

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 227
Judiciary

(Delegate James)

Criminal Law - Gangs - Definition, Underlying Crimes, and Sentencing

This bill removes references to “ongoing association” from the definition of a criminal gang under Maryland law. The bill adds several offenses to the list of underlying crimes that may serve to prove a pattern of criminal gang activity, including various controlled dangerous substances (CDS) violations, firearms violations, and assault violations. The bill alters existing statute so that a person may not participate in a criminal gang knowing that the members of the gang engage in a pattern, rather than an ongoing pattern, of criminal gang activity. The bill also requires a sentence imposed for participation in a criminal gang to run consecutive to the sentence imposed for the underlying crime.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill’s expansion of the list of underlying crimes and the requirement that sentences for criminal gang participation run consecutively to sentences for 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

Bill Summary: The bill adds the following offenses to the list of underlying crimes: (1) extortion by verbal or written threat; (2) drug kingpin; (3) use of a weapon in a drug trafficking crime; (4) firearm violations by individuals convicted of certain CDS

offenses; (5) use of a minor to manufacture, deliver, or distribute a CDS; (6) burglary with a destructive device; (7) hate crimes; (8) human trafficking; (9) receiving earnings of a prostitute; (10) betting, wagering, and gambling offenses; (11) sale, rental, or transfer of a regulated firearm to a person prohibited from possessing a firearm; (12) straw purchases or knowing participation in straw purchases of firearms; (13) misdemeanor second degree assault; (14) reckless endangerment; (15) assault by an inmate on another inmate or correctional employee; (16) stalking; (17) wearing, carrying, or transporting a handgun; (18) use of a handgun or antique firearm in the commission of a crime; (19) threat of arson; (20) attempted burning of a structure or property; (21) malicious destruction of property; and (22) prostitution or operation of a brothel.

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; or (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 section 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;
- 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.

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: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Maryland State's Attorneys' Association, Department of Legislative Services

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