

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 641 (Senator Jacobs, *et al.*)  
Judicial Proceedings

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Criminal Gang Activity - Financial Transactions - Penalty

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This bill establishes prohibitions and penalties relating to financial transactions made in connection with criminal gang activities.

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Fiscal Summary

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

**Local Effect:** Potential increase in local revenues due to the bill's monetary penalty provisions.

**Small Business Effect:** Minimal. It is assumed that most small businesses, of any nature, do not knowingly participate in business activities connected with or involving criminal gangs or the proceeds of gang activities.

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Analysis

**Bill Summary:** This bill prohibits a person from receiving proceeds the person knows or should know are directly derived from a pattern of criminal gang activity and using or investing an aggregate of \$10,000 or more of those proceeds in the acquisition of real or personal property or the establishment or operation of a criminal gang. A violator is guilty of a felony and subject to imprisonment for not less than 5 years and up to 40 years and/or a fine of \$1 million.

The bill prohibits a person from directly acquiring, maintaining an interest in, or asserting control of a criminal gang through a pattern of criminal gang activity. A violator is guilty of a felony and subject to imprisonment for not less than 5 years and up to 40 years and/or a fine of up to \$1 million.

The bill prohibits a person from engaging in a money transmission, as defined under the Maryland Money Transmission Act, with proceeds that the person knows or should know are derived from or traceable to a pattern of criminal gang activity. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 5 years and/or a fine not exceeding the greater of \$250,000 or three times the value of the proceeds. A subsequent offender is subject to maximum penalties of imprisonment for 10 years and/or a fine not exceeding the greater of \$250,000 or five times the value of the proceeds.

A person convicted under any of these provisions is not eligible for parole and the sentence imposed must be separate from and consecutive to a sentence for any crime based on the act establishing the violation.

**Current Law and 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.

Chapter 496 prohibited a person 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 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, including acts by juveniles that would be underlying crimes if committed as adults; 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.

Under Chapter 496, the Attorney General is authorized, at the request of a county State’s Attorney, to aid in the investigation of a gang violation or to prosecute a violation. In

exercising this authority, the Attorney General has all powers and duties of State's Attorney. Where violations of this bill are alleged to have been committed in more than one county, the Attorney General and State's Attorney for each county may join the causes of action in single complaint.

Under Chapter 313 of 2005, 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.

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. Chapter 313 also authorized 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.

Prior to the enactment of Chapter 313, statute did not directly address participation in criminal gang activity.

Under applicable provisions of the Financial Institutions Article, "money transmission" means the business of selling or issuing payment instruments or stored value devices, or receiving money or monetary value, for transmission to a location within or outside the United States by any means, including electronically or through the Internet. The term includes: (1) a bill payer service; (2) an accelerated mortgage payment service; and (3) any informal money transfer system engaged in as a business for, or network of persons who engage as a business in, facilitating the transfer of money outside the conventional financial institutions system to a location within or outside the United States.

**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. The number of people convicted of these proposed crimes 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 \$2,600 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 \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provision since these cases would likely be heard in the circuit courts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 6, 2008  
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