

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1235
Judiciary

(Delegate Waldstreicher, *et al.*)

Criminal Law - Criminal Gangs - Underlying Crimes, Sentencing, and Gang Leaders

This bill (1) adds offenses to the list of underlying crimes establishing criminal gang participation; (2) prohibits a person from actively participating in a criminal gang knowing that the gang's members engage in an ongoing pattern of criminal gang activity; (3) specifies circumstances under which a sentence imposed for criminal gang membership must run consecutively to a sentence imposed for an underlying crime; and (4) establishes a new offense for engaging in activities related to the management of a criminal gang.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's expansion of the list of underlying crimes and prohibited activities and the requirement that sentences for criminal gang participation run consecutively to sentences for underlying crimes under certain circumstances.

Local Effect: Potential minimal increase in local revenues due to an increase in the number of circuit court defendants who qualify for criminal gang participation monetary penalties as a result of the bill's expansion of the list of underlying crimes.

Small Business Effect: None.

Analysis

Bill Summary: The bill adds the following offenses to the list of underlying crimes: (1) misdemeanor second degree assault; (2) pandering; (3) receiving earnings of a

prostitute; (4) betting, wagering, and gambling offenses; (5) misdemeanor theft; (6) misdemeanor inducement of false testimony; (7) misdemeanor retaliation for testimony; (8) misdemeanor intimidation or corruption of a juror; and (9) possession of a regulated firearm by a person prohibited from possessing a regulated firearm, other than a person convicted of a crime of violence.

A sentence imposed for a criminal gang violation that does not result in the death of a victim may run concurrently for a first offense. The sentence imposed for a second or subsequent offense or a criminal gang violation that results in the death of a victim must run separate from and consecutively to a sentence imposed for an underlying crime.

The bill creates a new offense prohibiting a person from organizing, supervising, financing, or managing a criminal gang. Violators are guilty of a felony, subject to maximum penalties of 20 years imprisonment and/or a \$100,000 fine. The sentence for this offense must be separate from and run consecutively to a sentence for an underlying crime that was the basis of the violation.

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 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 Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of additional incarcerations or lengths of stay due to the proposed crime or the imposition of consecutive sentences 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.

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 participation, any increase in the workload can be handled with existing budgeted resources.

Local Revenues: Revenues increase minimally due to an increase in the number of circuit court defendants receiving monetary penalties for criminal gang participation as a result of the bill's expansion of the list of underlying crimes and prohibited activities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Commission on Criminal Sentencing Policy; Governor's Office of Crime Control and Prevention; Department of Juvenile Services; Department of State Police; State's Attorneys' Association; Department of Legislative Services

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

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