

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 639

(Senator Jacobs, *et al.*)

Judicial Proceedings

Courts - Evidence - Existence of or Membership in a Criminal Gang

This bill establishes that in a civil or criminal proceeding, specified evidence is probative of the existence of or membership in a criminal gang and is admissible.

Fiscal Summary

State Effect: Minimal. It is assumed that any increase in the workload for the Judiciary as a result of additional evidence being admissible in court proceedings could be handled with existing budgeted resources. Any additional convictions resulting from this bill are assumed to be minimal and would not materially affect incarceration costs for the Division of Correction.

Local Effect: Minimal. It is assumed that any increase in the workload for the circuit courts as a result of additional evidence being admissible in court proceedings could be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: For the purpose of establishing, in a criminal or civil proceeding, the existence of or a person's membership in a criminal gang, any competent evidence that is probative of the existence of or membership in a criminal gang is admissible, including the following:

- self-proclamation;
- a common name, insignia, flag, or means of recognition;
- common identifying hand or body signs, signals, or code;
- a common identifying mode, style, or color of dress;
- an identifying tattoo or body marking;
- a qualification or characteristic of membership such as age or ethnicity;
- creed or belief;
- an overt or covert organizational or command structure;
- a *de facto* claim of territory or jurisdiction;
- an initiation ritual;
- a concentration or specialty of criminal activity; or
- a method of operation or criminal enterprise.

Current Law: The Maryland Rules generally follow the Federal Rules of Evidence (FRE). Maryland Rule 5-402, which is substantively consistent with FRE 402, establishes that unless otherwise provided by constitutions, statutes, rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible.

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.

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 proliferation of gang activity in Maryland has prompted several initiatives designed to address the problem. In December 2006, the Washington-Baltimore High-Intensity Drug Trafficking Area program received federal grant money to administer GangNet, an Internet-based networking and gang database throughout Maryland, DC, and Virginia. GangNet allows information on gang members (*e.g.*, identities, vehicles, tattoos, gang

symbols, and locations) to be shared across jurisdictional lines in gang-related cases. The database can perform link-diagram analyses that show relationships among gang members and their positions within the hierarchy of the gangs.

Participating law enforcement agencies enter information in the database based on the criteria they establish as to what constitutes a gang member. The utility of the database is dependent on the quality of the data entered by the agencies. The information contained in the database is not accessible to the public.

There are no standardized statewide criteria used for determining gang membership. Criteria used by Maryland State Police include self-admission of gang membership, gang tattoos and attire, frequenting known gang areas, and participation in known gang activity. According to the Office of the Attorney General, local law enforcement and social service agencies gather data through the use of interviews with criminal defendants, witnesses, informants, and victims, as well as police reports and civilian complaints.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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