

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 635

(Senator Jacobs, *et al.*)

Judicial Proceedings

Real Property - Criminal Gangs - Abatement of Nuisance

This bill provides that property used by a member of a criminal gang in furtherance of specified gang-related crimes or a pattern of criminal gang activity is a nuisance that may be subject to an abatement action under the statute authorizing abatement of property used for drug offenses.

Fiscal Summary

State Effect: Any new prosecutions or actions brought under this bill could be accommodated with existing resources.

Local Effect: Any new prosecutions or actions brought under this bill could be accommodated with existing resources.

Small Business Effect: Minimal.

Analysis

Current Law: An action to abate a nuisance where the property is used for controlled dangerous substance offenses may be brought in District Court by (1) the State's Attorney of the county where the nuisance is located; (2) the county attorney or solicitor in which the nuisance is located; or (3) a community association or municipal corporation within whose boundaries the nuisance is located.

In this context, “nuisance” is defined as property used (1) by persons who assemble for the purpose of administering illegal drugs; (2) for the manufacture or distribution of

illegal drugs or controlled paraphernalia; or (3) for the storage or concealment of illegal drugs or paraphernalia in sufficient quantity to indicate an intent to manufacture or distribute.

Remedies for an abatement action available to the court include:

- ordering a tenant to vacate the property;
- ordering restitution or possession of property to the owner if both owner and tenant are parties to the action;
- ordering the owner to submit for court approval a plan of correction to ensure the property will no longer be a nuisance;
- ordering the property be demolished if not fit for habitation; *and*
- injunction or other equitable relief.

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 criminal gang is defined as a group or ongoing association of three or more persons whose members (1) individually or collectively engage in a pattern of criminal gang activity; (2) 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 by adults; and (3) 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 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 person is also prohibited from making such threats in a school vehicle or within 1,000 feet of a school.

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.

Additional Information

Prior Introductions: SB 631 of 2007, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - March 7, 2008
mll/jr

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