

HOUSE BILL 756

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CF SB 517

By: Delegates Levi, James, Anderson, Beidle, Bohanan, Dumais, Dwyer, Feldman, Frank, Jameson, Jennings, Kelly, Kramer, Mathias, McComas, McHale, Morhaim, Rice, Riley, Tarrant, Valderrama, Vaughn, and Walker Walker, Waldstreicher, Simmons, Barnes, Carter, Lee, McConkey, Rosenberg, Love, Costa, George, King, Kipke, Schuh, Sophocleus, and Smigiel

Introduced and read first time: February 5, 2010

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 28, 2010

CHAPTER _____

1 AN ACT concerning

2 **Maryland Gang Prosecution Act of 2010**

3 FOR the purpose of altering the definition of criminal gang to repeal the requirement
4 that an association of a certain number of persons whose members meet certain
5 criteria be ongoing; altering ~~a~~ certain ~~list of~~ factors that persons can have in
6 common to be considered a criminal gang; ~~defining "criminal gang member" for~~
7 ~~certain purposes~~; altering the list of underlying crimes for criminal gang
8 activity; altering a certain prohibition concerning participation in criminal gang
9 activity to ~~provide that a person may not actively participate in a criminal gang~~
10 ~~under certain circumstances~~; altering a provision of law to require that a certain
11 ~~sentence for a violation of the prohibition against participation in a criminal~~
12 ~~gang under certain conditions be separate from and consecutive to a sentence~~
13 ~~for the underlying crime~~ repeal the requirement that a pattern of criminal gang
14 activity be ongoing; requiring a sentence imposed for a second or subsequent
15 offense of participation in criminal gang activity to be separate from and
16 consecutive to a certain other sentence; requiring a sentence imposed for
17 participation in criminal gang activity that results in the death of a victim to be
18 separate from and consecutive to a sentence for a certain other sentence;
19 specifying that a certain consecutive sentence shall not be mandatory unless the
20 State makes a certain notification at a certain time; prohibiting a person from

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 organizing, supervising, financing, or managing a criminal gang; establishing
 2 penalties; requiring a certain sentence to be separate from and consecutive to a
 3 certain other sentence; providing that a certain provision of law may not be
 4 construed inconsistently with certain other provisions of law; making clarifying
 5 changes; and generally relating to criminal gangs.

6 BY repealing and reenacting, with amendments,
 7 Article – Criminal Law
 8 Section 9–801 and 9–804
 9 Annotated Code of Maryland
 10 (2002 Volume and 2009 Supplement)

11 BY adding to
 12 Article – Criminal Law
 13 Section 9–805 and 9–806
 14 Annotated Code of Maryland
 15 (2002 Volume and 2009 Supplement)

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

18 **Article – Criminal Law**

19 9–801.

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

21 (b) “Coerce” means to compel or attempt to compel another by threat of harm
 22 or other adverse consequences.

23 (c) “Criminal gang” means a group or [ongoing] association of three or more
 24 persons whose members:

25 (1) individually or collectively ~~[engage in a pattern of criminal gang~~
 26 ~~activity] COMMIT, ATTEMPT TO COMMIT, CONSPIRE TO COMMIT, OR SOLICIT TWO~~
 27 ~~OR MORE UNDERLYING CRIMES, OR ACTS BY A JUVENILE THAT WOULD BE AN~~
 28 ~~UNDERLYING CRIME IF COMMITTED BY AN ADULT, PROVIDED THE CRIMES OR~~
 29 ~~ACTS WERE NOT PART OF THE SAME INCIDENT;~~

30 (2) have as one of their primary objectives or activities the commission
 31 of one or more underlying crimes, including acts by juveniles that would be underlying
 32 crimes if committed by adults; and

33 (3) have in common:

34 ~~(1) an identifying sign, symbol, name, leader, or purpose;~~

1 ~~(II) AN OVERT OR COVERT ORGANIZATIONAL OR COMMAND~~
2 STRUCTURE;

3 ~~(III) A DE FACTO CLAIM OF TERRITORY OR JURISDICTION;~~

4 ~~(IV) AN INITIATION RITUAL; OR~~

5 ~~(V) A METHOD OF OPERATION OR CRIMINAL ENTERPRISE.~~

6 ¶(d) “Pattern of criminal gang activity” means the commission of, attempted
7 commission of, conspiracy to commit, or solicitation of two or more underlying crimes
8 or acts by a juvenile that would be an underlying crime if committed by an adult,
9 provided the crimes or acts were not part of the same incident.¶

10 ~~(D) “CRIMINAL GANG MEMBER” MEANS A PERSON WHOSE CRIMINAL~~
11 ~~GANG MEMBERSHIP IS PROVEN BY AT LEAST TWO OF THE FOLLOWING:~~

12 ~~(1) SELF PROCLAMATION;~~

13 ~~(2) USE OF A CRIMINAL GANG’S IDENTIFYING SIGN, SYMBOL,~~
14 ~~NAME, OR ANY OTHER MEANS OF RECOGNITION;~~

15 ~~(3) ASSOCIATION WITH KNOWN CRIMINAL GANG MEMBERS AND:~~

16 ~~(I) DEMONSTRATED ASPIRATION TO BECOME A CRIMINAL~~
17 ~~GANG MEMBER BY ADOPTION OF THE CRIMINAL GANG’S STYLE OF DRESS,~~
18 ~~TATTOOS, HAND SIGNALS, OR SYMBOLS; OR~~

19 ~~(II) PARTICIPATION IN CRIMINAL GANG ACTIVITIES,~~
20 ~~INCLUDING ATTENDING CRIMINAL GANG MEETINGS;~~

21 ~~(4) IDENTIFICATION AS A CRIMINAL GANG MEMBER THROUGH~~
22 ~~ASSESSMENT AND VERIFICATION WHILE IN THE CUSTODY OF THE DEPARTMENT~~
23 ~~OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR~~

24 ~~(5) PHYSICAL EVIDENCE INCLUDING PHOTOGRAPHS OR WRITTEN~~
25 ~~OR ELECTRONIC CORRESPONDENCE.~~

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

27 (f) “Underlying crime” means:

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

1 (2) A VIOLATION OF ~~§ 3-203 (SECOND DEGREE ASSAULT), § 3-701~~
 2 ~~(EXTORTION), § 4-101 (DANGEROUS WEAPONS), § 4-203 (WEARING, CARRYING,~~
 3 ~~OR TRANSPORTING A HANDGUN), § 6-301 (MALICIOUS DESTRUCTION), § 9-302~~
 4 ~~(INDUCING FALSE TESTIMONY OR AVOIDANCE OF SUBPOENA), § 9-303~~
 5 ~~(RETALIATION FOR TESTIMONY), § 9-305 (INTIMIDATING OR CORRUPTING~~
 6 ~~JUROR), § 11-303 (HUMAN TRAFFICKING), § 11-304 (RECEIVING EARNINGS OF~~
 7 ~~PROSTITUTE), OR § 11-306(A)(2), (3), OR (4) (HOUSE OF PROSTITUTION), OR §~~
 8 ~~12-102 (GAMBLING) OF THIS ARTICLE;~~

9 [(2)] (3) a felony violation of [§ 3-203, § 3-701,] § 3-701
 10 (EXTORTION), § 4-503 (MANUFACTURE OR POSSESSION OF DESTRUCTIVE
 11 DEVICE), § 5-602 (DISTRIBUTION OF CDS), § 5-603 (MANUFACTURING CDS OR
 12 EQUIPMENT), § 6-103 (SECOND DEGREE ARSON), ~~§ 6-109 (ATTEMPT TO BURN~~
 13 ~~STRUCTURE OR PROPERTY)~~, § 6-202 (FIRST DEGREE BURGLARY), § 6-203
 14 (SECOND DEGREE BURGLARY), § 6-204 (THIRD DEGREE BURGLARY), § 7-104
 15 (THEFT), OR § 7-105[, § 9-302, § 9-303, or § 9-305](UNAUTHORIZED USE OF A
 16 MOTOR VEHICLE) of this article; or

17 [(3)] (4) a ~~[felony]~~ violation of § 5-133~~(B) OR (C)~~ of the Public Safety
 18 Article.

19 9-804.

20 (a) A person may not:

21 (1) ~~ACTIVELY~~ participate in a criminal gang ~~[~~knowing that the
 22 members of the gang engage in ~~an ongoing~~ A pattern of criminal gang activity; and

23 (2) ~~knowingly~~ and willfully direct or participate in ~~the commission of~~
 24 an underlying crime, or act by a juvenile that would be an underlying crime if
 25 committed by an adult, committed for the benefit of, at the direction of, or in
 26 association with a criminal gang.

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

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

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

1 (2) **(I)** A sentence imposed under **PARAGRAPH (1)(I) OF THIS**
2 **SUBSECTION** this section **FOR A FIRST OFFENSE** ~~may~~ **SHALL** be separate from and
3 consecutive to ~~for concurrent with~~ a sentence for any crime based on the act
4 establishing a violation of this section.

5 **(II)** **A SENTENCE IMPOSED UNDER PARAGRAPH (1)(I) OF**
6 **THIS SUBSECTION FOR A SECOND OR SUBSEQUENT OFFENSE, OR PARAGRAPH**
7 **(1)(II) OF THIS SUBSECTION SHALL BE SEPARATE FROM AND CONSECUTIVE TO A**
8 **SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF**
9 **THIS SECTION.**

10 **(III)** **A CONSECUTIVE SENTENCE FOR A SECOND OR**
11 **SUBSEQUENT OFFENSE SHALL NOT BE MANDATORY UNLESS THE STATE**
12 **NOTIFIES THE PERSON IN WRITING OF THE STATE'S INTENTION TO PROCEED**
13 **AGAINST THE PERSON AS A SECOND OR SUBSEQUENT OFFENDER AT LEAST 30**
14 **DAYS BEFORE TRIAL.**

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

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

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

21 (ii) prosecute the violation or act.

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

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

30 (f) Notwithstanding any other provision of law and provided at least one
31 criminal gang activity of a criminal gang allegedly occurred in the county in which a
32 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and
33 otherwise conduct an investigation of the alleged criminal gang's activities and
34 offenses in other counties.

35 **9-805.**

1 **(A) A PERSON MAY NOT ORGANIZE, SUPERVISE, FINANCE, OR MANAGE A**
2 **CRIMINAL GANG.**

3 **(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY**
4 **AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS**
5 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH.**

6 **(C) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE SEPARATE**
7 **FROM AND CONSECUTIVE TO A SENTENCE FOR ANY CRIME BASED ON THE ACT**
8 **ESTABLISHING A VIOLATION OF THIS SECTION.**

9 **9-806.**

10 **NOTHING IN THIS SUBTITLE MAY BE CONSTRUED INCONSISTENTLY WITH**
11 **THE PROVISIONS RELATING TO JURISDICTION OVER JUVENILE CAUSES**
12 **CONTAINED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.