



**Testimony for the Senate Judicial Proceedings Committee  
March 3, 2020**

**SB 745 – Criminal Organizations – Penalties, Procedure, and  
Elements**

**OPPOSE**

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The ACLU of Maryland opposes SB 745, which amends Maryland's criminal gang offenses statute in various ways, based on recommendations from the General Assembly's recently-convened Gang Task Force. We are sympathetic to the challenge of combating violent crime, and support some aspects of the bill, such as diverting criminal assets to crime victim assistance and alternatives to incarceration. However, we oppose the bill particularly due to the provisions in (1) § 9-801(g), which expands the underlying list of crimes; and (2) § 9-808, which defines circumstances under which a defendant may be found to belong to a criminal organization.

Regarding § 9-801(g), any attempt to expand criminal statutes and elevate lesser offenses to more serious crimes if gang activity is shown will likely widen the racial disparity in prosecutions and sentencing. As the criminal justice system already disproportionately targets communities of color, this provision further risks arbitrary and discriminatory enforcement. Attempts by other jurisdictions to identify gang members through legislation, databases, and matrices have increased racial profiling and mass incarceration.<sup>1</sup> Furthermore, this provision also potentially punishes defendants twice: first for the underlying act, and second for doing the act to benefit the criminal organization.

<sup>1</sup> See Center for American Progress, "Mistaken Identity: The Dangers of Sweeping Gang Labels for Black and Latino Youth," Sept. 13, 2018, available at <https://www.americanprogress.org/issues/criminal-justice/reports/2018/09/13/457854/mistaken-identity/>, Anita Chabria, "A routine police stop landed him on California's gang database. Is it racial profiling?" *Los Angeles Times*, May 9, 2019, available at <https://www.latimes.com/politics/la-pol-ca-california-gang-database-calgang-criminal-justice-reform-20190509-story.html>, Stafford Scott, "The Met's Gangs Matrix is racist policing in its purest form," *The Guardian*, Jan. 12, 2019, available at <https://www.theguardian.com/commentisfree/2019/jan/12/metropolitan-police-gangs-matrix-racist-policing>



Regarding § 9-808, the proposed definition of a criminal organization member is overly broad and constitutionally vague, and includes protected activities related to free expression and association. Although the Supreme Court has been reluctant to recognize gang membership as a First Amendment-protected activity,<sup>2</sup> this bill would sweep up individuals without gang membership, including family members and individuals with prior gang involvement. Freedom of association is examined under strict scrutiny,<sup>3</sup> and although combating gang crime is certainly a compelling government interest, this bill does not employ the least restrictive means to accomplish that goal.

The bill sponsors could have explicitly excluded constitutionally protected activity from the scope of the statute, and included a requirement that the individual acted with a specific intent to benefit the organization. Those additional clauses would better align this bill to protect individuals' constitutional rights.

As it stands, the ACLU of Maryland urges an unfavorable report on SB 745.

<sup>2</sup> United States v. Choate, 576 F.2d 165, 181 (9th Cir. 1978).

<sup>3</sup> NAACP v. Alabama, 357 U.S. 449, 463 (1958).