

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 51
Judiciary

(Delegates Ramirez and Parker)

Criminal Law - Criminal Street Gangs - Participation and Recruitment

This bill prohibits, as felonies, various acts and activities connected with a person's involvement with "criminal street gangs."

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's penalty provisions. Revenues would not be affected.

Local Effect: Additional cases arising from the felonies created under this bill would generally be heard in the circuit courts and juvenile courts. It is assumed that any increase in caseload would be minimal, and could be handled with the existing budgeted resources of the courts.

Small Business Effect: None.

Analysis

Bill Summary: This bill prohibits a person from: (1) actively participating in a criminal street gang with knowledge that the gang members engage in a "pattern of gang activity;" and (2) willfully promoting, furthering, or assisting in the commission of a felony by a gang member. A violator is guilty of a felony and subject to imprisonment for a mandatory minimum of five years and a maximum of 10 years. The mandatory minimum portion of the sentence may not be suspended.

A person is prohibited from soliciting or recruiting another to actively participate in a criminal street gang with the intent that the person solicited or recruited: (1) actively

participate in a pattern of gang activity; or (2) “promote,” further, or assist in the commission of a felony by a gang member. A violator is guilty of a felony and subject to imprisonment for a mandatory minimum of five years and a maximum of 10 years. The mandatory minimum portion of the sentence may not be suspended.

A person is prohibited from threatening another with physical violence on two or more occasions within a 30-day period with the intent to “coerce,” induce, or “solicit” the other to participate actively in a criminal street gang. A violator is guilty of a felony and subject to imprisonment for a mandatory minimum of two years and a maximum of four years. The mandatory minimum portion of the sentence may not be suspended.

A person is prohibited from using physical violence to: (1) coerce, induce, or solicit another to participate actively in a criminal street gang; or (2) prevent another from leaving a gang. A violator is guilty of a felony and subject to imprisonment for a mandatory minimum of three years and a maximum of five years. The mandatory minimum portion of the sentence may not be suspended.

A person is prohibited from committing a violation of any of the above cited prohibitions against a minor. A violator is guilty of a felony and subject to imprisonment for a mandatory minimum of three years, which may not be suspended and which must be imposed consecutively to any other violation of these provisions.

The bill provides that its provisions may not interfere with the exercise of an individual’s constitutionally protected rights of freedom of expression and association. The bill’s prohibitions apply to the commission of, attempted commission of, solicitation of, conspiracy to commit, or conviction of two or more of certain enumerated crimes if: (1) at least one of these crimes occurred on or after October 1, 2004; (2) the last crime occurred within three years after a prior crime; and (3) each crime was committed on a separate occasion or by two or more persons.

In addition, the bill provides that these provisions may not be construed to limit prosecution for a violation of any other provision with respect to any activity that constitutes a violation of these provisions.

Current Law: There are no current provisions in Maryland directly addressing participation in criminal gang activity.

Chapter 339 of 2000 revoked, except for death penalty proceedings, the distinction between an accessory before the fact and a principal in a crime. Proceedings against an accessory before the fact are allowed: (1) in the same manner as a principal; (2) regardless of proceedings or dispositions concerning a principal in the crime; and (3) in any county where the act of accessoryship occurred or where a principal may be tried.

Formerly a common law offense, the felony of accessory after the fact was codified by Chapter 167 of 2001. That Act provides that, unless another penalty is provided by law, the penalty for the offense is the lesser of imprisonment not exceeding five years or a penalty not exceeding the maximum penalty provided by law for committing the crime.

A person, with the intent to extort or gain money, property, or anything of value from another, may not verbally threaten to: (1) accuse any person of a crime that may be charged by indictment under the laws of the State or of anything that, if true, would bring the person into contempt or disrepute; or (2) injure the person or property of anyone. A violator is guilty of a felony and subject to imprisonment for not less than two years and not more than 10 years.

A person or group may not engage in an act or conduct solely to coerce or intimidate another person to contribute or donate any money, goods, materials, or services to a social, economic, or political association or organization. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a fine of \$100. Each day on which a violation occurs is a separate violation.

Background: Under California's criminal law provisions, any person who actively participates in any criminal street gang activity with knowledge that its members engage in or have engaged in a pattern of such activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, are subject to imprisonment for up to three years. California similarly prohibits the solicitation or recruitment of persons to participate in criminal street gang activity; the use of threats of physical violence two or more times in a 30-day period with the intent to coerce, induce, or solicit participation in a criminal street gang; and the actual use of physical force for such coercion, inducement, or solicitation.

State Expenditures: Criminal street gangs continue to be a problem in Montgomery and Prince George's counties, with similar concerns relating to neighborhood drug gangs in Baltimore City. However, it is unclear whether the provisions of this bill would necessarily spur a greater number of successful criminal prosecutions against such gangs. As a result, the number of people convicted of these proposed crimes is expected to be minimal.

General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds,

personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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mh/jr

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