

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1211
Judiciary

(Delegate Schuh, *et al.*)

Criminal Gang Activity - Gang Solicitation

This bill prohibits a person from soliciting, inviting, recruiting, encouraging, or otherwise causing or attempting to cause an individual to participate in a criminal gang. Violators are guilty of a misdemeanor and subject to maximum penalties of two years imprisonment and/or a \$1,000 fine.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's monetary and incarceration penalties.

Local Effect: Potential minimal increase in local expenditures due to the bill's incarceration penalty.

Small Business Effect: None.

Analysis

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; and
- have in common an identifying sign, symbol, name, leader, or purpose.

An underlying crime includes all “crimes of violence” as defined in State law and felony violations of specified crimes.

A person may not threaten an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. Violators are guilty of a misdemeanor and subject to maximum penalties of two years imprisonment and/or a \$1,000 fine.

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; and (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 maximum penalties of 10 years imprisonment or 20 years if death to a victim occurs, and/or a \$100,000 fine. A sentence imposed under this provision may run consecutive to or concurrently with a sentence for any underlying crime that was used to establish participation in criminal gang activity. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

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; or
- 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.

“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.

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: The proliferation of gangs and their migration from urban communities to suburban and rural locations, which began more than two decades ago, is a significant problem in most areas of the country, including Maryland. It is estimated that there are over 600 active gangs in the State with over 11,000 members. The most prominent gangs in the State include the Bloods, Crips, MS-13, Black Guerilla Family, and Dead Man Incorporated.

In addition to traditional street gang activity, the Department of Public Safety and Correctional Services (DPSCS) designates gangs within correctional facilities as Security Threat Groups (STG). DPSCS uses a validation worksheet point system in which an individual is assessed points based on having or displaying gang paraphernalia, tattoos, signs, colors, or symbols; a previous identification as a gang member or association with known gang members; being named by another individual as being a gang member; or an admission of gang membership from the inmate. An inmate who receives 2 to 9 points is considered an “associate” of a gang, and an inmate with 10 or more points is considered a validated member. As of October 2009, DPSCS has identified approximately 3,400 STG members and 500 associates who participate in over 260 different gangs.

As required by the Maryland Gang Prosecution Act of 2007 (Chapter 496), the Attorney General and the Maryland State’s Attorneys’ Association submitted a report on January 1, 2008, to the General Assembly on their recommendations for additional legislation to assist in the prosecution of gang activity.

Although several of the proposals included in the report were introduced in the 2008 and 2009 sessions, none has been enacted. These proposals, which are expected to again be introduced in the 2010 session, include:

- eliminating the requirement that to be defined as a gang, there must be an “ongoing” association of three or more people. Prosecutors contend that this definition leaves open for argument that the alleged gang must be “ongoing” even at the time of arrest or trial;
- expanding the list of underlying crimes that are required to be proven to include various misdemeanor crimes that are often associated with gang activity, such as malicious destruction of property (*i.e.*, creating graffiti), second degree assault, receiving earnings of a prostitute, and wagering. Maryland gang law currently restricts the underlying crime to crimes of violence and felony violations of certain laws; and
- requiring that, where imposed, the gang offense must be served consecutively to the sentence for the underlying crime. Prosecutors argue that the impact of the Gang Prosecution Act is substantially diminished because, as currently written, a court may order a sentence for a gang violation to run concurrently with the sentence for the underlying crime.

According to the Maryland Sentencing Guidelines Database, in fiscal 2009, there was one conviction in the State’s circuit courts for participation as a member of a criminal gang in the commission of a crime resulting in the death of a victim. There were four convictions for gang participation in the commission of a crime that did not result in the death of a victim.

State Revenues: General fund revenues may increase minimally from monetary penalties imposed in District Court cases.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2010
mlm/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510