

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1322

(Delegate Sophocleus)

Judiciary

Criminal Law - Gang Activity - Jurisdiction over Juvenile Offenders

This bill establishes that the juvenile court does not have jurisdiction over a child at least 16 years old who is alleged to have committed a violation of specified gang-related crimes.

Fiscal Summary

State Effect: Minimal. Although this bill may result in additional sentences of incarceration for juveniles who are members of criminal gangs, it is not expected to significantly affect incarceration costs for the Division of Correction.

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.

Analysis

Current Law: 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.

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. 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.

In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed a violent crime, children age 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if a transfer is believed to be in the interests of the child or society ("reverse waiver"). Reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. The District Court also has the authority to transfer cases to juvenile court under certain circumstances. In addition, the juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older, or who is younger than age 15 and is charged with committing an act which if committed by an adult, would be punishable by death or life imprisonment.

If a child at least age 16 is alleged to have committed a violent crime, or was previously convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, the adjudication of delinquency and the disposition of charges are reportable to the Central Repository. Children that fall into this category who were not fingerprinted at the time of arrest are subject to court-ordered fingerprinting at a disposition hearing or within three days after the disposition hearing.

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.

The Department of Juvenile Services (DJS) reports increased gang activity in Baltimore City and Wicomico, Cecil, and Washington counties. DJS advises that its staff members are trained to identify gang members during the intake process, and information about known or suspected youth gang involvement is included in juvenile case files. However, the data gathered in individual case files are not recorded in a manner that can be aggregated easily for reporting purposes. DJS staff focus on increasing community awareness regarding youth involved in gangs by communications to law enforcement agencies and local school systems.

Additional Information

Prior Introductions: HB 587 of 2007, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: SB 634 (Senator Jacobs, *et al.*) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Department of Juvenile Services, 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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