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By: **Delegates Griffith, Anderson, Barkley, Benson, Branch, Cadden, Cane, Donoghue, Dumais, Frush, Gaines, Healey, Howard, Hubbard, James, Kelley, King, Kohl, Madaleno, Marriott, Moe, Niemann, Parker, Ross, F. Turner, Vaughn, and Zirkin**

Introduced and read first time: February 2, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Criminal Gang Offenses - Abatement of Criminal Gang**  
3 **Activity as a Nuisance**

4 FOR the purpose of prohibiting a person from participating actively in a criminal  
5 gang with knowledge that the gang members engage in certain criminal activity;  
6 prohibiting a person from promoting, furthering, or assisting in certain criminal  
7 conduct by criminal gang members; prohibiting a person from soliciting or  
8 recruiting another to participate actively in a criminal gang with the intent that  
9 the person solicited or recruited participate in, or promote, further, or assist in  
10 certain criminal conduct; providing an enhanced penalty for a conviction of  
11 causing malicious damage to property if the act was committed at the direction  
12 of a criminal gang; establishing certain penalties for certain violations of this  
13 Act; declaring the findings and intent of the General Assembly; including  
14 certain offenses involving criminal gang affiliation in the list of offenses for  
15 which a law enforcement unit making an arrest of a child enrolled in a public  
16 school system is required to notify the local superintendent; altering the  
17 definition of nuisance to include the use of property in furtherance of certain  
18 criminal gang activity; defining a certain term; making technical corrections;  
19 providing for the application of this Act; providing for the construction of this  
20 Act; and generally relating to criminal gangs.

21 BY repealing and reenacting, with amendments,  
22 Article - Criminal Law  
23 Section 6-301, 9-801, 9-802, and 9-803  
24 Annotated Code of Maryland  
25 (2002 Volume and 2005 Supplement)

26 BY adding to  
27 Article - Criminal Law  
28 Section 9-802 through 9-805, inclusive  
29 Annotated Code of Maryland

1 (2002 Volume and 2005 Supplement)  
2 BY repealing and reenacting, without amendments,  
3 Article - Education  
4 Section 7-303(a)(1)  
5 Annotated Code of Maryland  
6 (2004 Replacement Volume and 2005 Supplement)

7 BY repealing and reenacting, with amendments,  
8 Article - Education  
9 Section 7-303(a)(6)(vii)  
10 Annotated Code of Maryland  
11 (2004 Replacement Volume and 2005 Supplement)

12 BY repealing and reenacting, without amendments,  
13 Article - Real Property  
14 Section 14-120(a)(1), (b), and (c)  
15 Annotated Code of Maryland  
16 (2003 Replacement Volume and 2005 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Real Property  
19 Section 14-120(a)(5)  
20 Annotated Code of Maryland  
21 (2003 Replacement Volume and 2005 Supplement)

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

24 **Article - Criminal Law**

25 6-301.

26 (A) FOR PURPOSES OF THIS SECTION, AN ACT OF "GRAFFITI" MEANS A  
27 PERMANENT DRAWING, PERMANENT PAINTING, OR A PERMANENT MARK OR  
28 INSCRIPTION ON THE PROPERTY OF ANOTHER WITHOUT THE PERMISSION OF THE  
29 OWNER OF THE PROPERTY.

30 [(a)] (B) A person may not willfully and maliciously destroy, injure, or deface  
31 the real or personal property of another.

32 [(b)] (C) (1) A person who, in violation of this section, causes damage of at  
33 least \$500 to the property is guilty of a misdemeanor and on conviction is subject to  
34 imprisonment not exceeding 3 years or a fine not exceeding \$2,500 or both.

1           (2)     A PERSON WHO, IN VIOLATION OF THIS SECTION, CAUSES DAMAGE  
2 OF AT LEAST \$500 TO THE PROPERTY BY AN ACT OF GRAFFITI COMMITTED AT THE  
3 DIRECTION OF OR IN ASSOCIATION WITH A CRIMINAL GANG, AS DEFINED IN § 9-801  
4 OF THIS ARTICLE, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT  
5 TO IMPRISONMENT NOT EXCEEDING 3 YEARS AND SHALL PAY A FINE NOT  
6 EXCEEDING \$2,500.

7     [(c)]   (D)   (1)     A person who, in violation of this section, causes damage of less  
8 than \$500 to the property is guilty of a misdemeanor and on conviction is subject to  
9 imprisonment not exceeding 60 days or a fine not exceeding \$500 or both.

10           (2)     A PERSON WHO, IN VIOLATION OF THIS SECTION, CAUSES DAMAGE  
11 OF LESS THAN \$500 TO THE PROPERTY BY AN ACT OF GRAFFITI COMMITTED AT THE  
12 DIRECTION OF OR IN ASSOCIATION WITH A CRIMINAL GANG, AS DEFINED IN § 9-801  
13 OF THIS ARTICLE, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT  
14 TO IMPRISONMENT NOT EXCEEDING 60 DAYS AND SHALL PAY A FINE NOT  
15 EXCEEDING \$500.

16     [(d)]   (E)   (1)     [For purposes of this subsection, an act of "graffiti" means a  
17 permanent drawing, permanent painting, or a permanent mark or inscription on the  
18 property of another without the permission of the owner of the property.

19           (2)]     In addition to the penalties set forth in subsections [(b) and] (c) AND  
20 (D) of this section, the court shall order a person convicted of causing malicious  
21 destruction by an act of graffiti to pay restitution or perform community service or  
22 both.

23           [(3)]   (2)     Title 11, Subtitle 6 of the Criminal Procedure Article applies to  
24 an order of restitution under this subsection.

25     [(e)]   (F)   (1)     Except as provided in paragraph (2) of this subsection, to  
26 determine a penalty, the court may consider as one crime the aggregate value of  
27 damage to each property resulting from one scheme or continuing course of conduct.

28           (2)     If separate acts resulting in damage to the properties of one or more  
29 owners are set forth by separate counts in one or more charging documents, the  
30 separate counts may not be merged for sentencing.

31     [(f)]   (G)   (1)     The value of damage is not a substantive element of a crime  
32 under this section and need not be stated in the charging document.

33           (2)     The value of damage shall be based on the evidence and that value  
34 shall be applied for the purpose of imposing the penalties established in this section.

35           (3)     If it cannot be determined from the evidence whether the value of the  
36 damage to the property is more or less than \$500, the value is deemed to be less than  
37 \$500.

1 9-801.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) "Coerce" means to compel or attempt to compel another by threat of harm  
4 or other adverse consequences.

5 (c) "Criminal gang" means a group or any association of three or more  
6 persons:

7 (1) that forms to engage in criminal activity, including acts by juveniles  
8 that would be crimes if committed by adults, for the purposes of pecuniary gain or to  
9 create an atmosphere of fear and intimidation either collectively or with knowledge of  
10 the acts of the members of the group; and

11 (2) whose members have a common identifying sign, symbol, or name.

12 (D) "PATTERN OF CRIMINAL GANG ACTIVITY" MEANS THE COMMISSION OF,  
13 ATTEMPTED COMMISSION OF, SOLICITATION OF, CONSPIRACY TO COMMIT, OR  
14 CONVICTION OF TWO OR MORE OF THE FOLLOWING SUBJECT CRIMES:

15 (1) BURGLARY IN THE FIRST, SECOND, OR THIRD DEGREE UNDER §  
16 6-202, § 6-203, OR § 6-204 OF THIS ARTICLE;

17 (2) A CONTROLLED DANGEROUS SUBSTANCE CRIME UNDER § 5-601 OR §  
18 5-602 OF THIS ARTICLE;

19 (3) A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THIS ARTICLE;

20 (4) FELONY EXTORTION UNDER § 3-701 OF THIS ARTICLE;

21 (5) USE OF A FIREARM, AS DEFINED IN § 6-201 OF THIS ARTICLE, IN THE  
22 COMMISSION OF A FELONY OR OTHER CRIME OF VIOLENCE, AS DEFINED IN § 14-101  
23 OF THIS ARTICLE;

24 (6) THE INTIMIDATION OF A WITNESS OR VICTIM UNDER § 9-302, § 9-303,  
25 OR § 9-304 OF THIS TITLE;

26 (7) MALICIOUS DESTRUCTION OF PROPERTY UNDER § 6-301 OF THIS  
27 ARTICLE;

28 (8) PROSTITUTION UNDER § 11-303, § 11-304, § 11-305, OR § 11-306 OF THIS  
29 ARTICLE;

30 (9) STALKING UNDER § 3-802 OF THIS ARTICLE;

31 (10) THEFT OF PROPERTY WITH A VALUE OF \$500 OR MORE UNDER § 7-104  
32 OR § 7-105 OF THIS ARTICLE;

33 (11) TORTURE, AS DEFINED IN § 3-812 OF THE COURTS ARTICLE;

1 (12) POSSESSION OF OR THE SALE, RENTAL, OR TRANSFER OF A FIREARM  
2 UNDER § 5-133, § 5-134, OR § 5-136 OF THE PUBLIC SAFETY ARTICLE; OR

3 (13) MONEY LAUNDERING UNDER 18 U.S.C. § 1956.

4 [(d)] (E) "Solicit" has the meaning stated in § 11-301 of this article.

5 9-802.

6 (A) THE GENERAL ASSEMBLY FINDS THAT ANY INDIVIDUAL, REGARDLESS OF  
7 RACE, COLOR, RELIGIOUS BELIEFS, NATIONAL ORIGIN, GENDER, AGE, SEXUAL  
8 ORIENTATION, OR DISABILITY, SHOULD FEEL SECURE AND PROTECTED FROM FEAR,  
9 INTIMIDATION, AND PHYSICAL HARM CAUSED BY THE ACTIVITIES OF VIOLENT  
10 GROUPS AND INDIVIDUALS.

11 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ENFORCEMENT OF  
12 THIS SUBTITLE ERADICATE CRIMINAL ACTIVITY BY CRIMINAL GANGS BY FOCUSING  
13 ON PATTERNS OF CRIMINAL GANG ACTIVITY AND THE ORGANIZED NATURE OF  
14 GANGS THAT, TOGETHER, ARE THE CHIEF SOURCES OF TERROR CREATED BY  
15 CRIMINAL GANGS.

16 9-803.

17 (A) THIS SUBTITLE MAY NOT INTERFERE WITH THE EXERCISE OF AN  
18 INDIVIDUAL'S CONSTITUTIONALLY PROTECTED RIGHTS OF FREEDOM OF  
19 EXPRESSION AND ASSOCIATION.

20 (B) SECTIONS 9-804 AND 9-805 OF THIS SUBTITLE APPLY TO THE COMMISSION  
21 OF, ATTEMPTED COMMISSION OF, SOLICITATION OF, CONSPIRACY TO COMMIT, OR  
22 CONVICTION OF TWO OR MORE OF THE SUBJECT CRIMES LISTED IN § 9-801(D) OF  
23 THIS SUBTITLE IF:

24 (1) THE LATEST SUBJECT CRIME OCCURRED WITHIN 3 YEARS AFTER A  
25 PRIOR SUBJECT CRIME; AND

26 (2) EACH SUBJECT CRIME WAS COMMITTED ON A SEPARATE OCCASION  
27 OR BY TWO OR MORE PERSONS.

28 9-804.

29 (A) A PERSON MAY NOT:

30 (1) ACTIVELY PARTICIPATE IN A CRIMINAL GANG KNOWING THAT THE  
31 GANG MEMBERS ENGAGE IN A PATTERN OF CRIMINAL GANG ACTIVITY; AND

32 (2) WILFULLY PROMOTE, FURTHER, OR ASSIST IN THE COMMISSION OF  
33 A FELONY BY A CRIMINAL GANG MEMBER.

34 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON  
35 CONVICTION SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 10 YEARS  
36 AND IS SUBJECT TO A FINE NOT EXCEEDING \$5,000.

1 9-805.

2 (A) A PERSON MAY NOT SOLICIT OR RECRUIT ANOTHER TO PARTICIPATE  
3 ACTIVELY IN A CRIMINAL GANG WITH THE INTENT THAT THE PERSON SOLICITED OR  
4 RECRUITED:

5 (1) ACTIVELY PARTICIPATE IN A PATTERN OF CRIMINAL GANG  
6 ACTIVITY; OR

7 (2) PROMOTE, FURTHER, OR ASSIST IN THE COMMISSION OF A FELONY  
8 BY A CRIMINAL GANG MEMBER.

9 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON  
10 CONVICTION SHALL BE SENTENCED TO IMPRISONMENT NOT EXCEEDING 10 YEARS  
11 AND IS SUBJECT TO A FINE NOT EXCEEDING \$5,000.

12 [9-802.] 9-806.

13 (a) A person may not threaten an individual, or a friend or family member of  
14 an individual, with physical violence with the intent to coerce, induce, or solicit the  
15 individual to participate in or prevent the individual from leaving a criminal gang.

16 (b) A person who violates this section is guilty of a misdemeanor and on  
17 conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding  
18 \$1,000 or both.

19 [9-803.] 9-807.

20 (a) A person may not threaten an individual, or a friend or family member of  
21 an individual, with or use physical violence to coerce, induce, or solicit the individual  
22 to participate in or prevent the individual from leaving a criminal gang:

23 (1) in a school vehicle, as defined under § 11-154 of the Transportation  
24 Article; or

25 (2) in, on, or within 1,000 feet of real property owned by or leased to an  
26 elementary school, secondary school, or county board of education and used for  
27 elementary or secondary education.

28 (b) Subsection (a) of this section applies whether or not:

29 (1) school was in session at the time of the crime; or

30 (2) the real property was being used for purposes other than school  
31 purposes at the time of the crime.

32 (c) A person who violates this section is guilty of a misdemeanor and on  
33 conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding  
34 \$4,000 or both.

1 (d) Notwithstanding any other law, a conviction under this section may not  
2 merge with a conviction under [§ 9-802] § 9-806 of this subtitle.

3 **Article - Education**

4 7-303.

5 (a) (1) In this section the following words have the meanings indicated.

6 (6) "Reportable offense" means:

7 (vii) A violation of [§ 9-802 or § 9-803] § 9-804, § 9-805, § 9-806, OR §  
8 9-807 of the Criminal Law Article.

9 **Article - Real Property**

10 14-120.

11 (a) (1) In this section the following words have the meanings indicated.

12 (5) "Nuisance" means a property that is used:

13 (i) By persons who assemble for the specific purpose of illegally  
14 administering a controlled dangerous substance;

15 (ii) For the illegal manufacture, or distribution of:

16 1. A controlled dangerous substance; or

17 2. Controlled paraphernalia, as defined in § 5-101 of the  
18 Criminal Law Article; [or]

19 (iii) For the illegal storage or concealment of a controlled dangerous  
20 substance in sufficient quantity to reasonably indicate under all the circumstances an  
21 intent to manufacture, distribute, or dispense:

22 1. A controlled dangerous substance; or

23 2. Controlled paraphernalia, as defined in § 5-101 of the  
24 Criminal Law Article; OR

25 (IV) BY PERSONS IN THE FURTHERANCE OF A PATTERN OF  
26 CRIMINAL GANG ACTIVITY, AS DEFINED IN § 9-801 OF THE CRIMINAL LAW ARTICLE.

27 (b) An action under § 4-401 of the Courts Article to abate a nuisance may be  
28 brought by:

29 (1) The State's Attorney of the county in which the nuisance is located;

30 (2) The county attorney or solicitor of the county in which the nuisance is  
31 located;

1 (3) A community association within whose boundaries the nuisance is  
2 located; or

3 (4) A municipal corporation within whose boundaries the nuisance is  
4 located.

5 (c) An action under § 4-401 of the Courts Article to abate a nuisance may be  
6 brought against:

7 (1) A tenant of the property where the nuisance is located;

8 (2) An owner of the property where the nuisance is located; or

9 (3) An operator of the property where the nuisance is located.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
11 construed to apply only prospectively and may not be applied or interpreted to have  
12 any effect on or application to any criminal action begun before the effective date of  
13 this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be  
15 construed to limit prosecution for a violation of any other provision of law with respect  
16 to any activity that constitutes a violation of this Act.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2006.