

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1265

(Delegate Sophocleus, *et al.*)

Judiciary

Criminal Law - Criminal Gangs - Underlying Crime

This bill expands the crimes that are considered “underlying crimes” for purposes of the prohibition against participating in a gang offense. The bill alters the definition of underlying crimes to include misdemeanor second degree assault; malicious destruction of property; human trafficking; receiving earnings of a prostitute; and betting, wagering, or gambling.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill’s expansion of the list of underlying crimes.

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

Current Law: 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.

“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.

“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 among the following list of felonies:

- abduction;
- arson in the first or second degree, or threat of arson;
- kidnapping;
- manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery in the first or second degree;
- carjacking or attempted carjacking;
- sexual offense in the first or second degree;
- attempt to commit a violent crime;
- assault in the first or second degree, assault by inmate, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense;
- manufacturing or possessing of destructive device;
- extortion;
- manufacturing or distributing a controlled dangerous substance;
- burglary in the first, second, or third degree;
- general theft or motor vehicle theft;
- obstruction of justice;
- retaliation for testimony or intimidating or corrupting a juror; and
- illegal possession of a firearm.

A violator is guilty of a felony and subject to imprisonment not exceeding 10 years, or 20 years if death to a victim occurs, and/or a fine not exceeding \$100,000. A sentence imposed under this provision 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.

Background: Chapter 496 of 2007, an Administration initiative, created new offenses regarding criminal gangs. The Attorney General was authorized to aid in the investigation or prosecute violations of the Act. By January 1, 2008, the Attorney General and the Maryland State Attorneys' Association were required to report to the General Assembly on recommendations for more legislation to assist in the prosecution of gang activity. One of the recommendations was to expand 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.

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.

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 activity, 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.

Additional Information

Prior Introductions: HB 1307 of 2008 received an unfavorable report from the House Judiciary Committee. SB 640 of 2008 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

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

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