

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

Senate Bill 640

(Senator Jacobs, *et al.*)

Judicial Proceedings

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**Criminal Law - Criminal Gangs - Underlying Crime**

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This bill expands the crimes that are considered “underlying crimes” for purposes of the prohibition against participating in a gang offense. The bill alters the definition of underlying crimes to include misdemeanor assault, malicious destruction of property, pandering, receiving earnings of a prostitute, and betting, wagering, or gambling.

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**Fiscal Summary**

**State Effect:** Minimal. Although this bill may result in additional individuals being subject to prosecution and incarceration for participation in a criminal gang, it is not expected to significantly affect operations or finances for the Judiciary or the Department of Public Safety and Correctional Services.

**Local Effect:** Minimal. It is assumed that any additional caseload for the circuit courts could be handled with existing budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly or willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang.

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

“Pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes among the following list of felonies:

- abduction;
- arson in the first or second degree, or threat of arson;
- kidnapping;
- manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery in the first or second degree;
- carjacking or attempted carjacking;
- sexual offense in the first or second degree;
- attempt to commit a violent crime;
- assault in the first or second degree, assault by inmate, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense;
- manufacturing or possessing of destructive device;
- extortion;
- manufacturing or distributing a controlled dangerous substance;
- burglary in the first, second, or third degree;
- general theft or motor vehicle theft;
- obstruction of justice;
- retaliation for testimony or intimidating or corrupting a juror; and
- illegal possession of a firearm.

A violator is guilty of a felony and subject to imprisonment not exceeding 10 years, or 20 years if death to a victim occurs, and/or a fine not exceeding \$100,000. A sentence imposed under this section may run consecutive to or concurrently with a sentence for any crime establishing a violation of this act. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

**Background:** Chapter 496 of 2007, an Administration initiative, created new offenses regarding criminal gangs. The Attorney General was authorized to aid in the investigation or prosecute violations of the Act. By January 1, 2008, the Attorney General and the Maryland State Attorneys' Association were required to report to the General Assembly on recommendations for more legislation to assist prosecution of gang activity. This bill emerges from those recommendations.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1307 (Delegate Sophocleus) – Judiciary.

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

**Fiscal Note History:** First Reader - March 7, 2008  
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