

# SENATE BILL 517

E1

0lr2086  
CF HB 756

---

By: ~~Senators Stone and Jacobs~~, **Senators Jacobs, Forehand, Mooney, and Simonaire**

Introduced and read first time: February 3, 2010

Assigned to: Judicial Proceedings

---

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 6, 2010

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Criminal Law Criminal Gangs Offenses and Membership~~  
3 Maryland Gang Prosecution Act of 2010

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

---

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 may not be construed inconsistently with certain other provisions of law;  
 2 making clarifying changes; and generally relating to criminal gangs.

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

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

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

15 **Article – Criminal Law**

16 9–801.

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

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

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

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

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

30 (3) have in common:

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

32 ~~(II) AN OVERT OR COVERT ORGANIZATIONAL OR COMMAND~~  
 33 ~~STRUCTURE;~~

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

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

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

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

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

10                   ~~(1) SELF PROCLAMATION;~~

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

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

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

17                   ~~(ii) PARTICIPATION IN CRIMINAL GANG ACTIVITIES,~~  
18 ~~INCLUDING ATTENDING CRIMINAL GANG MEETINGS;~~

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

22                   ~~(5) PHYSICAL EVIDENCE INCLUDING PHOTOGRAPHS OR WRITTEN~~  
23 ~~OR ELECTRONIC CORRESPONDENCE.~~

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

25           (f) “Underlying crime” means:

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

27                   (2) A VIOLATION OF § 3-203 (SECOND DEGREE ASSAULT), ~~§ 3-701~~  
28 ~~(EXTORTION), § 4-101 (DANGEROUS WEAPONS), § 4-203 (WEARING, CARRYING,~~  
29 ~~OR TRANSPORTING A HANDGUN), § 6-301 (MALICIOUS DESTRUCTION), § 9-302~~  
30 ~~(INDUCING FALSE TESTIMONY OR AVOIDANCE OF SUBPOENA), § 9-303~~

1 (RETALIATION FOR TESTIMONY), § 9-305 (INTIMIDATING OR CORRUPTING  
 2 JUROR), § 11-303 (HUMAN TRAFFICKING), § 11-304 (RECEIVING EARNINGS OF  
 3 PROSTITUTE), OR § 11-306 (A)(2), (3), OR (4) (HOUSE OF PROSTITUTION), OR §  
 4 ~~12-102 (GAMBLING)~~ OF THIS ARTICLE;

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

13 [(3)](4) a [~~felony~~] violation of § 5-133(~~(B) OR (C)~~) of the Public Safety  
 14 Article.

15 9-804.

16 (a) A person may not:

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

19 (2) ~~knowingly~~] and willfully direct or participate in ~~the commission of~~  
 20 an underlying crime, or act by a juvenile that would be an underlying crime if  
 21 committed by an adult, committed for the benefit of, at the direction of, or in  
 22 association with a criminal gang; ~~OR~~

23 ~~(2) ACTIVELY PARTICIPATE AS A CRIMINAL GANG MEMBER IN~~  
 24 ~~ACTIVITIES OF A CRIMINAL GANG.~~

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

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

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

34 (2) (I) A sentence imposed under PARAGRAPH (1)(I) OF THIS  
 35 SUBSECTION this section FOR A FIRST OFFENSE [~~may~~] ~~SHALL~~ be separate from and

1 consecutive to ~~for~~ concurrent with] a sentence for any crime based on the act  
2 establishing a violation of this section.

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

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

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

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

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

19 (ii) prosecute the violation or act.

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

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

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

33 **9-805.**

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

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

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

7 **9-806.**

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

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

Approved:

---

Governor.

---

President of the Senate.

---

Speaker of the House of Delegates.