



**MARYLAND OFFICE OF THE  
PUBLIC DEFENDER**

# Constitutional Context

## Maryland Context

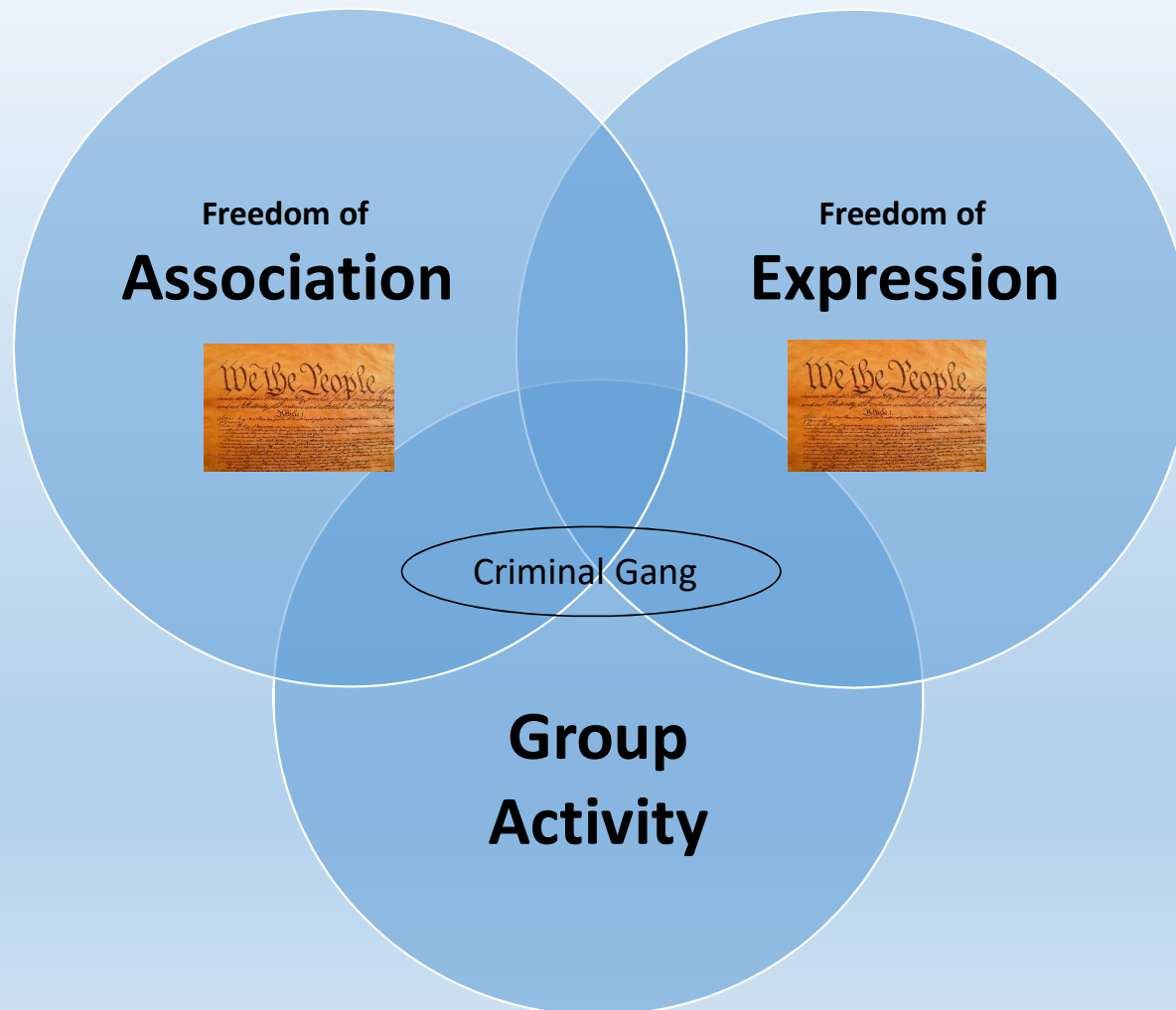


Gang

Statute

# Constitutional Context

## Legitimate Constitutional Freedoms & Illicit Group Activity Can Be A Close Call:



**In light of the Constitutional context, changes to Maryland statutes, if any, should avoid:**

- **defining more groups as “gangs” that aren’t;**
- **assuming persons are “members” of gangs that aren’t;**
- **exacerbating disparate racial or economic impact;**
- **exacerbating unfair and prejudicial treatment at any stage of the criminal proceeding.**

# State Gang Statute: ISSUES

**Definition of a gang,  
per Montgomery County Department of Police:**

...A formal or informal ongoing organization, association, or group of three or more persons

**who have a common name or common identifying signs, colors or symbols** and

have members **or associates** who, individually or collectively, engage in **or have engaged in** a pattern of criminal street gang activity...

## Documented gang members, per Montgomery County Department of Police:

...An individual may be documented as a gang member if there is documentation to support a **reasonable suspicion** to believe **any two** of the following:

- individual admits membership with a gang.
- reliable source identifies an individual as a gang member.
- is **arrested** with other documented gang member
- is identified as a gang member by an **unproven** source.
- is **observed associating** with validated gang members.
- individual has **tattoos** indicating gang membership.
- is observed **displaying** gang hand **signs**, possessing gang **symbols**, **logos** or **graffiti**.
- is observed wearing gang **attire**.
- individual is identified through documents, photographs, or social media as being a gang member...



## Gang member summary documentation, per Montgomery County Department of Police:

**Defendant:**

[REDACTED]

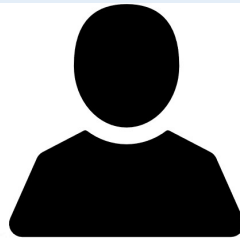
**Moniker:**

[REDACTED]

**Clique**

[REDACTED]

**Gang Affiliation:** Mara Salvatrucha 13 (MS-13) is a transnational criminal street gang which operates primarily in Central and North America. MS-13 has a large presence in and around Montgomery County, Maryland. MS-13 members and associates have been known to commit a variety of crimes including: CDS offenses, assault, robbery, sexual assaults, extortion, and murder. MS-13 members and associates commonly operate in smaller groups called "Cliques". Cliques normally have a formal leadership and command structure.



**Is a member by the following criteria:**

- Self-Admission
- Identified as a member by an Untested Source
- Associates with Validated gang members
- Arrested with Validated gang members

**Incidents / Contacts / Arrests:**

November, 2014; ; Identified as a member by an untested source

December, 2014; Blair HS security provided a flyer of their suspected MS-13 members

Jan 2015; Identified as a member by an untested source

jan, 2015; Associates with Validated gang member. Stopped with a Validated MS-13 member) during field interview

; Identified as a member of MS-13 by an untested source.

april, 2015; Identified as a member of MS-13 by an untested source.

Oct 2016; Self Admits MS-13 membership in clique during debrief with detectives.

Is a member by the following criteria:

- Self-Admission:
  - during "debrief with detectives"
- Identified as a member by an Untested Source
  - never by a tested source
- Associates with Validated gang members
  - stopped together "during field interview"
- Arrested with Validated gang members
  - no conviction info provided

## MD Rules

### **RULE 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT...**

#### **(a) Character Evidence.**

- (1) *Prohibited Uses.* Subject to subsections (a)(2) and (3) of this Rule, evidence of a person's character or character trait is not admissible to prove that the person acted in accordance with the character or trait on a particular occasion...
- (2) **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or other acts including delinquent acts as defined by [Code, Courts Article § 3-8A-01](#) is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident, or in conformity with [Rule 5-413](#).

# Statutory Context

## **In light of Maryland's already existing penal context:**

- **What proof is there that existing penalties are not enough to punish or incapacitate law-breaking individuals, groups or associations?**
- **What proof is there that the specific gang-related prohibitions in our code are making any difference above and beyond other chargeable offenses?**

# Serious Punishment/Incapacitation Already Available:

## - for underlying offense -

Murder	Rape	Assault	Robbery
<ul style="list-style-type: none"><li>• 1<sup>st</sup> – LWOP or life</li><li>• 2<sup>nd</sup> – 40 years</li></ul>	<ul style="list-style-type: none"><li>• 1<sup>st</sup> – LWOP or life</li><li>• 2<sup>nd</sup> – 20 years</li></ul>	<ul style="list-style-type: none"><li>• 1<sup>st</sup> – 25 years</li><li>• 2<sup>nd</sup> – 10 years</li></ul>	<ul style="list-style-type: none"><li>• Carjacking – 30 years</li><li>• Armed – 20 years</li><li>• Unarmed – 15 years</li></ul>

# Serious Punishment/Incapacitation Already Available:

## - for group activity -

### Conspiracy

- an agreement between 2 or more persons to commit a crime:
  - punishment **equal** to the maximum penalty for the related offense

### Solicitation

- urge, advise, induce, encourage, request, command another to commit a crime:
  - punishment **equal** to the maximum penalty for the related offense

### Accessoryship

- aiding before the fact and not present; or aiding or abetting while present or close enough to provide assistance and support:
  - punishment **equal** to the maximum penalty for the related offense
- aiding after the fact by assisting in order to hinder, impede or prevent the offender's arrest, prosecution or trial:
  - 10 years for murder
  - 5 years for any other felony

# Serious Punishment/Incapacitation Already Available:

## - for repeat offenders -

### CR § 14-101 – Crime of Violence

- every offense already referred to, plus about 20 other offenses and attempts thereof, including arson, abduction, kidnapping, mayhem, home invasion etc.

#### 2<sup>nd</sup> CoV

- 10 years mandatory minimum

#### 3<sup>rd</sup> CoV

- 25 years mandatory minimum

#### 4<sup>th</sup> CoV

- LWOP

# Final Recommendations

AS OF 12/05/19





## **#1: Do Nothing**

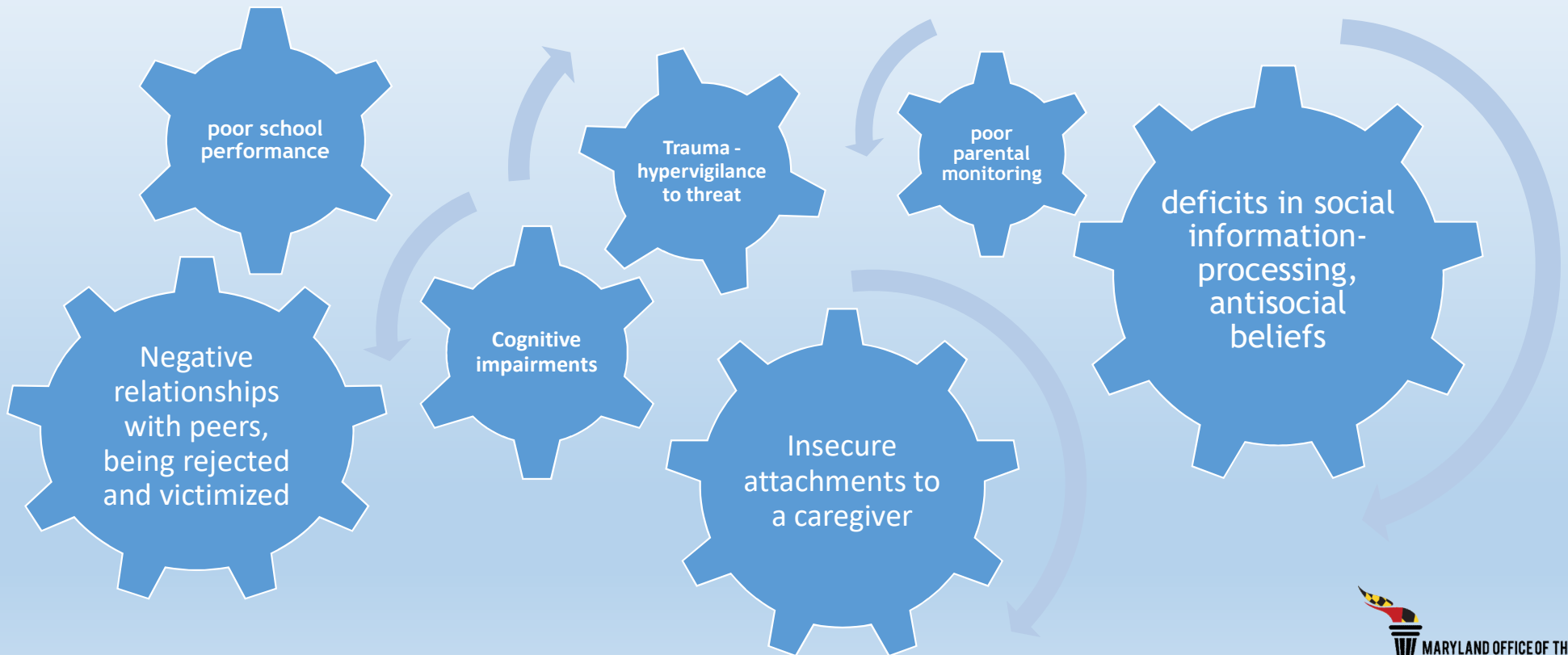
- Until sufficient evidence shows existing penalties are insufficient, or that our specialty offenses are making any particular difference, no changes to our laws should be made.

## #2: Focus on Prevention

“Intervention and suppression efforts by law enforcement are not sufficient to solve the youth gang problem in the U.S. To realize a significant and lasting reduction in youth gang activity, those who make decisions about how limited resources are allocated...must understand what the evidence shows about preventing young people from joining a gang in the first place.”

## #2: Focus on Prevention (continued)

Important risk factors why adolescents join gangs include:



## #3: Focus on Oversight

Statutory

- Collect and publish data to establish need for reforms, **if any**;
- Monitor disparate impacts, address existing issues;
- Curb overreaching and abuse, similar to Federal system.

## #3: Focus on Oversight (continued)

### Gang Databases

- Any definitions of gangs – for whatever policing, prosecutorial or other purpose - should be equivalent to or more protective than state statute;
- Records regarding gangs should be audited;
- underlying data needs to be ripe (recent and relevant), not stale;
- A purging policy of names and data is needed;
- Include countervailing factors that falsify gang association;
- Facilitate case-related discovery of underlying data; ensure credibility of any sources.