
By: Delegate D. Davis

Introduced and read first time: February 2, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Criminal Gang Activity - Penalties**

3 FOR the purpose of prohibiting active participation in a criminal gang and the willful
4 promotion or assistance in any felonious criminal conduct by members of a criminal
5 gang; establishing certain additional terms of imprisonment for certain offenses
6 committed in association with a criminal gang; establishing certain penalties for
7 certain persons who use or threaten physical violence to coerce a minor to
8 participate in a criminal gang; providing for the confiscation and forfeiture of
9 certain weapons owned or possessed for the purpose of the commission of criminal
10 gang activity; establishing certain forfeiture procedures; defining certain terms; and
11 generally relating to criminal gang activities.

12 BY adding to

13 Article 27 - Crimes and Punishments

14 Section 264D through 264G, to be under the new subheading "Criminal Gang
15 Activity"

16 Annotated Code of Maryland

17 (1992 Replacement Volume and 1995 Supplement)

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

20 **Article 27 - Crimes and Punishments**

21 **CRIMINAL GANG ACTIVITY**

22 264D.

23 (A) IN THIS SUBHEADING, THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (B) "CRIMINAL GANG" MEANS ANY ONGOING FORMAL OR INFORMAL
26 ORGANIZATION, ASSOCIATION, OR GROUP OF THREE OR MORE PERSONS WITH A
27 COMMON NAME AND IDENTIFYING SIGN OR SYMBOL, AND WHOSE MEMBERS
28 INDIVIDUALLY OR COLLECTIVELY ENGAGE IN A PATTERN OF CRIMINAL GANG
29 ACTIVITY.

1 (C) "PATTERN OF CRIMINAL GANG ACTIVITY" MEANS THE COMMISSION,
2 ATTEMPTED COMMISSION, OR SOLICITATION OF ANY OF THE FOLLOWING OFFENSES
3 ON TWO OR MORE SEPARATE OCCASIONS BY TWO OR MORE PERSONS WITHIN A
4 3-YEAR PERIOD:

5 (1) A CRIME OF VIOLENCE AS DEFINED IN § 441 OF THIS ARTICLE;

6 (2) UNLAWFULLY WEARING, CARRYING, OR TRANSPORTING A
7 HANDGUN IN VIOLATION OF § 36B OF THIS ARTICLE; OR

8 (3) POSSESSING AN ASSAULT PISTOL IN VIOLATION OF § 36H-3 OF THIS
9 ARTICLE.

10 264E.

11 (A) A PERSON WHO ACTIVELY PARTICIPATES IN A CRIMINAL GANG WITH
12 KNOWLEDGE THAT ITS MEMBERS ENGAGE IN OR HAVE ENGAGED IN A PATTERN OF
13 CRIMINAL GANG ACTIVITY, AND WHO WILLFULLY PROMOTES, FURTHERS, OR
14 ASSISTS IN ANY FELONIOUS CRIMINAL CONDUCT BY MEMBERS OF THAT GANG, IS
15 GUILTY OF A MISDEMEANOR AND UPON CONVICTION IS SUBJECT TO
16 IMPRISONMENT FOR NOT MORE THAN 3 YEARS.

17 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
18 PERSON WHO IS CONVICTED OF A FELONY COMMITTED FOR THE BENEFIT OF, AT
19 THE DIRECTION OF, OR IN ASSOCIATION WITH ANY CRIMINAL GANG, WITH THE
20 SPECIFIC INTENT TO PROMOTE, FURTHER, OR ASSIST IN ANY CRIMINAL CONDUCT
21 BY GANG MEMBERS, SHALL, UPON CONVICTION OF THAT FELONY, IN ADDITION AND
22 CONSECUTIVE TO THE PUNISHMENT PRESCRIBED FOR THE FELONY OR ATTEMPTED
23 FELONY, SERVE AN ADDITIONAL TERM OF IMPRISONMENT FOR NOT MORE THAN 3
24 YEARS.

25 (2) IF THE UNDERLYING FELONY AS DESCRIBED IN PARAGRAPH (1) OF
26 THIS SUBSECTION IS COMMITTED ON THE GROUNDS OF A PUBLIC OR PRIVATE
27 ELEMENTARY, VOCATIONAL, JUNIOR HIGH, OR HIGH SCHOOL, OR WITHIN 1,000 FEET
28 OF SUCH A SCHOOL, DURING HOURS IN WHICH THE FACILITY IS OPEN FOR CLASSES
29 OR SCHOOL RELATED PROGRAMS OR WHEN MINORS ARE USING THE FACILITY, THE
30 ADDITIONAL TERM OF IMPRISONMENT SHALL BE NOT MORE THAN 4 YEARS.

31 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
32 PERSON WHO IS CONVICTED OF A MISDEMEANOR COMMITTED FOR THE BENEFIT
33 OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH ANY CRIMINAL GANG, WITH
34 THE SPECIFIC INTENT TO PROMOTE, FURTHER, OR ASSIST IN ANY CRIMINAL
35 CONDUCT BY GANG MEMBERS, SHALL, UPON CONVICTION OF THAT MISDEMEANOR,
36 IN ADDITION AND CONSECUTIVE TO THE PUNISHMENT PRESCRIBED FOR THE
37 MISDEMEANOR, SERVE AN ADDITIONAL TERM OF IMPRISONMENT FOR NOT MORE
38 THAN 6 MONTHS.

39 (2) IF THE UNDERLYING MISDEMEANOR AS DESCRIBED IN PARAGRAPH
40 (1) OF THIS SUBSECTION IS COMMITTED ON THE GROUNDS OF A PUBLIC OR PRIVATE
41 ELEMENTARY, VOCATIONAL, JUNIOR HIGH, OR HIGH SCHOOL, OR WITHIN 1,000 FEET
42 OF SUCH A SCHOOL, DURING HOURS IN WHICH THE FACILITY IS OPEN FOR CLASSES

3
1 OR SCHOOL RELATED PROGRAMS OR WHEN MINORS ARE USING THE FACILITY, THE
2 ADDITIONAL TERM OF IMPRISONMENT SHALL BE NOT MORE THAN 1 YEAR.

3 (3) THIS SUBSECTION DOES NOT CHANGE THE STATUS OF THE
4 UNDERLYING OFFENSE FROM A MISDEMEANOR TO A FELONY.

5 (D) (1) ANY ADULT WHO USES PHYSICAL VIOLENCE TO COERCE, INDUCE, OR
6 SOLICIT A MINOR TO ACTIVELY PARTICIPATE IN A CRIMINAL GANG, IS GUILTY OF A
7 MISDEMEANOR AND UPON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT
8 MORE THAN 3 YEARS.

9 (2) ANY ADULT WHO THREATENS A MINOR WITH PHYSICAL VIOLENCE
10 ON TWO OR MORE SEPARATE OCCASIONS WITHIN A 30-DAY PERIOD WITH THE
11 INTENT TO COERCE, INDUCE, OR SOLICIT THE MINOR TO ACTIVELY PARTICIPATE IN
12 A CRIMINAL GANG, SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION
13 IS SUBJECT TO IMPRISONMENT FOR NOT MORE THAN 3 YEARS.

14 (3) ANY MINOR WHO IS 16 YEARS OF AGE OR OLDER WHO COMMITS AN
15 OFFENSE DESCRIBED UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION IS
16 GUILTY OF A MISDEMEANOR.

17 264F.

18 (A) ANY FIREARM, WEAPON, OR AMMUNITION OWNED OR POSSESSED BY A
19 MEMBER OF A CRIMINAL GANG FOR THE PURPOSE OF THE COMMISSION OF
20 CRIMINAL GANG ACTIVITY MAY BE CONFISCATED BY ANY LAW ENFORCEMENT
21 OFFICER AND SUBJECT TO FORFEITURE UNDER § 264G OF THIS ARTICLE.

22 (B) (1) ANY BUILDING USED BY MEMBERS OF A CRIMINAL GANG FOR THE
23 PURPOSE OF THE COMMISSION OF CRIMINAL GANG ACTIVITY IS A NUISANCE THAT
24 MAY BE ENJOINED, ABATED, OR PREVENTED.

25 (2) ANY INJUNCTIONS ISSUED UNDER THIS SUBSECTION SHALL BE
26 LIMITED TO THOSE NECESSARY TO PROTECT THE HEALTH AND SAFETY OF THE
27 RESIDENTS OR THE PUBLIC OR TO THOSE NECESSARY TO PREVENT FURTHER
28 CRIMINAL ACTIVITY.

29 (3) A PERSON WHO OWNS A BUILDING DESCRIBED IN PARAGRAPH (1)
30 OF THIS SUBSECTION MAY BE LIABLE FOR CIVIL PENALTIES IF THE PERSON KNEW
31 OR SHOULD HAVE KNOWN ABOUT THE CRIMINAL GANG ACTIVITY BEING
32 CONDUCTED IN THE BUILDING.

33 (4) ANY SUIT FILED UNDER THIS SUBSECTION MAY NOT BE FILED UNTIL
34 30 DAYS' NOTICE OF THE CRIMINAL GANG ACTIVITY HAS BEEN PROVIDED TO THE
35 OWNER OF THE BUILDING BY MAIL, RETURN RECEIPT REQUESTED, POSTAGE
36 PREPAID, TO THE LAST KNOWN ADDRESS OF THE OWNER.

37 264G.

38 (A) THE FOLLOWING ITEMS OF PROPERTY SHALL BE SUBJECT TO SEIZURE
39 AND FORFEITURE, AND, UPON FORFEITURE, NO PROPERTY RIGHT SHALL EXIST IN
40 THEM:

4

1 (1) ANY FIREARM OR WEAPON OWNED OR POSSESSED BY A MEMBER OF
2 A CRIMINAL GANG UNDER § 264F OF THIS ARTICLE.

3 (2) ALL AMMUNITION OR OTHER PARTS OF OR APPURTENANCES TO
4 ANY SUCH FIREARM OR WEAPON OWNED OR POSSESSED BY SUCH PERSON OR
5 FOUND IN THE IMMEDIATE VICINITY OF SUCH FIREARM OR WEAPON.

6 (B) (1) ANY PROPERTY SUBJECT TO SEIZURE UNDER SUBSECTION (A) OF THIS
7 SECTION MAY BE SEIZED BY ANY DULY AUTHORIZED LAW ENFORCEMENT OFFICER,
8 AS AN INCIDENT TO AN ARREST OR SEARCH AND SEIZURE.

9 (2) ANY SUCH OFFICER SEIZING SUCH PROPERTY UNDER THIS SECTION
10 SHALL EITHER PLACE THE PROPERTY UNDER SEAL OR REMOVE THE SAME TO A
11 LOCATION DESIGNATED EITHER BY THE DEPARTMENT OF STATE POLICE OR BY THE
12 LAW ENFORCEMENT AGENCY HAVING JURISDICTION IN THE LOCALITY.

13 (C) (1) (I) UPON THE SEIZURE OF PROPERTY UNDER THIS SECTION, THE
14 SEIZING AUTHORITY SHALL ATTEMPT TO ASCERTAIN AND LOCATE ITS OWNER BY
15 WHATEVER INQUIRY AND INVESTIGATION IS CONSIDERED APPROPRIATE.

16 (II) IF, AS A RESULT OF AN INQUIRY OR INVESTIGATION, THE
17 NAME AND ADDRESS OF THE REPUTED OWNER OF THE PROPERTY IS ASCERTAINED
18 AND THE OWNER IS A NONRESIDENT OF MARYLAND, THE SEIZING AUTHORITY
19 SHALL NOTIFY THE APPROPRIATE LAW ENFORCEMENT AGENCY OF THE
20 JURISDICTION OF WHICH THE OWNER IS A RESIDENT AND FORWARD THE
21 PROPERTY TO THAT AGENCY FOR DISPOSITION IF THE PROPERTY IS NOT NEEDED
22 FOR INVESTIGATION OR EVIDENCE OR DISPOSED OF UNDER PARAGRAPH (4) OF
23 THIS SUBSECTION.

24 (III) IF THE OWNER IS A RESIDENT OF THE STATE THE SEIZING
25 AUTHORITY MAY RETURN THE PROPERTY TO THE OWNER.

26 (IV) IF THE SEIZING AUTHORITY DOES NOT RETURN THE
27 PROPERTY, IT SHALL PROMPTLY NOTIFY THE OWNER THAT THE OWNER MAY APPLY
28 WITHIN 30 DAYS TO THE SEIZING AUTHORITY FOR A REVIEW TO DETERMINE
29 WHETHER THE OWNER KNEW OR SHOULD HAVE KNOWN THAT THE PROPERTY WAS
30 POSSESSED OR USED IN VIOLATION OF § 264F, AND WHETHER THE OWNER IS
31 QUALIFIED TO POSSESS IT.

32 (V) QUALIFICATION FOR POSSESSION IS THE SAME AS FOR SALE
33 OR TRANSFER UNDER § 442 OF THIS ARTICLE.

34 (VI) KNOWINGLY GIVING FALSE INFORMATION OR MAKING A
35 MATERIAL MISSTATEMENT IN THE APPLICATION FOR REVIEW OR AN
36 INVESTIGATION OF THE APPLICATION IS SUBJECT TO THE PENALTIES SET FORTH IN
37 § 448 OF THIS ARTICLE.

38 (2) (I) UPON TIMELY RECEIPT OF AN APPLICATION, THE SEIZING
39 AUTHORITY SHALL HOLD AN INFORMAL REVIEW NOT SUBJECT TO THE
40 ADMINISTRATIVE PROCEDURE ACT ON THE MATTER OF WHETHER THE OWNER
41 EITHER KNEW OR SHOULD HAVE KNOWN OF THE USE OR INTENDED USE OF THE
42 PROPERTY IN VIOLATION OF § 264F.

1 (II) IF, AFTER THAT REVIEW, THE DETERMINATION OF THE
2 SEIZING AUTHORITY IS FAVORABLE TO THE OWNER, THE PROPERTY SHALL BE
3 RELEASED TO THE OWNER IF THE OWNER IS QUALIFIED TO POSSESS IT, UNLESS THE
4 PROPERTY IS NEEDED AS EVIDENCE IN A CRIMINAL CASE OR INVESTIGATION, IN
5 WHICH EVENT THE PROPERTY SHALL BE PROMPTLY RETURNED UPON THE FINAL
6 CONCLUSION OF THE CASE OR INVESTIGATION.

7 (3) (I) IF THE SEIZING AUTHORITY DETERMINES AFTER REVIEW
8 THAT THE PROPERTY SHOULD BE FORFEITED TO THE STATE, THE OWNER SHALL BE
9 SO NOTIFIED AT HIS LAST KNOWN ADDRESS AND WITHIN 30 DAYS THEREAFTER THE
10 OWNER MAY PETITION THE APPROPRIATE DISTRICT COURT FOR RELEASE OF THE
11 PROPERTY TO THE OWNER.

12 (II) THE STATE'S ATTORNEY SHALL REPRESENT THE STATE IN THE
13 ACTION.

14 (III) THE COURT SHALL HEAR THE MATTER AND GRANT
15 WHATEVER RELIEF IS PROPER AND IN ACCORDANCE WITH THIS SUBSECTION.

16 (4) (I) IN A PROCEEDING IN A CRIMINAL CASE INVOLVING SEIZED
17 PROPERTY A COURT MAY ORDER FORFEITURE OR RELEASE OF THE SEIZED
18 PROPERTY IN ACCORDANCE WITH THE CRITERIA FOR RELEASE SET FORTH IN THIS
19 SUBSECTION.

20 (II) PERSONS WHO HAVE MADE WRITTEN CLAIM OF OWNERSHIP
21 OF THE PROPERTY TO THE SEIZING AUTHORITY OR THE STATE'S ATTORNEY SHALL
22 BE NOTIFIED OF THE PROCEEDING AND OF THE CLAIMANT'S RIGHT TO PRESENT A
23 CLAIM AT THE PROCEEDING.

24 (III) A CLAIMANT WHO HAS COMPLETED THE REVIEW PROCEDURE
25 PROVIDED FOR BY THIS SUBSECTION DOES NOT HAVE THE RIGHT TO A SECOND
26 REVIEW UNDER THIS PARAGRAPH.

27 (5) IF NO TIMELY APPLICATION FOR A REVIEW UNDER PARAGRAPH (2)
28 OF THIS SUBSECTION OR A PETITION TO THE COURT UNDER PARAGRAPH (3) OF THIS
29 SUBSECTION IS EFFECTED, OR ORDER FOR RELEASE UNDER PARAGRAPH (4) OF
30 THIS SUBSECTION IS ISSUED, THE PROPERTY SHALL BE FORFEITED TO THE STATE
31 WITHOUT FURTHER PROCEEDINGS AND DESTROYED BY THE SEIZING AUTHORITY
32 OR DISPOSED OF IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

33 (6) IF A REPUTED OWNER OF SEIZED PROPERTY IS NOT ASCERTAINED
34 AND LOCATED PURSUANT TO INQUIRY OR INVESTIGATION CONDUCTED UNDER
35 PARAGRAPH (1) OF THIS SUBSECTION, THE PROPERTY IS FORFEITED TO THE STATE
36 WITHOUT FURTHER PROCEEDINGS.

37 (D) (1) WHENEVER PROPERTY IS FORFEITED UNDER THIS SECTION, THE LAW
38 ENFORCEMENT AGENCY SEEKING FORFEITURE OF THE PROPERTY MAY:

39 (I) ORDER THE PROPERTY RETAINED FOR THE OFFICIAL USE OF
40 THE LAW ENFORCEMENT AGENCY; OR

6

1 (II) MAKE SUCH OTHER DISPOSITION OF THE PROPERTY AS THE
2 LAW ENFORCEMENT AGENCY DEEMS APPROPRIATE.

3 (2) WITHIN 30 DAYS OF THE DISPOSITION OF THE FORFEITED
4 PROPERTY, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE SECRETARY OF
5 THE STATE POLICE OF:

6 (I) THE DESCRIPTION OF THE PROPERTY FORFEITED;

7 (II) THE TYPE OF DISPOSITION MADE;

8 (III) THE IDENTITY OF THE PERSON TO WHOM THE PROPERTY WAS
9 TRANSFERRED FOR DISPOSAL, RETENTION, OR RESALE; AND

10 (IV) IF THE PERSON WAS A LICENSED FIREARMS DEALER, THE
11 FIREARMS DEALER'S LICENSE NUMBER AND ADDRESS.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 1996.