

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1387

(Chair, Judiciary Committee)(By Request - Departmental
- Public Safety and Correctional Services)

Judiciary

Criminal Law - Criminal Gang Offenses - Membership

This departmental bill alters the definition of a criminal gang and establishes a definition of a criminal gang member. The bill expands the crimes that are considered “underlying crimes” and prohibits a person from being a criminal gang member if the person knows, or has reason to know, that the members of the gang engage in a pattern of criminal activity. A person is also prohibited from being a criminal gang member or participating in a criminal gang while under the supervision of the Division of Parole and Probation or the Department of Juvenile Services.

Fiscal Summary

State Effect: None. Although the workload of the Judiciary, Office of the Public Defender, and the Attorney General’s Office may increase to the extent that additional individuals are prosecuted under the bill’s expansion of prohibitions against gang activity, any increase in the workload can be handled with existing budgeted resources. Although the bill’s provisions may lead to the incarceration of additional individuals, it is not expected to significantly affect operations or finances for the Division of Correction.

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill alters the definition under current law to establish that a criminal gang is a group or ongoing association of three or more persons whose members:

- individually or collectively commit, attempt to commit, conspire to commit, or solicit an underlying crime or act by a juvenile that would be an underlying crime if committed by an adult;
- 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 an adult; and
- have in common (1) an identifying sign, symbol, name, leader, or purpose; (2) an overt or covert organizational or command structure; (3) a *de facto* claim of territory or jurisdiction; (4) an initiation ritual; or (5) a method of operation or criminal enterprise.

The bill establishes that a “criminal gang member” means a person whose membership in a criminal gang is proven by two or more of the following:

- self-proclamation;
- a common group name, insignia, flag, or means of recognition;
- association with known gangs and participation in some activities of a gang;
- regular association with gang members and demonstrated aspiration to become a member by adoption of the gang’s style of dress, tattoos, hand signals, or symbols; or
- physical evidence, including photographs, written or electronic correspondence, or other documentation.

The bill repeals references to “pattern of criminal gang activity.”

The bill establishes that misdemeanor violations of second degree assault, malicious destruction of property, receiving the earnings of a prostitute, and certain crimes relating to gambling are underlying crimes. The bill also expands underlying crimes to include: (1) human trafficking; (2) wearing, transporting, or carrying a handgun; and (3) wearing or carrying a concealed dangerous weapon or wearing or carrying a weapon openly with the intent or purpose of injuring an individual in an unlawful manner. The bill eliminates felony second degree assault as an underlying crime.

Current Law: “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 by 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 or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.

A violation of any of the following (defined as a “crime of violence” under the Criminal Law Article and for which mandatory sentences apply) is an “underlying crime” for purposes of the prohibition against gang activity:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony or other crime of violence;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct involving rape or sexual offense with a child;
- assault in the first degree, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

A felony violation of the following crimes is also an underlying crime:

- second degree assault;
- extortion;
- manufacturing or possessing a destructive device;
- manufacturing, distributing, possessing with intent to distribute, or dispensing a controlled dangerous substance;
- second degree arson;
- attempting to burn a structure or property;
- burglary in the first, second, or third degree;
- general theft or unauthorized taking of a motor vehicle;
- obstruction of justice;
- retaliation for testimony or intimidating or corrupting a juror; or
- illegal possession of a firearm.

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 a maximum imprisonment term of 10 years, or 20 years if death to a victim occurs, and/or a maximum fine of \$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.

The Attorney General, at the request of the State’s Attorney for a county in which a violation or an act establishing a violation of the prohibition against gang activity occurs, may aid in the investigation of the violation or act and prosecute the violation or act.

Background: In response to the gang problem in Maryland, the “Kaizen Project” was established by Governor Martin O’Malley. Leaders from five entities (the Maryland State Police, the Baltimore City Police Department, the Baltimore County Police Department, the Department of Juvenile Services, and DPSCS) determine the direction of the project, but over 50 criminal justice stakeholders are involved.

According to DPSCS, one team within the “Kaizen Project” was tasked with developing possible legislation for the 2009 session. This team invited input from a range of stakeholders to develop legislation intended to be helpful to law enforcement as an investigation tool as well as to prosecutors. The invitees included a representative of the

Maryland State's Attorneys Association, legislative coordinators for the Gang of Five Executive Stakeholders, and a representative of the Attorney General. The team thought the changes illustrated in this bill allow a law enforcement unit the opportunity to deliver clear, clean investigations for prosecutors to present in court. This bill attempts to eliminate any controversial descriptions that indicate gang members by ethnicity, race, culture, etc. and to provide a definition of gangs and gang members that is more universal.

DPSCS indicates that data has shown that gangs are participating in prostitution, tagging (malicious destruction of property), and second degree assault (jumping people into the gang). These crimes are added as underlying crimes under this bill.

The Maryland State Commission on Criminal Sentencing Policy indicates that there were no convictions for any of the criminal gang related offenses in fiscal 2007 or 2008.

According to information provided by the State Police in 2008, gang presence is reported in 22 counties (all but Somerset and Worcester). The most prominent gangs identified are the Bloods (present in 20 counties), the Crips (present in 9 counties) and MS-13 (present in 10 counties).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany, Harford, Montgomery, and Talbot counties; City of Bowie; Office of the Attorney General; Baltimore City; Commission on Criminal Sentencing Policy; Governor's Office of Crime Control and Prevention; Department of Juvenile Services; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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ncs/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law – Criminal Gang Offenses - Membership

BILL NUMBER: HB 1387

PREPARED BY: Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.