

SENATE BILL 632

E1, E2

7lr2996
CF HB 713

By: **Senator Jacobs and the President (By Request - ~~Administration, Attorney General, and Maryland State's Attorneys' Association~~ Administration and Attorney General) and Senators Brochin, Haines, Simonaire, and Stone**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 2, 2007

CHAPTER _____

1 AN ACT concerning

2 **Maryland Gang Prosecution Act of 2007**

3 FOR the purpose of prohibiting a person from participating in a certain criminal gang
4 knowing that the members of the gang engage in ~~or have engaged in~~ a certain
5 pattern of criminal gang activity; prohibiting a person from knowingly and
6 willfully ~~promoting, furthering, or assisting in a~~ directing or participating in a
7 certain criminal offense committed for the benefit of, at the direction of, or in
8 association with a criminal gang; prohibiting a person from committing a
9 violation of this Act involving the commission of an offense that results in the
10 death of the victim; establishing penalties for a violation of this Act;
11 establishing that a sentence imposed under this Act may be separate from and
12 consecutive to or concurrent with a sentence for a crime based on the act
13 establishing a violation of this Act; providing that a defendant may only be
14 charged with a violation under this Act by indictment, criminal information, or
15 a petition alleging a delinquent act; authorizing the Attorney General, ~~with the~~
16 ~~consent~~ at the request of a certain State's Attorney, to aid in a certain
17 investigation and prosecution under certain circumstances; establishing that
18 the Attorney General has all the powers and duties of a State's Attorney in

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain circumstances; authorizing certain State's Attorneys or the Attorney
2 General to join certain causes of action in certain circumstances; authorizing a
3 certain grand jury to conduct a certain investigation; requiring the Attorney
4 General and the Maryland State's Attorneys' Association to provide the General
5 Assembly with a certain report; defining ~~a certain term~~ certain terms; altering a
6 certain term; and generally relating to criminal gangs.

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Law
9 Section 9–801
10 Annotated Code of Maryland
11 (2002 Volume and 2006 Supplement)

12 BY adding to
13 Article – Criminal Law
14 Section 9–804
15 Annotated Code of Maryland
16 (2002 Volume and 2006 Supplement)

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

19 **Article – Criminal Law**

20 9–801.

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

22 (b) “Coerce” means to compel or attempt to compel another by threat of harm
23 or other adverse consequences.

24 (c) “Criminal gang” means a group or [any] ~~OTHER FORMAL OR INFORMAL~~
25 ONGOING association of three or more persons **WHOSE MEMBERS:**

26 (1) [that forms to] **INDIVIDUALLY OR COLLECTIVELY** engage in **A**
27 **PATTERN OF** criminal **GANG** activity;

28 (2) **HAVE AS ONE OF THEIR PRIMARY OBJECTIVES OR ACTIVITIES**
29 **THE COMMISSION OF ONE OR MORE** ~~CRIMINAL ACTIVITIES~~ UNDERLYING
30 CRIMES, including acts by juveniles that would be UNDERLYING crimes if committed
31 by adults[, for the purposes of pecuniary gain or to create an atmosphere of fear and

1 intimidation either collectively or with knowledge of the acts of the members of the
2 group]; and

3 [(2)] (3) [whose members] have [a] IN common AN identifying sign,
4 symbol, [or] name, LEADER, OR PURPOSE.

5 (d) **“PATTERN OF CRIMINAL GANG ACTIVITY” MEANS THE COMMISSION**
6 **OF, ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, OR SOLICITATION**
7 **OF TWO OR MORE ~~OF THE FOLLOWING~~ UNDERLYING CRIMES OR ACTS BY A**
8 **JUVENILE THAT WOULD BE ~~A~~ AN UNDERLYING CRIME IF COMMITTED BY AN**
9 **ADULT, PROVIDED THE CRIMES OR ACTS WERE NOT PART OF THE SAME**
10 **INCIDENT.**

11 (1) ~~A CRIME OF VIOLENCE AS DEFINED UNDER § 14-101 OF THIS~~
12 ~~ARTICLE;~~

13 (2) ~~A VIOLATION OF §§ 3-203, 3-210, 4-503, 5-601, 5-602, 6-103,~~
14 ~~6-107, 6-109, 6-202, 6-203, 6-204, 7-104, 7-105, 9-302, 9-303, 9-304, 11-303,~~
15 ~~11-304, 11-305, AND 11-306 OF THIS ARTICLE; AND~~

16 (3) ~~A VIOLATION OF §§ 5-113, 5-134, AND 5-136 OF THE PUBLIC~~
17 ~~SAFETY ARTICLE.~~

18 (E) “Solicit” has the meaning stated in § 11-301 of this article.

19 (F) **“UNDERLYING CRIME” MEANS:**

20 (1) **A CRIME OF VIOLENCE AS DEFINED UNDER § 14-101 OF THIS**
21 **ARTICLE;**

22 (2) **A FELONY VIOLATION OF § 3-203, § 3-701, § 4-503, § 5-602, §**
23 **6-103, § 6-109, § 6-202, § 6-203, § 6-204, § 7-104, § 7-105, § 9-302, § 9-303, OR**
24 **§ 9-305 OF THIS ARTICLE; OR**

25 (3) **A FELONY VIOLATION OF § 5-133 OF THE PUBLIC SAFETY**
26 **ARTICLE.**
27 **9-804.**

28 (A) A PERSON MAY NOT:

1 (1) PARTICIPATE IN A CRIMINAL GANG KNOWING THAT THE
2 MEMBERS OF THE GANG ENGAGE IN ~~OR HAVE ENGAGED IN A~~ AN ONGOING
3 PATTERN OF CRIMINAL GANG ACTIVITY; AND

4 (2) ~~WILLFULLY PROMOTE, FURTHER, OR ASSIST IN A CRIMINAL~~
5 ~~OFFENSE~~ KNOWINGLY AND WILLFULLY DIRECT OR PARTICIPATE IN THE
6 COMMISSION OF AN UNDERLYING CRIME, OR ACT BY A JUVENILE THAT WOULD
7 BE AN UNDERLYING CRIME IF COMMITTED BY AN ADULT, COMMITTED FOR THE
8 BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH A CRIMINAL
9 GANG.

10 (B) A PERSON MAY NOT COMMIT A VIOLATION OF SUBSECTION (A) OF
11 THIS SECTION INVOLVING THE COMMISSION OF AN UNDERLYING CRIME THAT
12 RESULTS IN THE DEATH OF A VICTIM.

13 ~~(B)~~ (C) (1) (I) A EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)
14 OF THIS PARAGRAPH, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
15 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING
16 ~~30~~ 10 YEARS OR A FINE NOT EXCEEDING \$100,000 OR BOTH.

17 (II) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS
18 SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO
19 IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING \$100,000
20 OR BOTH.

21 (2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE
22 SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE
23 FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS
24 SECTION.

25 ~~(C)~~ (D) A PERSON MAY ~~ONLY~~ BE CHARGED WITH A VIOLATION OF THIS
26 SECTION ONLY BY INDICTMENT, CRIMINAL INFORMATION, OR PETITION
27 ALLEGING A DELINQUENT ACT.

28 ~~(D)~~ (E) (1) THE ATTORNEY GENERAL, ~~WITH THE CONSENT AT THE~~
29 REQUEST OF THE STATE'S ATTORNEY FOR A COUNTY IN WHICH A VIOLATION OR
30 AN ACT ESTABLISHING A VIOLATION OF THIS SECTION OCCURS, MAY:

1 (I) AID IN THE INVESTIGATION OF THE VIOLATION OR ACT;
2 AND

3 (II) PROSECUTE THE VIOLATION OR ACT.

4 (2) IN EXERCISING AUTHORITY UNDER PARAGRAPH (1) OF THIS
5 SUBSECTION, THE ATTORNEY GENERAL HAS ALL THE POWERS AND DUTIES OF A
6 STATE'S ATTORNEY, INCLUDING THE USE OF THE GRAND JURY IN THE COUNTY,
7 TO PROSECUTE THE VIOLATION.

8 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN
9 CIRCUMSTANCES IN WHICH VIOLATIONS OF THIS SECTION ARE ALLEGED TO
10 HAVE BEEN COMMITTED IN MORE THAN ONE COUNTY, THE RESPECTIVE STATE'S
11 ATTORNEY OF EACH COUNTY, OR THE ATTORNEY GENERAL, MAY JOIN THE
12 CAUSES OF ACTION IN A SINGLE COMPLAINT WITH THE CONSENT OF EACH
13 STATE'S ATTORNEY HAVING JURISDICTION OVER AN OFFENSE SOUGHT TO BE
14 JOINED.

15 ~~(E)~~ (F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
16 PROVIDED AT LEAST ONE CRIMINAL GANG ACTIVITY OF A CRIMINAL GANG
17 ALLEGEDLY OCCURRED IN THE COUNTY IN WHICH A GRAND JURY IS SITTING,
18 THE GRAND JURY MAY ISSUE SUBPOENAS, SUMMON WITNESSES, AND
19 OTHERWISE CONDUCT AN INVESTIGATION OF THE ALLEGED CRIMINAL GANG'S
20 ACTIVITIES AND OFFENSES IN OTHER COUNTIES.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General
22 and the Maryland State's Attorneys' Association shall report to the General Assembly
23 on or before January 1, 2008, in accordance with § 2-1246 of the State Government
24 Article on recommendations for additional legislation to aid in the prosecution of gang
25 activity.

26 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2007.