference to challenges, § 9-804 of the Criminal Law Article requires "three trials" to occur in one (*see slides #8 and #9*). Mr. Weiss said it is hard to prove a pattern of criminal gang activity (definition, landscape, changing circumstances). Although most people may think of MS-13 for gangs at a large level, these assumptions may not apply to local gangs. For instance, "One Way Hustle" in Montgomery County caused a lot of issues, to include trafficking handguns, so law enforcement confiscated the guns and tracked the "followers" on Instagram. They also followed the individuals, in partnership with the Montgomery County State's Attorney's Office. Then, all of a sudden, "One Way Hustle" changed their colors, hand signs, and name to "TMK" (*see slide #10*). It is important to note that there is no law to show this shift to connect the two gang names, even though they are the same.

Mr. Weiss mentioned two tricky patterns (*see slide #12*):

- Hybrid gang crimes: members of hybrid gangs do not always work within certain lines
- Varsity and junior varsity: junior varsity (6th - 8th graders) serves as one gang for the "main" gang (varsity); however, junior varsity and varsity often do crimes together as well

In reference to slide #13, Mr. Weiss said the issue with proving prior crime is not what the jury wants to hear. Although the statute makes everyone say it is important and necessary, the jury does not want to hear all the gruesome details. He also mentioned that the relevancy of MS-13 crimes in the past three years should be an element.

At a recent conference, Mr. Weiss asked attendees for their input on items that need to be addressed. They all responded with the "underlying crime concept" *(see slide #14)*:

- Financial fraud schemes
- Quality of life issues
- Non-felony illegal possession of firearms

- Inhibits investigation (search warrants)
- Limited to Maryland Crimes? Gang Migration Issues (*see House Bill 102*)[1]

One attendee stated that a man from Montgomery County was deported, then brought back illegally, and later found at the county fair by law enforcement. He was then arrested by law enforcement. Because he was in possession of a cellular phone, and known to be an influential person, law enforcement applied for a warrant to search. Unfortunately, they were denied because they could not articulate the gang nexus for new information to the judge.

Mr. Weiss referenced the highlighted areas on slide #16 which, if changed, would improve the statute. In particular, Mr. Weiss suggested the following changes:

- Add a definition of "gang member" (Montgomery County identified nine items to define a "gang member") (*see slide #18*).
- Delete the "criminal gang" definition (*see slide #19*).

These changes would serve to create a new robust § 9-804 of the Criminal Law Article, based on the new "gang member" definition, and the removed "criminal gang" definition (*see slide #20*) or the redefined "criminal gang" definition (*see slide #21*), and removed "underlying crime concept" (*see slide #22*).

Mr. Weiss asked the members if they had any questions. Mr. Kotowski asked if you can charge conspiracy under § 9-804 of the Criminal Law Article. In particular, if individuals are in a gang in which it is proven that members conspire with Joe Smith to "pull the trigger," could the others be charged? Mr. Weiss said yes, that would be a conspiracy charge. He also said that charge is used.

Ms. Holness asked if conspiracy crime is an underlying crime? Mr. Weiss said yes, as defined by § 9-801 of the Criminal Law Article, under patterns of criminal gang activity; however, there is still a need to prove that it happened. Ms. Holness also asked about finance crimes and if there is anything to prove that this is what they are doing? Mr. Weiss said gang members are often charged with these crimes and show the amount of money they receive without having a job.

Mr. Patashnick mentioned charging someone with murder, and asked if it is worth using the gang statute or if a subset of crimes is used for a wider net? Mr. Weiss said the intent of the statute, in theory, is to have a wider net of criminal gangs to include rival gangs, such as MS-13. While it is believed that the statute is for that purpose, there are hurdles that make it challenging. Mr. Patashnick then asked if there is a specific subset of crimes that would make more sense for prosecutors to go after versus the co-conspirators? Mr. Weiss said, for murder, it would be best

[1] It is assumed that House Bill 102 was proposed because gangs move and migrate which may result in in-state crimes and out-of-state convictions. For example, motorcycle gangs move and migrate all over which result in many federal prosecutions; however, some gangs cannot be prosecuted because many crimes occurred in other states.

to get the most amount of time; for second degree assault, that would be maybe 10 years; and for secondary assaults in the community, that may be more cumbersome.

Delegate Fisher inquired about best practices in other states and what would be best for Maryland. She also inquired about a nexus or common theme or brand. Mr. Weiss said it would be best to prove they are a member of the gang, and that they committed the crime. Although a nexus may be beneficial, it all depends on what you are looking for. Delegate Fisher mentioned social media and how it is like a "flat structure" in which people do their own thing within a brand or within a hierarchy structure. She then asked if Mr. Weiss' cases are flat or pyramid in relation to organizational structure, and how judges respond to the organizational structure? Mr. Weiss said the local gangs do not have organizational structures like MS-13. He also said that judges appear to be fine with organizational structures, and the statute appears to assume structures within the law; however, this is not always the case. Some do not have ranks or sense of hierarchy. Ms. Siegfried said that Mr. Weiss' perspective is to prove they are gangs; however, another perspective is to identify those who are not gang members, or a gang as it is defined. She then asked if there are data on people of color and those prosecuted, who are not gang members? Mr. Weiss receives cases in which some individuals say they are not a member. When you look at the nine factors proposed by Montgomery County to define a "gang member," Mr. Weiss said that this validation process is far more accurate than simply saying someone is a gang member.

Delegate Pippy said the first thing that came to his mind is perpetuity. He mentioned that the Pagans were in his district for a while. He also mentioned his interest in finding how individuals are recruited and if individuals are in a "temporary" spot of the activity. For the Pagans, Mr. Weiss said they have a nationally organized level which includes a president, and are very organized and structured, based on what they do. The recruitment methods differ, based on what "side of the street your parents had an apartment." Mr. Weiss explained that it is not necessary recruitment, instead it is more like a "birthright." It is important to note that if the gang is organized like MS-13 and Pagans, their structure is different and a statute for this will likely need to be different than any other gang.

Gang Activity & Gang Members

Senator Hough invited Lt. Colonel Ruel to present. Lt. Colonel Ruel indicated that gang activity and gang members have been validated throughout the State, to include street gangs, local gangs, national gangs, etc. He also said that gang names may be based on something unique to them.

In the past, gangs were not known outside of prison. Now, however, there are gangs, such as BGF or DMI, in prison that regroup outside of the prison. Gangs include Aryans, White Supremacists, Bloods (may also be associated with different sets), Crips, Pagans, etc. When you collectively examine the member within these groups, the most dangerous include: Bloods, BGF, MS-13, and some local gangs. No area is immune to criminal gang activity. The core activities

include: CDS, violent crimes (assault, aggravated assault, homicide), and weapons (illegal possession, carrying, use of gun in commission of crime).

Lt. Colonel Ruel indicated that gangs leverage social media to coordinate gang activity. They also use social media to meet and provoke rivals. For example, several rap crews in Baltimore City would insult each other through videos and then fight. He also mentioned that gangs will "call out" snitches or others which creates a lot of turmoil and inner gang violence.

Lt. Colonel Ruel said some of the things that go unnoticed are the motorcycle gangs. For instance, Pagans increased drastically in one year. They started their first overseas chapter this year. Previously, there were five chapters in Maryland which has increased to nine. Although they are not represented in Southern Maryland, they intend to have a chapter in each county at some point. Hells Angels are also starting a new chapter in Baltimore.

Lt. Colonel Ruel indicated that the general goal for gang members is to gain wealth. Because of this, the overall gang activity will continue to increase in the suburbs where there is less rival, compared to the city. Many gang members move to Western Maryland because they do not have to worry about competition, and they can hide a little easier. They will go there, have a large clientele, and then move back and forth. They are in every jurisdiction in Maryland. Gang violence has occurred in 17 of Maryland's 24 jurisdictions. With regards to statistics, Lt. Colonel Ruel said the total homicide count was 496, of which 14% (n = 70) were gang-related.

Senator Hough asked the members if they had any questions. Ms. Holness said Baltimore City is referenced a lot with regards to gangs. She then asked: how do we handle the police gangs such as the Gun Trace Task Force; do you recommend that we fit them in; should we treat them the same; is there a special condition we should use; how should we handle this? Lt. Colonel Ruel said they should be dealt with the same as we would with any citizen identified as a gang. Mr. Holness then asked if we could classify them as a gang? Lt. Colonel said if they are identifying and conducting as a gang then he would assume the statute to apply.

Mr. Moore indicated that the Department of Public Safety and Correctional Services are experiencing a lot of the things that Lt. Colonel Ruel mentioned in the city. Mr. Moore said BGF, Crips, and Bloods come together to unite with this neighborhood approach; however, they come together to make money through "murder for hire," etc. He then asked, how he would prosecute them. Senator Hough said this may be best for the Montgomery County State's Attorney's Office to answer. Mr. Weiss said the current statute causes a lot of problems for this in which one would have to prove that each element of the gang is committing a gang activity. This is what would be included under the, previously mentioned, hybrid model. Mr. Moore also said that the Department of Public Safety and Correctional Service is discovering that gangs

receive dues, money for contraband in prison. In addition, some gangs monitor police activity because each jurisdiction has a different way to validate (Baltimore City uses a point system).

Senator Hough said that is a great question. He suggested that the Department of Public Safety and Correctional Services present to the Task Force at a later meeting. He also referenced the recruitment of the Department of Public Safety and Correctional Services, and what is happening in the jails, at the State and local jails. Senator Hough would like an entire meeting on this topic.

Delegate Pippy responded to Ms. Holness and said that, while Baltimore City was mentioned, so was Western Maryland. He also said as a public servant, such as a police and correctional officer, they should be treated no differently or worse because they betrayed our trust. He then asked about the finance component and its relation to drug distribution. Lt. Colonel Ruel said yes; however, this could include skimming credit cards, robbery on Craigslist, etc. He said it could be a setup from the beginning and is primarily seen as the drugs. Delegate Pippy said most lawmakers are looking at the drug crisis and the issue with fentanyl.

Mr. Patashnick indicated that there appears to be a distinction between organized crime and gangs. He then asked Lt. Colonel Ruel if there is a relationship between a gang committing an organized crime and organized crime generally. Lt. Colonel Ruel said there are so many different layers of things. For instance, if dealing with MS-13 or Pagans, it is difficult given their organized structure; whereas, for less known gangs - local gangs - they are less structured.

Discussion

Senator Hough said it would be good to wrap-up the Task Force's findings by the end of December 2019, so they may submit their findings and recommendations to the Governor and the General Assembly on or before June 30, 2020. Because this is a regional problem, he would like to meet regionally to hear from law enforcement and others. Senator Hough would like to hold five to six regional meetings at the following locations: Prince George's County, Eastern Shore, Frederick, Baltimore City, Montgomery County, etc. Ms. Siegfried asked if the public defender will be able to present. Senator Hough said yes to the Public Defender at the next meeting, followed by the Department of Public Safety and Correctional Services, etc.

Closing Remarks

The meeting adjourned at 4:35 p.m.

Appendix B: Second Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

U.S. Attorney's Office
36 S. Charles Street, Baltimore, Maryland 21201 (Fourth Floor)
Tuesday, April 30, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Lt. Colonel David Ruel, Maryland State Police; Michael D. Moore, representative for Bill Sage, Department of Public Safety and Correctional Services; Katie Dorian, Attorney General's Office; Ricardo Flores, representative for Mary Siegfried, Office of the Public Defender; Judge William Tucker, Maryland Judiciary; Carl J. Kotowski, Governor's Office of Crime Control and Prevention; Nicole Hanson, Out for Justice; and James Trusty, Ifrah Law PLLC.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Delegate Wanika Fisher, Maryland House of Delegates; Gavin Patashnick, Department of Juvenile Services; Michael Yeagy, Maryland Retailers Association; Toni Holness, American Civil Liberties Union; Anthony McNeil, Farming4Hunger; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: U.S. Attorney Robert Hur, U.S. Attorney's Office; Assistant Special Agent in Charge Brian Nadeau, Federal Bureau of Investigation, Baltimore Field Office; Assistant U.S. Attorney Michael Hanlon, U.S. Attorney's Office; Assistant U.S. Attorney Clint Fuchs, U.S. Attorney's Office; Marcy Murphy, U.S. Attorney's Office; Steven Clark, Legislative Aide for Senator Hough; Melanie Shapiro, Office of the Public Defender; Cierra Rodgers, Governor's Office of Crime Control and Prevention; Marty Hammond, Governor's Office of Crime Control and Prevention; Rachel Kesselman, Governor's Office of Crime Control and Prevention; and more.

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Welcome and Introductions

Senator Hough called the meeting to order at approximately 9:38 a.m. as he welcomed everyone to the second *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting.

Introductions of Gang Task Force Members

Senator Hough invited members to introduce themselves.

Approval of Minutes

Senator Hough mentioned the draft minutes from the March meeting and asked members to provide input if any corrections are needed. The draft minutes were subsequently approved because no one requested any changes.

Federal Criminal Gang Statute(s)

Senator Hough invited U.S. Attorney Robert Hur to present on the Federal statutes relating to criminal gang-related activity. U.S. Attorney Hur indicated that his presentation would serve as a factual presentation, only. He then introduced Assistant U.S. Attorney (AUSA) Michael Hanlon. He also mentioned AUSA Clint Fuchs, Assistant Special Agent in Charge (ASAC) Brian Nadeau, and James Trusty, Esq., Partner at Ifrah Law, PLLC. U.S. Attorney Hur stated that Mr. Hanlon, Mr. Fuchs, Mr. Nadeau, and Mr. Trusty all have valuable expertise in conducting federal RICO investigations and prosecutions.

RICO Overview

U.S. Attorney Hur directed everyone's attention to a PowerPoint presentation (*please see the* ***Application of the Federal RICO Statute to Gang Prosecutions*** *PowerPoint presentation for more information*). As illustrated in slide #2, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, was enacted to address the mob and leaders who were ordering criminal activity. "The purpose of the RICO statute is 'the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce'" (*see slide #3*).

USA Hur discussed some of the legal aspects of the RICO statute, including:

- The elements that must be proven for RICO Conspiracy (*see slide #6*).
- Some of the differences between the federal RICO statute and the Maryland gang statute, including that proof of a defendant's membership or association in a RICO enterprise may be easier to prove under the federal statute in some cases.

U.S. Attorney Hur indicated that conspiracy is an extremely powerful tool to use with RICO cases because often times, the evidence used to demonstrate the existence of a conspiracy may be the same as, or closely related to, the evidence user to prove the elements of the "enterprise." A RICO enterprise may include not only gangs or criminal organizations, but also legal entities such as local government agencies.

Broad Definition of "Enterprise"

Because a RICO charge is broadly defined, U.S. Attorney Hur said the terms need to be liberally construed (*see slide #9*). In addition, and because "RICO broadly defines enterprise," U.S. Attorney Hur provided insight on how to use the legal phrase:

> "An 'enterprise' may be a group of people who have associated together for a common purpose of engaging in a course of conduct over a period of time" (*see slide #10*).

NOTE: "The first element that the government must prove beyond a reasonable doubt is that an 'enterprise' existed as charged in the Indictment" (*see slide #10*).

For example, in proving the existence of the MS-13 gang enterprise in MS-13 cases, prosecutors have been able to present evidence of the common purposes of MS-13 (*see slide #11*).

There are also examples of charging RICO cases in which the enterprise is a legal entity. U.S. Attorney Hur mentioned the federal corruption cases involving Baltimore City Detention Center (BCDC), the Maryland Eastern Correctional Institution (ECI), and the Maryland Correctional Institute Jessup (MCIJ). In each of these cases, the indictments charged RICO violations in which the enterprise was a legal entity. As illustrated in slide #12, "ECI constituted an 'enterprise,' as defined in Title 18, United States Code, Section 1961" in which "ECI engaged in, and its activities affected, interstate commerce."

The enterprise can be a legal entity or "association-in-fact" (*see slide #13*). USA Hur discussed some of the ways that the existence of a RICO enterprise have been proven for individual gangs, like MS-13 (*see slides #14, 15, 16, 17*).

U.S. Attorney Hur indicated that dangerous Baltimore gangs are not always large organizations that control vast territory; rather, many of them are smaller groups that control a discrete area within the city. Among these groups, violence is often triggered by members of one group disrespecting members of another via social media.

"Association" with the Enterprise

In order to prove the third element ("Association with the Enterprise"), "the government must prove beyond a reasonable doubt that the defendant was connected to the enterprise in some meaningful way, and that he knew of the existence of the enterprise and of the general nature of its activities" (*see slide #20*).

NOTE: "The third element that the government must prove beyond a reasonable doubt is that the defendant was associated with the enterprise" (*see slide #20*).

Multi-Defendant Trials

U.S. Attorney Hur mentioned that the ECI case charged 80 defendants, including both inmates and correctional officers. In cases of this size, significant numbers of defendants who elect to go to trial are usually tried together, and additional tables are required in the courtroom to seat the defendants and counsel. Multi-defendant trials also save time for the judges and helps with judicial economy. U.S. Attorney Hur asked Judge Tucker for his input on how joinder and severance works in state cases. Judge Tucker said motions are filed on behalf of the defendant to have the case severed.

Mr. Trusty said, in reference to the "association-in-fact," people may not be made members of any particular enterprise. In addition, and as U.S. Attorney Hur mentioned, this all started with the Supreme Court in which there were questions regarding the legitimacy and level of knowledge needed. All aspects of RICO have been litigated for many years. Mr. Trusty added that, the "association-in-fact" is not just a flash mob prosecution, and it is not just when a girlfriend or buddy of the enterprise is swept into the enterprise. Instead, they look at substantial involvements in which people must have significant knowledge and roles.

Delegate Pippy asked how difficult it is to take State cases to the Federal level? AUSA Hanlon provided insight regarding the Federal advantages to particular defenses, and provided examples of RICO. He then invited Ms. Dorian to speak on the State opinion. Ms. Dorian said part of the concern that they see is the "labeling" of the gang versus the enterprise; and the challenge to explain this to the judge and jury that it can be a street organization or street crew. AUSA Hanlon added it is great if we have evidence of tattoos and graffiti; however, they are not needed to charge at the RICO level.

Delegate Pippy mentioned that his group often brings State law to the Federal definition. If this were to happen, he asked, would this make someone's job easier? Ms. Dorian said the purpose of this statute was to model the Federal RICO; however, it is a bit more narrow and constrained. She also mentioned a Gang Statute "cheat sheet" that can be used to help with its complexity. However, if the definitions were to be clarified, this would make it easier to understand on both sides for prosecution and defense.

Ms. Hanson indicated that she was under the impression that RICO is a broader policy that can be used at the State level. An AUSA responded that an important component is that RICO is based on illegal acts of the enterprise or association in which the individual participates in that group and commits illegal acts as part of that particular group. One could, in theory, be a member of the "40th Street Guys," a social collective family group, and do stuff together that is not illegal. The gang component is not a problem unless they are committing an illegal act. He added that it cannot just be those who are hanging out with them but rather those who are participating in the criminal act. An AUSA added that this allows non-structured enterprise

gangs (the "association-in-fact") to be able to be charged under RICO (those non-structured groups that commit illegal acts). Mr. Trusty added that RICO does not include one pure act but rather multiple acts. RICO is not unlimited but the charges must be in relation to the enterprise in which the individual is robbing money and then taking stolen money to help the gang do something else. Ms. Dorian added that the State statute includes the covert or overt gang structure. Ms. Hanson stated her concern of the definition. Senator Hough said it is important to see how the Feds address this.

An AUSA said there is an extraordinary level of review for RICO cases that must go to the U.S. Department of Justice, after applying to the U.S. Attorney's Office.[1] He added that this extensive process occurs to ensure the information collected is consistent with the RICO statute.[2] Mr. Trusty mentioned that there are subject experts in the Department of Justice to make the case as strong as possible. He also said that the RICO Review Unit is the "guardian of the statute." It is important to note that the RICO Review Unit may not always approve of a proposed RICO case. In fact, there are times where the unit rejects RICO prosecutions because of insufficient evidence or because the prosecutors are stretching the use of the RICO statutes in a way that might ultimately hurt all prosecutors in the long run.

Senator Hough asked about the "sign off." Mr. Trusty said the U.S. Attorney's Office must submit a memo to the RICO Review Unit to assess the information that looks at each defendant on an individual basis. The job of the reviewers is to ensure that if each defendant went to trial separately, there would be a pattern to show connection to racketeering. If it is approved by the RICO Review Unit, additional information may be needed. U.S. Attorney Hur said the end game is the approval process. Congress provided us with a tool, the RICO statute, and the Justice Department wants to use the tool wisely.

Gang Situation

Senator Hough invited ASAC Nadeau, with the Federal Bureau of Investigation (FBI) Baltimore Field Office, to present on the current gang situation, from the Federal perspective. ASAC

[1] The United States Department of Justice. (2019). *9-110.000 - Organized Crime and Racketeering*. Section 9-110.101 - Division Approval states that, "No RICO criminal indictment or information or civil complaint shall be filed, and no civil investigative demand shall be issued, without the prior approval of the Criminal Division. See RICO Guidelines at JM 9-110.200."

[2] Ibid. Section 9-110.210 - Authorization of RICO Prosecution - The Review Process states that, "*The review and approval function for all RICO matters has been centralized within the Organized Crime and Gang Section of the Criminal Division. To commence the review process, the final draft of the proposed indictment or information and a RICO prosecution memorandum shall be forwarded to the Organized Crime and Gang Section. Separate approval is required for superseding indictments or indictments based upon a previously approved information. Attorneys are encouraged to seek guidance from the Organized Crime and Gang Section by telephone prior to the time in an investigation is undertaken and well before a final indictment and prosecution memorandum are submitted for review. Guidance on preparing the RICO prosecution memorandum is in the Criminal Resource Manual at 2071 et seq. . . .* "

Nadeau said there are many investigators who open a case and experience some difficulty trying to prosecute everyone. This is not a one individual investigation, it is a long term approach that may consist of a six month, a year, or even a two year process. Baltimore City probably has 250 gang members but that does not mean they are all engaged in criminal activity. The FBI's Safe Streets Gang Task Forces have used the RICO statute for many years.

Senator Hough thanked U.S. Attorney Hur and ASAC Nadeau for their presentations, and for taking the time to go through everything with the group. He said it was very helpful.

Mr. Flores inquired about the sentences imposed. U.S Attorney Hur said the sentence for RICO is a 20 year maximum and the sentence for RICO racketeering ("association-on-fact") is up to life imprisonment.

Senator Hough inquired about large cases and who would prosecute if local law enforcement does not have the resources. Mr. Trusty said the U.S. Attorney's Office can help with this process because of available resources. Lt. Colonel Ruel mentioned that working with the State's Attorney's Office may be difficult because some information is pushed off and becomes problematic (i.e., dealing with 23-24 jurisdictions) which is why it may be easier for the Feds. An AUSA said Feds have the luxury of time in many cases that may take 1-2 years which Maryland does not have.

Ms. Dorian mentioned how her unit is situated differently in which they work with the Maryland State Police and are almost set-up like a state gang task force where they can pick cases and set-up cases. They are trying to do more gang cases in the State's Attorney's Office because that is what her unit was established to do.

Discussion

Senator Hough indicated that he would like to go to Montgomery County for the next meeting, followed by Prince George's County, and Frederick County.

- The third meeting will occur in Montgomery County in the summer of 2019.
- The fourth meeting will occur in Prince George's County in the fall of 2019.
- The fifth meeting will occur in Frederick County at the end of 2019.

For the meeting in Montgomery County, Senator Hough asked the Office of the Public Defender to present. Mr. Flores asked about criminal and white collar activities, and when/how the State and Federal prosecution is determined. Mr. Trusty mentioned the sniper case and that there are many factors that result in the decision to prosecute at the State or Federal level. Ms. Hanson asked if/when we look at the Gang Statute, how do we get the "smart guys?" An AUSA said the

Feds are directed to a location based on knowledge that crimes have occurred. Federal agents will then conduct an investigation to find the "smart people" to include the gun trafficker, etc.

Closing Remarks

Senator Hough asked that the meeting close early. He thanked U.S Attorney Hur and ASAC Nadeau, again, for their time and presentation. The meeting adjourned at 11:07 a.m.

Appendix C: Third Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

Judicial Conference Room
Montgomery County Judicial Center, North Tower
50 Maryland Avenue, Rockville, Maryland 20850 (Third Floor)
Monday, July 22, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Toni Holness, American Civil Liberties Union; Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Lt. Colonel David Ruel, Maryland State Police; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); and Judge William Tucker, Maryland Judiciary.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Katie Dorian, Attorney General's Office; Nicole Hanson, Out for Justice; Michael Yeagy, Maryland Retailers Association; Anthony McNeil, Farming4Hunger; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: Captain Michael D. Moore, DPSCS; Ricardo Flores, Office of the Public Defender; Conor McCarthy, Department of Legislative Services; Assistant State's Attorney (ASA) Patrick Mays, Montgomery County State's Attorney's Office; ASA Kelly McGann, Montgomery County State's Attorney's Office; ASA Gordon King, Montgomery County State's Attorney's Office; Don Hogan, GOCCP; Rachel Kesselman, GOCCP; State's Attorney John McCarthy, Montgomery County State's Attorney's Office; Steven Clark, Legislative Aide for Senator Hough; Danny Pletcher, GOCCP; Melanie Shapiro, Office of the Public Defender; and Ryan Turner, Community Law in Action (CLIA).

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Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:40 a.m. as he welcomed everyone to the third *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked Montgomery County for hosting the meeting and for providing refreshments. Senator Hough mentioned that the fourth meeting will occur in September in Prince George's County. He added that the fifth meeting will occur in October or November in Frederick County, and the final meeting to "wrap-up" the Task Force's recommendations and findings will occur in December in Annapolis. He also welcomed members to provide suggestions.

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Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.

Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the April meeting and asked if any changes were needed. He then asked for a motion to approve the minutes. A motion was made to adopt the minutes which was seconded by Delegate Fisher, and approved without any edits or additions.

Presentations

Gang Statute and Criminal Laws

Senator Hough invited Mary Siegfried, Esq., to present on the gang statute and criminal laws from the perspective of the Office of the Public Defender. Ms. Siegfried directed everyone's attention to a PowerPoint presentation (*please see the **Office of the Public Defender Gang Task Force Presentation** for more information*). She said the criminal gang statute is a loose term that should be tailored to ensure it does not infringe on constitutional rights. She said there are also issues with the definition of a criminal gang and how individuals are perceived to be gang members. She added that a lot of rap groups tend to be people of color who are swept up in this definition of a gang or a gang member.

Ms. Siegfried illustrated an example of the Montgomery County Police's definition and documentation of a gang and/or gang member (*see slides #8-10*). She mentioned that, when Montgomery County tries to prove a member of a gang, the police department will send the Office of the Public Defender a letter with the definition of a gang which adds extra criteria to the statutory definition. Ms. Siegfried gave an example of a group of Girl Scouts who stole a car to sell cookies in a neighborhood. She said these individuals are less likely to be viewed as a gang, but individuals who are brown and black and decide to steal a neighbor's car to sell candy door-to-door - this illustrates a better example of gang activity compared to the Girl Scouts.

Mr. Trusty mentioned that you cannot translate this as one of your elements of truth. He added that this is not a shortcut for evidentiary admission in a RICO case. You must still make sure that each individual is meaningfully connected to the enterprise. Ms. Siegfried added that people may admit to things that are not true because they are an adolescent; and they may state an affiliation with a gang to "connect" with them based on demographics or race. Ms. Siegfried added that one should not be prosecuted for the "cloth" they wear. This should only occur when it is criminal.

Ms. Siegfried referenced the Maryland Rule 5-404. Character Evidence Not Admissible To Prove Conduct, and posed two questions in light of Maryland's already existing penal context

(*see slides #11-13*). She mentioned the potential need for two trials and then asked, do we really need § 9-804 of the Criminal Law Article? She directed everyone's attention to slides #14-16 and said Serious Punishment/Incapacitation already exist for underlying offenses, group activity, and repeat offenders. She brought this up because, from a Constitutional context, we have a freedom of Association, Expression, and Group Activity (*see slide #18*). She said the criminal gang component should only represent a "slice of the pie." Because of this, Ms. Siegfried said changes to Maryland statutes should avoid certain things in light of the Constitutional context (*see slide #19*). She also provided three initial suggestions which include: (1) do nothing; (2) focus on prevention; and/or (3) focus on oversight (*see slides #20-25*).

Ms. Siegfried said the problem with a gang database is that when something is kept in the database from when the juvenile is 12 years old, that "tag" follows him/her because there are no regulations. She also stressed the need for an oversight group, similar to the RICO Review Unit, to ensure no one is wrongfully classified as a gang.

Ms. Holness asked a question in reference to an allegation. Ms. Siegfried said when an allegation is made of a gang, law enforcement will get an expert (usually a police officer) who will provide a definition of a gang.

Delegate Pippy thanked Ms. Siegfried for her presentation, and said some individuals may present themselves as a gang for street credit. He mentioned a case in Frederick County where a group - an alleged MS13 gang - kidnapped and dismembered a girl. He also mentioned the terms "and" versus "or" as it relates to a gang member. Ms. Siegfried responded that when pretending to be a gang member, the "and" does not really matter if they are a gang member. She then asked if there is another way we can address this without § 9-804 of the Criminal Law Article.

Mr. Trusty thanked Ms. Siegfried for her presentation, and said the entire concept of law enforcement is geared around evidence-based practices. When standing trial, the purpose is to prove the elements. He added that the long standing criminal problem in the community is more of a contextual thing for the jury to understand the whole picture. While it is good to find the low bearing fruit, at the federal level RICO goes after the smart guys who make the decisions. Ms. Holness said it is shocking that this response is not having a deterrent effect. Why do we need a gang task force for violent crimes? Mr Trusty said there is a practical issue - in federal cases there may be a murder but no one has resources to plow through it. He said it is less common to see all the players in the act of the story but in RICO, the jury sees all the roles play out over the crime. He added that he is unaware of a more robust system.

ASA Mays agreed with that characterization in which murder continues to get thrown out. He then asked, why would we have another penalty? Ms. Siegfried said the law currently states that if there are five people and only one is caught, then that one person can get double the penalty because of the conspiracy.

Delegate Pippy said the focus appears to be on the defendant and not the affiliation. However, the purpose of this Task Force as Mr. Trusty alluded to, is to determine if the current laws can address what we are trying to do here or are the resources limited for state's attorneys. Mr. Trusty said yes, and that the state's attorney was white-collar based and it is now street-based because it has resources. He also mentioned that when someone commits murder and then gains status in prison, there are more members to fill that one individuals' spot on the street.

Issue of Gangs

Senator Hough invited Deputy Director Bill Sage and Captain Mike Moore, with DPSCS, to present on the issue of gangs within our prison system. Mr. Sage introduced himself as the Deputy Director for DPSCS' Intelligence and Investigative Division (IID). IID conducts criminal and administrative investigations of misconduct or suspected criminal activity that involve employees of DPSCS, adult inmates confined in a correctional facility, or any individual that has contact with the employees or clients-inmates, arrestees, detainees, or parolees of DPSCS. It also serves as the DPSCS liaison with allied federal, State, and local law enforcement agencies to provide investigative services and support to their investigations.

Mr. Sage mentioned Security Threat Groups (STGs) that threaten the safety and security of correctional facilities, and some of the many assessments conducted by IID in different countries. The largest STG in Maryland is the Black Guerilla Family (BGF) which consists of about 463 members and is ever evolving.

IID has the most stringent validation process in the State, and maintains its own gang database which is regulated under 28 CFR Part 20 - Criminal Justice Information Systems. Unlike many other gangs, BGF is a prison gang that was founded in prison. In 2008, BGF became dominant and so powerful that it took control of a facility. In 2013, BGF recruited correctional officers at the Baltimore City Detention Center (BCDC).

In prison, individuals frequently go with a gang to feel protected. Once this occurs, IID validates the information and analyzes it to retrieve intelligence. IID gathers, analyzes, and disseminates prison intelligence to intelligence units/officers, correctional officers, civilian staff, outside law enforcement, etc. This intelligence is also shared internally to ensure the Bloods and Crips do not go into the same area - this is done to segregate individuals for safety purposes.

Captain Moore mentioned that IID examines information as it relates to the crimes that occur outside the prison and inside the prison (e.g., contraband thrown over the prison walls). They work with multiple sources, and have redeveloped the intelligence gathering process to a more modern and effective sense that is actionable.

In reference to traditional gangs, many may think of the Black Panther Party, BGF, Crips, Aryan Brotherhood, and Dead Man Inc (DMI). However, Captain Moore explained that there are other

gang groups that have an alliance with BGF, such as CRIP (Community Revolution in Progress). Captain Moore also provided examples of modern criminal gang structures for several gangs in Baltimore City (*as illustrated below*).

- Young Ballers Shining (YBS) was murdered in which his best friend was charged and is currently housed in Jessup prison. Members of YBS have a heavy Bloods affiliation.
- Young Go Getter (YGG)
- Out That Mob (OTM)
- 5200 Murdaland Mafia Piru (MMP)
- DMI has a specialty in murder-for-hire.
- Bloods battle with BGF and contribute to the increasing murder rate of Baltimore City.
- Aryan Brotherhood is the most dangerous gang in prison. They formed in 1967 and earned the respect of the Mexican Mafia.

Captain Moore said there are different ways for individuals to enter a gang (*as illustrated below*). He also said that gangs recruit members as young as six years old.

- "Blessed in"
- "Jumped in"
- "Sexed in"
- "Born in"

Discussion

Delegate Fisher thanked the presenters, and said we have to look to our past to know our future. She also mentioned Jim Crow laws which were a collection of state and local statutes that legalized racial segregation. Delegate Fisher said rap music is viewed as an expression and she does not feel comfortable saying it is a gang-related thing.

Closing Remarks

Senator Hough thanked Ms. Siegfried, Mr. Sage, and Captain Moore, again, for their time and presentation. The meeting adjourned at 11:30 a.m.

Appendix D: Fourth Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes
Meeting Minutes

Room 140
Prince George's County Office Building
1801 McCormick Drive, Largo, Maryland 20774
Friday, September 13, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Toni Holness, American Civil Liberties Union; Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Lt. Colonel David Ruel, Maryland State Police; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); Nicole Hanson, Executive Director, Out for Justice; Katherine Dorian, Esq., Maryland Office of the Attorney General; and Anthony McNeil, Farming4Hunger..

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Michael Yeagy, Maryland Retailers Association; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: Captain Michael Moore, Department of Public Safety and Corrections; Don Hogan, Governor Hogan's Legislative Office; Anthony Baranauskas, GOCCP; Steven Clark, Legislative Aide for Senator Hough; Dwayne "Shorty" Davis Sr., Out for Justice; Fay Hayes, Out for Justice; Robert Perkins, Out for Justice.

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Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:30 a.m. as he welcomed everyone to the fourth *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked Prince George's County and Delegate Fisher for hosting the meeting. Senator Hough mentioned that the fifth meeting will occur in November in Frederick County, and the final meeting to "wrap-up" the Task Force's recommendations and findings will occur in December in Annapolis. Senator Hough then read the legislation that created the task force and reminded the members of their duties.

Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.

Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the July meeting and asked if any changes were needed. A motion was made by Ms. Siegfried to make a change to page three of the July minutes. The changes add the clause, "because of conspiracy" to page three of the minutes. The motion was seconded by Senator Hough and then approved by the body. He then asked for a motion to approve the minutes. A motion was made to adopt the minutes which was seconded by Delegate Fisher and approved by the body.

Presentations

Use of Current Gang/Organized Crime Statutes in Prosecution

Senator Hough invited Katie Dorian, Esq., to present on the gang statute and criminal laws from the perspective of the Office of the Attorney General ("OAG"). Ms. Dorian said that the OAG focuses on gang and organized crime prosecution cases. Most cases handled by OAG are multi-defendant and spread across multiple jurisdictions. Ms. Dorian then passed out a handout breaking down *Criminal Law Article* §9A-804, which is a commonly used statute in prosecuting gang violence cases. This statute is used to prosecute those who "Participate in a Gang with Knowledge of Gang's Engagement in Criminal Activity."

Ms. Dorian proceeded to breakdown the elements of the statute. In order to be convicted for a violation of §9A-804, one must (1) be involved in a group or association of three or more individuals whose members, (2) individually or collectively engage in a pattern of criminal gang activity (two or more underlying crimes provided in the statute, and (3) have in common an overt or covert organizational or command structure knowing the member of the gang engages in a pattern of criminal gang activity. After going through §9A-804, Ms. Dorian referenced the less commonly used gang statutes in the *Criminal Law Article* found between §9A-801 through 9A-807. These statutes cover other facets of gang violence, including; threats or coercion to join a gang, gang activity near a school, organization or managing a gang.

Ms. Dorian then referenced raw data on gang convictions in the State of Maryland. 8 of 24 jurisdictions in Maryland have convicted defendants under the current gang statutes. Of the 88 total convictions, 29 have been from Prince George's County, 21 from Baltimore County, 12 from Montgomery County, 9 from Frederick County, 6 from Worcester County, 6 from Anne Arundel County, and 1 from Somerset County. Most of the convictions were from lower level gang members, as only one conviction was made under §9A-805 statute which covers managing, financing, or organizing gang operations.

Ms. Dorian concluded that while the current gang statutes have a high threshold to meet in order to support a conviction, it is appropriate to use these statutes with discretion. Additionally, Ms.

Dorian commented on the need for victim and witness relocation resources in order to turn former associates against Defendants during trial.

Delegate Fisher said that she would like to see stats from other states compared to Maryland regarding use of gang statutes. Ms. Holness asked whether a prosecutor has to prove the underlying crimes in use of gang statutes. Ms. Dorian responded that the prosecutor is not required to charge the underlying crimes, but is required to prove them in order to support a conviction using the current gang statutes.

Delegate Pippy asked for statistics regarding how many defendants were charged versus how many were convicted. Ms. Dorian responded that the Sentencing Commission does not track this information, but the local State's Attorney Offices would have this information. Ms. Siegfried followed by asking whether the OAG had oversight similar to what exists in the Department of Justice. Ms. Dorian responded that OAG only gets involved in cases that cross county lines or those referred to by local State's Attorney Offices.

Mr. Trusty expressed concern that there are many "walk away cases", where prosecutors do not use the gang statutes because the threshold is too high. Additionally, Mr. Trusty stated factually that incidents of witness intimidation rise in accordance with charges under the gang statutes. Ms. Hanson echoed the need for resources for witness relocation resources. Mr. Hogan commented on the FY 20 Operating Budget inclusion of $2.4 million additional funding for victim and witness relocation funding in Baltimore City.

<u>"Investing in Communities, Not Prisons"</u>

Senator Hough invited Executive Director Nicole Hanson from Out for Justice to present before the work group. Out for Justice is a non-profit group established in 2006 that focuses on helping the formerly incarcerated by giving back to the community through legislation and involvement.

Ms. Hanson presented on the factors that lead individuals to join gangs, including; safety, isolation, and involvement in the legal system. Additionally, Ms. Hanson discussed the impacts of the 1993 Federal Crime Bill and War on Drugs on communities of color. Ms. Hanson expressed her concern regarding apparent racial disparities in incarceration and criminal sentencing. She concluded her presentation by expressing her desire not to change the current gang statutes because there is a greater need for prevention and diversion programs rather than increased law enforcement. Senator Hough asked about a provision in a previous bill, SB 198 from 2018 which would provide proactive resources on top of enhanced penalties for gang violence. Ms. Hanson said yes, because there needs to be an avenue for gang members to exit the organization.

Discussion

The roundtable discussion focused on the inclusion of gang member's names and affiliations in government databases. Ms. Hanson expressed the desire to eliminate labels in government databases, due to the harsh impact the labels can have after the individual has left the gang. Lt. Colonel David Ruel and Mr. Sage both said that if databases do not receive new information within 5 years, the data is purged pursuant to federal law. Mr. Trusty responded and said the database info is not admissible in court. Ms. Siegfried concurred, but said the information could impact whether or not the individual is released from prison during the pre-trial process or receives a transfer to juvenile court. Ms. Holness agreed, and asked for more information from neighboring states on ways to incentivize gang members to disaffiliate.

Public Comment

Senator Hough then opened the meeting up to public comment. The first person to comment was Dwayne "Shorty" Davis, Sr. Mr. Davis is a filmmaker and a self-described whistleblower who is a member of Out for Justice. He discussed the lasting impact of the 1857 *Dred Scott v. Sandford* decision and recounted his own experience in the legal system. The second member of the public to comment was Fay Hayes from Out for Justice. Ms. Hayes expressed her concern over government databases containing names of gang members, and asked why information was purged after 5 years and not sooner. Lt. Colonel Ruel responded that the determination is set by federal law. The final member of the public to comment was Robert Perkins from Out for Justice. Mr. Perkins expressed his concern regarding witness relocation and asked how decisions are made concerning relocation. Mr. Hogan responded that the Maryland State's Attorney Association will be providing the funding to Baltimore, and then it will be up to the Baltimore City State's Attorney Office to make a determination on how to distribute the funds.

Closing Remarks

Senator Hough thanked Ms. Dorian, Ms. Hanson, and members of the public for their comments. The meeting adjourned at 11:30 a.m.

Appendix E: Fifth Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes
Meeting Minutes

100 West Patrick Street
Frederick, Maryland 21701
Tuesday, November 5, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Toni Holness, American Civil Liberties Union; Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Lt. Colonel David Ruel, Maryland State Police; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); Katherine Dorian, Esq., Maryland Office of the Attorney General; and Judge William Tucker; Circuit Court of Howard County, Captain Michael Moore, Department of Juvenile Services.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Michael Yeagy, Maryland Retailers Association; Scott Shellenberger, Baltimore County State's Attorney's Office; Holly Wilcoc, PhD, Johns Hopkins University, and Chief Henry P. Stawinski III, Prince George's County Police Department, Nicole Hanson, Executive Director, Out for Justice; Anthony McNeil, Farming4Hunger..

Other Guests in Attendance: Cara Sullivan, Governor Hogan's Legislative Office; Anthony Baranauskas, GOCCP; Steven Clark, Legislative Aide for Senator Hough; Luke Pinton, Chief of Staff for Senator Will Smith.

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Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:30 a.m. as he welcomed everyone to the fifth *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked the members for traveling to his home county in Frederick for this meeting. Additionally, he thanked the Frederick Police for allowing the Task Force to use their facilities. Senator Hough mentioned that the final meeting will occur in December in Annapolis, and this meeting will "wrap-up" the Task Force's recommendations and findings in preparation for the 2020 Legislative Session. Senator Hough then asked the members to send proposals of recommendations to him within 10 days of the final December meeting.

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Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.

Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the September meeting and asked if any changes were needed. Delegate Pippy made a motion to approve the minutes, which was seconded by various members of the Task Force. Minutes were then approved.

Presentations

Use of Current Gang Statutes in Prosecution in Frederick County

Senator Hough invited Frederick County State's Attorneys, Charlie Smith, Amanda Leatherman, and Rebecca Clinton to present on the use of the current gang statutes in Frederick. Mr. Baker said that Frederick faces a unique problem in Maryland because it borders three states (Pennsylvania, Virginia, and West Virginia). Gang activity is not limited to just one jurisdiction, and it can be challenging to follow the activity.

Mr. Smith proceeded to explain the difficulty of using the current statutes. In order to be convicted for a violation of §9A-804, one must (1) be involved in a group or association of three or more individuals whose members, (2) individually or collectively engage in a pattern of criminal gang activity (two or more underlying crimes provided in the statute), and (3) have in common an overt or covert organizational or command structure knowing the member of the gang engages in a pattern of criminal gang activity. Mr. Baker said that in his opinion, the current gang statutes, "have no teeth, and were only enacted to relieve public pressure when Doug Gansler was Maryland Attorney General." Mr. Baker then introduced Amanda Leatherman, who is the lead prosecutor in Frederick County pursuing gang crimes.

Ms. Leatherman mentioned that while Frederick is not a large jurisdiction, the county has a high influx of MS-13 and Pagan related gang activity. MS-13 in particular is recruiting gang members in schools at a young age, some as young as 12. Additionally, she said waiting until high school to educate the students on the dangers of joining a gang is too late to reach them. Ms. Leatherman proceeded to explain how the current statutes are not as forceful as they need to be. Prosecutors have too many elements to prove beyond a reasonable doubt not only for the underlying crime, but to convince juries that the crime was gang related. Ms. Leatherman said that there are almost 10 factors that she and other prosecutors need to meet in order to prove the crime was gang related. Previously, Frederick County was able to rely on an expert witness who would testify as a material witness in favor of the State. This expert has since retired, and Ms. Leatherman suggested that it might be necessary for the State to create a list of expert witnesses who can be used while prosecuting gang crimes.

Ms. Leatherman then introduced Rebecca Clinton who oversees the prosecution of violent crime in Frederick. Ms. Clinton said that is difficult to use the current statutes connecting firearm offenses with gang activity. An ideal situation would be where the state could use the firearm offense along with circumstantial evidence of gang membership to prove that the crime was connected to gang violence.

Mr. Smith reiterated that the focus of the workgroup should be to focus on how to take down the leadership and top members of the gang, rather than simply prosecuting the low level members who are easily replaced. Senator Hough stated that the Governor's proposed bill from 2018 would have done this, in addition to providing resources to victims and training for law enforcement.

Protecting Civil Liberties and Constitutional Rights

Senator Hough invited Public Policy Director from the ACLU, Toni Holness, to speak on concerns from the viewpoint of criminal defendants. Ms. Holness opened by going over the constitutional definitions and applications of statutory vagueness and overbreadth. Statutory vagueness is the constitutional doctrine, arising out of the right to due process, which requires criminal statutes to specifically and concretely state what acts are prohibited in order to provide fair notice and ensure consistent application. Statutory overbreadth occurs when a statute designed to punish activities is so broad that it sweeps permissible activities into prohibition based on statutory design.

Ms. Holness explained how prior proposed statutes could be considered violations of the 1st Amendment based on overbreadth or vagueness. Ms. Holness went on to propose that any new statute should focus less on increasing penalties on those associated with gangs, and more on preventive solutions to keep individuals from feeling the need to join these associations. Ms. Holness also went on to propose that increased victim and witness relocation funding from the state would be a step in the right direction. Additionally, the task force should put forth recommendations that incentivize gang disengagement rather than increased penalties due to the disparate impact on minority communities.

Discussion

The roundtable discussion focused on the importance of the need for victim and witness relocation funding. Ms. Seigfried stated that this money would be helpful, but pushing for increased mandatory minimum sentences would create distrust in minority communities. Senator Hough mentioned that when the legislators crafted Justice Reinvestment in 2016, the committee tried to separate individuals into two groups; (1) people we were scared of and (2) people we were mad at. Most gang offenses fall under the former category. Senator Hough went on to state that the work group is sensitive to racial disparities and the majority of victims from MS-13

violence are Hispanic and gang violence tends to harm their own communities more than other groups.

Delegate Fisher stated that if the work group was to make recommendations for higher sentencing, the new legislation should treat college fraternities involved in sexual assaults similar to gang enterprises. Delegate Pippy stated that increasing victim and witness relocation funds will help take on the hierarchy of gang leadership. Mr. Smith suggested that the group look into diversion based programs for juveniles caught-up in gang association before they commit acts of violence.

Closing Remarks

Senator Hough thanked Mr. Smith, Ms. Leatherman, Ms. Clinton, and Ms. Holness for their presentations. Senator Hough also reminded the members to submit recommendations to him ten days before the next meeting in December. The meeting adjourned at 11:30 a.m.

Appendix F: Sixth Task Force Meeting Minutes

Task Force to Study Maryland's Criminal Gang Statutes
Meeting Minutes

11 Bladen Street, Miller West
Annapolis, Maryland 21401
Monday, December 16, 2019, 9:00 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Delegate Wanika Fisher, Maryland House of Delegates; Bill Sage, Department of Public Safety and Correctional Services (DPSCS); Mary Siegfried, Esq., Office of the Public Defender; Joe Spielberger, American Civil Liberties Union (ACLU); Robin Brady-Slifer, Department of Juvenile Services; James Trusty, Esq., Ifrah Law PLLC; Carl J. Kotowski, Governor's Office of Crime Control and Prevention (GOCCP); Katherine Dorian, Esq., Maryland Office of the Attorney General; Nicole Hanson, Executive Director, Out for Justice; and Honorable Judge William Tucker; Circuit Court of Howard County.

Members Not in Attendance: Lt. Colonel David Ruel, Maryland State Police; Captain Michael Moore, Department of Juvenile Services; Senator William C. Smith, Jr., Maryland Senate; Michael Yeagy, Maryland Retailers Association; Scott Shellenberger, Baltimore County State's Attorney's Office; Holly Wilcox, PhD, Johns Hopkins University, and Chief Henry P. Stawinski III, Prince George's County Police Department, Anthony McNeil, Farming4Hunger..

Other Guests in Attendance: Cara Sullivan, Governor Hogan's Legislative Office; Anthony Baranauskas, GOCCP; Steven Clark, Legislative Aide for Senator Hough; Luke Pinton, Chief of Staff for Senator Will Smith; Jessica Armstrong-Reichenberg, Department of Public Safety and Correctional Services; Ricardo Flores, Maryland Office of the Public Defender, Donald Hogan Governor Hogan's Legislative Office; James Johnston, Department of Juvenile Services.

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Welcome by Senator Michael Hough

Senator Hough called the meeting to order at 9:15 a.m. as he welcomed everyone to the final meeting of *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting. He thanked the members for traveling through the inclement weather in Annapolis for this meeting. Senator Hough mentioned that purpose of this final meeting was to "wrap-up" the Task Force's recommendations and findings in preparation for the 2020 Legislative Session.

Introductions of Gang Task Force Members

Senator Hough invited members and guests to introduce themselves.

Approval of Meeting Minutes

Senator Hough mentioned the draft minutes from the previous meeting and asked if any changes were needed. Delegate Pippy made a motion to approve the minutes, which was seconded by various members of the Task Force. Minutes were then approved.

Recommendation Discussion

Senator Hough thanked the members for submitting proposals for the Task Force to evaluate and subsequently vote on. Senator Hough began with recommendation (13) *Witness Protection and Victim Resources.* This recommendation was provided by Mr. Trusty, the ACLU, and Out for Justice. Mr. Trusty said that after listening to state prosecutors concerns to the Task Force regarding inadequate resources, he formulated this proposal to provide for the safety of victims and witnesses of gang violence. Ms. Dorian said that the Attorney General's Office supports this initiative, but the proposal would be more beneficial if the Task Force recommended funding rather than a statewide program. Mr. Trusty said that there are liability concerns regarding relocation funding. Senator Hough invited Cara Sullivan from the Governor's Office to explain the existing program. Ms. Sullivan said that currently, $300,000 in funding is given to the Maryland State's Attorney Association (MSAA) to distribute statewide. In FY20, Governor Hogan included $2.0 million in victim relocation funding to Baltimore City as part of the Crime Reduction Strategy. Additionally, the Violence Intervention Prevention Program (VIPP), included $360,000 in victim and witness relocation funding to Baltimore City from FY20 through FY24. Delegate Fischer said that she would like more information on how MSAA distributes its funding. Senator Hough set forth the following proposal for the members to vote upon. (1) Ask the Governor for more resources for victim and witness relocation funding statewide. With the caveat that MSAA explains how they distribute the funding and ensure that those with previous criminal records would not be prohibited from receiving funding. The members passed this proposal without opposition.

Senator Hough then asked Mr. Trusty to explain recommendation (14) *Expert Witness List*. The members agreed that this was not a legislative fix, but want MSAA to facilitate an expert witness list for gang prosecution and work with the AG office when needed. The members passed this recommendation without opposition.

Senator Hough then asked the Task Force to evaluate the proposal that no changes to the gang statutes should be made. Ms. Siegfried stated that it should be difficult to use the gang statutes, and the group has heard no demonstrations that the current statutes are allowing criminals to get away without punishment. Delegate Pippy responded by saying the gang activity in Maryland

has increased, and doing nothing will not accomplish the goal of the Task Force. Ms. Hanson said that to her, deter means to prevent crime, not increase penalties. Senator Hough said the members have made a number of good suggestions, and to report nothing would violate the charge of the work group. Senator Hough asked for a motion to approve this recommendation. The recommendation failed 8-3, with Mr. Speilberger, Ms. Siegfried, and Ms. Hanson the only votes in the affirmative.

The next recommendation brought up for consideration was changing the term "gang" in Maryland Statute to "Criminal Organization". This recommendation was proposed by the AGs Office. Ms. Dorian said that using the term "Criminal Organization" would bring Maryland Law more in line with Federal RICO statutes. Mr. Trusty concurred. This recommendation passed without opposition.

Senator Hough introduced the next recommendation to expand the list of underlying crimes. Senator Hough pointed to Governor Hogan's proposed bill in 2018. This recommendation would add the underlying crimes listed on page 4 lines 4-10 from SB 198 from 2018 (minus 9-412) in addition to financial crimes. Senator Hough related how this would be helpful in prosecuting those involved in prison corruption cases across the state. Ms. Siegfried opposed on the basis that the Task Force has not seen enough information to justify an expansion of underlying crimes. The Task Force voted 8-3 to support the recommendation, with Mr. Speilberger, Ms. Siegfried, and Ms. Hanson the only votes in opposition.

The Task Force then considered a proposal from DPSCS defining the meaning of a gang member. After a lengthy discussion, the members opted to table this recommendation on the basis of lack of information.

Senator Hough then asked Mr. Trusty to explain his recommendation to include the "association in fact" language from the Federal RICO statute. Mr. Trusty explained that gangs changing names and affirmations will always make law enforcement efforts to dismantle the group more challenging, and this language will help defeat the camouflage of using different names over time. Ms. Siegfried voiced concern that dilution of the statute would occur and more inactive gang members will be charged under the statutes. Ms. Hanson also said she doesn't think criminal defendants do not receive enough information. This recommendation passed 7-4, with Delegate Fischer, Mr. Speilberger, Ms. Siegfried, and Ms. Hanson as votes of opposition.

Mr. Trusty then explained recommendation (15) *Oversight*. This recommendation would mandate some type of oversight for state's attorney offices who use the gang statutes. After discussion, the work group came to the consensus that MSAA should work with the AG's Office to conduct a review to include a more formalized procedure for the use of the statutes. These two entities would work together to come up with a formal process for oversight. This suggestion passed without opposition.

DPSCS representative Jessica Armstrong-Reichenberg discussed four proposals related to the membership validation of inmates within DPSCS facilities. The Task Force ended up tabling these proposals without a vote.

Ms. Brady-Slifer from DJS then discussed her proposal for more Prevention Efforts for Youth Gang Involvement. Ms. Hanson agreed that more programing would be beneficial, but wanted to ensure programming would not be used against defendants in potential adjudications. Senator Hough then referred to page 6 of Governor Hogan's bill from 2018 that recommended funding for prevention services that shall not be excluded on prior conviction. Sen. Hough made a motion to recommend adding in the local funding provisions from the Governor's Bill SB 198 (2018) pg. 6 lines 2-19. This recommendation passed without opposition. Further discussion on youth prevention efforts were tabled until the end of the meeting.

The Task Force then considered a proposal from the ACLU and Out for Justice regarding Gang Dissociation. Ms. Hanson discussed the damaging impact of labeling can have on criminal defendants. Ms. Armstrong-Reichenberg said that the database does not have any impact in adjudications, it is only used by DPSCS for internal purposes such as housing. The Task Force tabled this proposal without a vote.

Senator Hough then brought attention to proposals (16) and (17) related to increasing penalties for gang offenses. Ms. Siegfried voiced opposition to harsher sentences. The Task Force voted 6-5 against increasing sentences for gang convictions. Senator Hough, Delegate Pippy, Mr. Trusty, Ms. Armstrong-Reichenberg, and Judge Tucker were the votes in favor. Mr. Trusty made a motion to make sentencing consecutive as provided for in the Governor's Bill SB 198 (2018). The motion failed 4-6 (Sen. Hough had stepped out). Delegate Pippy, Mr. Trusty, Ms. Armstrong-Reichenberg, and Judge Tucker voted in favor.

The Task Force concluded with a 10-0 vote (Senator Hough had stepped out) in support of funding more youth prevention efforts.

Final Recommendations

Here are the final recommendations from the Task Force

(1) Ask the Governor for more resources for victim and witness relocation funding statewide. With the caveat that MSAA explains how they distribute the funding and ensure that those with previous criminal records would not be prohibited from receiving funding.

(2) Ask MSAA to facilitate an expert witness list for gang prosecution and work with the AG office when needed.

(3) Change the term "gang" in Maryland Statute to "Criminal Organization".

(4) Expand the list of underlying crimes. This recommendation would add the underlying crimes listed on page 4 lines 4-10 from SB 198 from 2018 (minus 9-412) in addition to financial crimes.

(5) Include the term "Association in fact" language from the Federal RICO statute within the Maryland Gang Statutes

(6) Ask MSAA to work with the AG's Office to conduct a review to include a more formalized procedure for the use of the statutes. These two entities would work together to come up with a formal process for oversight.

(7) Add language from SB 198 (2018) pg.6 lines 2-19 to give assets divested to local authorities in order to provide for treatment programs, youth gang involvement prevention programs, and assistance to victims of gang-related crime.

(8) Provide more Prevention Efforts for Youth Gang Involvement.

Closing Remarks

Delegate Fischer (sitting in for Senator Hough) thanked the members for their recommendations and work on the Task Force over the last year.