

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

House Bill 1402  
Judiciary

(Delegate Frush)

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**Crime of Violence - Commission as Part of Criminal Gang Activity - Penalty**

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This bill establishes new prohibitions and penalties aimed at combating criminal gang activity.

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**Fiscal Summary**

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

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

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill prohibits a person from threatening an individual, or a friend or family member of an individual, by committing a crime of violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a gang. A violator is guilty of a misdemeanor and, in addition to any other sentence imposed for the crime of violence, subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

The bill establishes the same prohibition specifically in a school vehicle or in, on, or within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or county board of education and used for elementary or secondary education. A violator is guilty of a misdemeanor and, in addition to any other sentence imposed for the

crime of violence, subject to maximum penalties of eight years imprisonment and/or an \$8,000 fine.

The bill also prohibits a person from committing a crime of violence as part of “criminal gang-related activity.” A violator is guilty of a misdemeanor and, in addition to any other sentence imposed for the crime of violence, subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

The bill expands, as specified, the definition of a “criminal gang.”

**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 unlawfully extort money, property, or anything of value from another, may not verbally threaten to (1) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute; or (2) cause physical injury to a person, inflict emotional distress on a person, cause economic damage to a person, or cause damage to the property of a person. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000.

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:** In November 2006, Baltimore City published a *Baltimore City Gang Violence Reduction Plan*. The plan includes a multi-agency approach consisting of the following eight elements:

- initial and continuous problem assessment using qualitative and quantitative data;
- targeting of the area and populations of individuals most closely associated with the problem;
- utilizing five key activities: community mobilization, social intervention, opportunities provision, suppression, and organizational change/development;
- creating a Steering Committee;
- mobilizing a direct contact team including community outreach staff in addition to law enforcement, probation, and others;
- a plan for coordinating efforts and sharing information among those working with youth on a daily basis;
- community capacity building; and
- ongoing data collection and analysis to inform the process.

The Baltimore City plan also includes recommendations to:

- increase the maximum sentence for a felon in possession of a firearm;
- provide consistent definitions and sentencing enhancements for crimes committed by gang members and/or in furtherance of gang activity in or around schools; and
- expand reporting requirements under the Education Article, which requires mandatory disclosure of specific arrest categories and dispositions to schools.

Because the Education Article also requires notification if the offense is related to the student's membership in a gang, the Baltimore City plan proposed that reporting requirements be extended to include all gang-related arrests and incidents. In addition, all gang-related arrests at or near a school should be reported to school authorities.

The Mid-Atlantic Regional Gang Investigators Network (MARGIN), formally known as Washington/Baltimore Metropolitan Area Regional Gang Investigators Network, is an organization consisting of federal, state, and local law enforcement/criminal justice officers, representing agencies from throughout Maryland, Virginia, and Washington, DC. The stated primary goal of MARGIN is to "enhance officer safety by providing relevant gang information to law enforcement officers and for the overall public safety." The State Police are active participants in MARGIN.

The White House Office of National Drug Control Policy (ONDCP) was established by the Anti-Drug Abuse Act of 1988. ONDCP designated the Washington/Baltimore area a High Intensity Drug Trafficking Area (HIDTA) in 1994 to address the serious public safety threats arising from the distribution of illegal drugs. Washington/Baltimore HIDTA has arranged for the purchase of GangNET through the Arlington County Police Department and it will, among other uses, be available to track gang data collected in Maryland. Once protocols are established, the Maryland State Police will have access to this data on a basis determined by HIDTA.

There are currently 102 active grants to a variety of State and local government entities aimed at tracking and/or combating gang activities in the State, totaling \$4,784,946 in federal funds and \$1,572,972 in State funds.

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

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalty 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 arrested and/or convicted under the provisions of

this bill is unknown without any actual experience under the provisions. Some jurisdictions have had more difficulties with the activities and practices of criminal gangs than others.

In any event, 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 \$2,300 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 \$465 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 2008 are estimated to range from \$21 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 provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalty. 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 \$42 to \$120 per inmate in fiscal 2008.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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