

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1269
Judiciary

(Delegate Sophocleus, *et al.*)

Criminal Law - Criminal Gang Participation - Sentencing

This bill requires that any sentence imposed for a violation of the prohibition against participation in a criminal gang be separate from and consecutive to a sentence for any crime establishing a violation.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's requirement that sentences be served consecutively. Revenues are not affected.

Local Effect: None. The bill would not materially affect operations of the circuit courts.

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 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 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, 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.

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 may run consecutive to or concurrent with a sentence for any crime establishing a violation.

“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.

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 prosecution of gang activity. This bill emerges from those recommendations.

State Fiscal Effect: General fund expenditures could increase minimally as a result of the requirement of consecutive sentences 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.

Additional Information

Prior Introductions: HB 1321 of 2008 received an unfavorable report from the House Judiciary Committee. SB 637 of 2008 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - February 26, 2010
mlm/kdm

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