

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1259
Judiciary

(Delegate Sophocleus, *et al.*)

Criminal Law - Definition of "Criminal Gang"

This bill alters the definition of a “criminal gang” by repealing the requirement that a group of three or more persons whose members meet additional criteria must have an *ongoing* association to be defined as a criminal gang.

Fiscal Summary

State Effect: Minimal. Although the bill may result in additional individuals being defined as members of a criminal gang and subject to prosecution and incarceration under the prohibition against participation in a criminal gang, it is not expected to significantly affect operations or finances for the Judiciary or the Department of Public Safety and Correctional Services.

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. It is assumed that any additional caseload for the circuit courts could be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: A 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.

Background: Chapter 496 of 2007, an Administration initiative, created new offenses regarding criminal gangs. Chapter 496 prohibited a person 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 committed for the benefit of, at the direction of, or in association with a criminal gang.

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 prosecution of gang activity. One of the recommendations was to eliminate 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.

State Expenditures: General fund expenditures increase minimally due to more people being committed to Division of Corrections (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted as a result of this 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.

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.

Additional Information

Prior Introductions: HB 1308 of 2008 received an unfavorable report from the House Judiciary Committee. SB 636 of 2008 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Garrett and Montgomery 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

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