

Department of Legislative Services  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

House Bill 1307

(Delegate Dwyer, *et al.*)

Judiciary

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**Criminal Law - Statewide Definition of Criminal Gang Member**

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This bill requires all law enforcement agencies in the State to define a criminal gang member as a person whose membership in a criminal gang is proven by two or more of the following traits: (1) self-proclamation of membership; (2) association with a common group name, insignia, flag, or means of recognition of a gang; (3) association with known gangs and participation in some activities of a gang; (4) regular association with gang members and demonstrated aspiration to become a member by adoption of the gang's style of dress, tattoos, hand signals, or symbols; or (5) physical evidence, including photographs, written or electronic correspondence, or other documentation.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in State expenditures to the extent that the bill results in increased prosecution and incarceration of individuals who participate in criminal gangs. Revenues are not affected.

**Local Effect:** Potential minimal increase in local revenues from monetary penalties in circuit court cases if the bill results in an increase in the number of convictions for criminal gang participation.

**Small Business Effect:** None.

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**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, including acts by juveniles that would be underlying crimes if committed as adults; 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 and willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed as 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 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. One of the recommendations was to expand the list of factors that may be used by law enforcement statewide to uniformly authenticate gang membership. The current statute requires a showing that the members of an alleged gang “have in common an identifying sign, symbol, name, leader, or purpose.” Prosecutors contend that identifiers such as symbols and flags, style or color of dress, tattoos, claims of territory, or self-proclamation are also frequently used by local law enforcement to document and validate gang membership.

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 Fiscal Effect:** The bill’s requirement that all law enforcement agencies in the State adopt a uniform definition of a criminal gang member may result in an increase in the number of successful multi-jurisdiction cases and increased cooperation between law enforcement agencies. However, the bill does not amend the current statutory definition of “criminal gang” used in the prohibition on criminal gang participation. Therefore, it is unclear to what extent the bill will increase the number of gang cases prosecuted and the number of individuals incarcerated for criminal gang participation.

However, to the extent that the bill results in an increase in the number of incarcerations, general fund expenditures increase minimally due to more people being committed to Division of Corrections (DOC) facilities. The number of additional people likely to be incarcerated as a result of this proposed change in definition 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany, Harford, and Montgomery counties; Governor's Office of Crime Control and Prevention; Department of Natural Resources; Department of General Services; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; State's Attorneys' Association; Department of Legislative Services

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Analysis by: Amy A. Devadas

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