

HOUSE BILL 1387

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9lr0103

By: **Chair, Judiciary Committee (By Request – Departmental – Public Safety and Correctional Services)**

Introduced and read first time: February 23, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Criminal Gang Offenses – Membership**

3 FOR the purpose of altering the definition of criminal gang to include a group or
4 association whose members individually or collectively commit, attempt to
5 commit, conspire to commit, or solicit certain acts; altering a certain list of
6 factors that persons can have in common to be considered a criminal gang;
7 defining “criminal gang member” for certain purposes; altering the list of
8 underlying crimes for criminal gang activity; altering a certain prohibition
9 providing that a person may not be a criminal gang member under certain
10 circumstances or participate in a criminal gang under certain circumstances;
11 prohibiting a person from being a criminal gang member or participating in a
12 criminal gang while under the supervision of the Division of Parole and
13 Probation of the Department of Juvenile Services; and generally relating to
14 criminal gangs.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Law
17 Section 9–801 and 9–804
18 Annotated Code of Maryland
19 (2002 Volume and 2008 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Criminal Law**

23 9–801.

24 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) "Coerce" means to compel or attempt to compel another by threat of harm
2 or other adverse consequences.

3 (c) "Criminal gang" means a group or ongoing association of three or more
4 persons whose members:

5 (1) individually or collectively [engage in a pattern of criminal gang
6 activity] **COMMIT, ATTEMPT TO COMMIT, CONSPIRE TO COMMIT, OR SOLICIT AN**
7 **UNDERLYING CRIME OR ACT BY A JUVENILE THAT WOULD BE AN UNDERLYING**
8 **CRIME IF COMMITTED BY AN ADULT;**

9 (2) have as one of their primary objectives or activities the commission
10 of one or more underlying crimes, including acts by juveniles that would be
11 underlying crimes if committed by [adults] **AN ADULT;** and

12 (3) have in common:

13 (I) an identifying sign, symbol, name, leader, or purpose;

14 (II) **AN OVERT OR COVERT ORGANIZATIONAL OR COMMAND**
15 **STRUCTURE;**

16 (III) **A DE FACTO CLAIM OF TERRITORY OR JURISDICTION;**

17 (IV) **AN INITIATION RITUAL; OR**

18 (V) **A METHOD OF OPERATION OR CRIMINAL ENTERPRISE.**

19 [(d) "Pattern of criminal gang activity" means the commission of, attempted
20 commission of, conspiracy to commit, or solicitation of two or more underlying crimes
21 or acts by a juvenile that would be an underlying crime if committed by an adult,
22 provided the crimes or acts were not part of the same incident.]

23 (D) **"CRIMINAL GANG MEMBER" MEANS A PERSON WHOSE MEMBERSHIP**
24 **IN A CRIMINAL GANG IS PROVEN BY TWO OR MORE OF THE FOLLOWING:**

25 (1) **SELF-PROCLAMATION;**

26 (2) **A COMMON GROUP NAME, INSIGNIA, FLAG, OR MEANS OF**
27 **RECOGNITION;**

28 (3) **ASSOCIATION WITH KNOWN GANGS AND PARTICIPATION IN**
29 **SOME ACTIVITIES OF A GANG;**

1 **(4) REGULAR ASSOCIATION WITH GANG MEMBERS AND**
2 **DEMONSTRATED ASPIRATION TO BECOME A MEMBER BY ADOPTION OF THE**
3 **GANG’S STYLE OF DRESS, TATTOOS, HAND SIGNALS, OR SYMBOLS; OR**

4 **(5) PHYSICAL EVIDENCE, INCLUDING PHOTOGRAPHS, WRITTEN**
5 **OR ELECTRONIC CORRESPONDENCE, OR OTHER DOCUMENTATION.**

6 (e) “Solicit” has the meaning stated in § 11–301 of this article.

7 (f) “Underlying crime” means:

8 (1) a crime of violence as defined under § 14–101 of this article;

9 (2) a felony violation of [§ 3–203,] § 3–701, § 4–503, § 5–602, § 6–103,
10 § 6–109, § 6–202, § 6–203, § 6–204, § 7–104, § 7–105, § 9–302, § 9–303, or § 9–305 of
11 this article; [or]

12 (3) **(I) A VIOLATION OF § 4–101, IF THE VIOLATION INVOLVES A**
13 **WEAPON, § 4–203, OR § 11–303 OF THIS ARTICLE; OR**

14 **(II) a felony violation of § 5–133 of the Public Safety Article; OR**

15 **(4) A MISDEMEANOR VIOLATION OF § 3–203, § 6–301, § 11–304,**
16 **OR § 12–102 OF THIS ARTICLE.**

17 9–804.

18 (a) A person may not:

19 (1) **(I) BE A CRIMINAL GANG MEMBER OR** participate in a
20 criminal gang knowing **OR HAVING REASON TO KNOW** that the members of the gang
21 engage in [an ongoing] A pattern of criminal [gang]activity; and

22 [(2)] **(II) knowingly and willfully direct or participate in the**
23 **commission of an underlying crime, or act by a juvenile that would be an underlying**
24 **crime if committed by an adult, committed for the benefit of, at the direction of, or in**
25 **association with a criminal gang; OR**

26 **(2) BE A CRIMINAL GANG MEMBER OR PARTICIPATE IN A**
27 **CRIMINAL GANG WHILE UNDER THE SUPERVISION OF THE DIVISION OF PAROLE**
28 **AND PROBATION OR THE DEPARTMENT OF JUVENILE SERVICES.**

29 (b) A person may not commit a violation of subsection (a) of this section
30 involving the commission of an underlying crime that results in the death of a victim.

1 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
2 person who violates this section is guilty of a felony and on conviction is subject to
3 imprisonment not exceeding 10 years or a fine not exceeding \$100,000 or both.

4 (ii) A person who violates subsection (b) of this section is guilty
5 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
6 fine not exceeding \$100,000 or both.

7 (2) A sentence imposed under this section may be separate from and
8 consecutive to or concurrent with a sentence for any crime based on the act
9 establishing a violation of this section.

10 (d) A person may be charged with a violation of this section only by
11 indictment, criminal information, or petition alleging a delinquent act.

12 (e) (1) The Attorney General, at the request of the State's Attorney for a
13 county in which a violation or an act establishing a violation of this section occurs,
14 may:

15 (i) aid in the investigation of the violation or act; and

16 (ii) prosecute the violation or act.

17 (2) In exercising authority under paragraph (1) of this subsection, the
18 Attorney General has all the powers and duties of a State's Attorney, including the use
19 of the grand jury in the county, to prosecute the violation.

20 (3) Notwithstanding any other provision of law, in circumstances in
21 which violations of this section are alleged to have been committed in more than one
22 county, the respective State's Attorney of each county, or the Attorney General, may
23 join the causes of action in a single complaint with the consent of each State's Attorney
24 having jurisdiction over an offense sought to be joined.

25 (f) Notwithstanding any other provision of law and provided at least one
26 criminal [gang] activity of a criminal gang allegedly occurred in the county in which a
27 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and
28 otherwise conduct an investigation of the alleged criminal gang's activities and
29 offenses in other counties.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2009.