

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 672
Judiciary

(Delegate Griffith, *et al.*)

Criminal Law - Criminal Gang Offenses - Abatement of Criminal Gang Activity
as a Nuisance

This bill alters and adds to provisions abating criminal gang activity.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: Specifically, the bill makes the following changes:

- A person is prohibited from participating actively in a criminal gang with knowledge that the gang members engage in a "pattern of criminal gang activity." A person is prohibited from willfully promoting, furthering, or assisting in the commission of a felony by a criminal gang member. A person is prohibited from soliciting another to participate actively in a criminal gang with the intent that the other person actively participate in a pattern of criminal gang activity or promote, further, or assist in the commission of a felony by a gang member. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

- The bill provides a misdemeanor penalty for a conviction of causing malicious damage to property if an act of “graffiti” was committed at the direction of a criminal gang. If the damage is at least \$500, a violator is subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500. If the damage is less than \$500, a violator is subject to maximum penalties of imprisonment for 60 days and/or a fine of \$500.
- The prohibitions created under the bill are included under the definition of “reportable offense” in the Education Article under provisions relating to arrests for such offenses.
- The bill changes a definition of nuisance, under specified provisions of the Real Property Article, to include the use of property in furtherance of a pattern of criminal gang activity.
- The bill expresses the intent of the General Assembly that enforcement of provisions of the Obstructing Justice Subtitle of the Criminal Law Article (as added under this bill) eradicate criminal activity by criminal gangs by focusing on patterns of criminal gang activity and the organized nature of gangs that, together, are the chief sources of terror created by criminal gangs.
- The bill’s provisions are required to be applied prospectively and may not be construed to limit prosecution for a violation of any other provision with respect to any activity that constitutes a violation of the provisions of this bill.

Current Law: Chapter 313 of 2005 created new offenses relating to criminal gang activity. A person is prohibited from threatening an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000. As a separate crime, a person is also prohibited from making such threats in a school vehicle or within 1,000 feet of a school. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for four years and/or a \$4,000 fine. A conviction for the latter offense may not merge with a conviction for the former offense. 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.

Chapter 313 authorizes prior felony or misdemeanor convictions, if related to the defendant's membership in a criminal gang, to be included in a presentence investigation report for a court by the Division of Parole and Probation.

Under the Act, "criminal gang" is defined as a group or any association of three or more persons: (1) that forms to engage in criminal activity, including acts by juveniles that would be crimes if committed by adults, for the purposes of pecuniary gain or to create an atmosphere of fear and intimidation either collectively or with knowledge of the acts of the members of the group; and (2) whose members have a common identifying sign, symbol, or name.

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 2 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.

Reportable offenses to school superintendents include crimes of violence, crimes not within the original jurisdiction of the juvenile court, certain weapon and drug offenses, and possession of explosives and bomb threats. Chapter 313 added violations of these criminal gang activity prohibitions, as well as arson and malicious burning, to the list of offenses that must be reported to the local superintendent of schools if a public school student is arrested and charged with the offense. If a child enrolled in a public school system is arrested for any of these offenses, the law enforcement agency making the arrest must notify the local superintendent of schools of the arrest and the charges within 24 hours or as soon as practicable. The State's Attorney must promptly notify the superintendent of the disposition of a reportable offense. Information about a reportable offense obtained by a local superintendent must be used to provide appropriate educational programming and related services to the child committing the offense and to maintain a safe school environment for students and personnel. Information may only be transmitted to the principal of the school the child attends and a limited number of other school personnel who need to know.

Background: 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.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: 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 and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2007.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 24, 2006
nas/jr

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