

HOUSE BILL 426

E1, E2
HB 609/10 – JUD

11r2083

By: **Delegates Love, Barkley, Beidle, Costa, George, Kipke, O'Donnell, and Sophocleus**

Introduced and read first time: February 4, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Gang Activity – Jurisdiction over Juvenile Offenders**

3 FOR the purpose of excluding from the jurisdiction of juvenile court a child of at least
4 a certain age alleged to have committed, as a member of a criminal gang, a
5 certain act that would be a crime if committed by an adult; providing for the
6 application of this Act; and generally relating to the jurisdiction of the court
7 over a juvenile offender involved in criminal gang activity.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–8A–03(d)(4)(xvi) and (xvii)
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2010 Supplement)

13 BY adding to
14 Article – Courts and Judicial Proceedings
15 Section 3–8A–03(d)(4)(xviii)
16 Annotated Code of Maryland
17 (2006 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Criminal Law
20 Section 9–802, 9–803, and 9–804
21 Annotated Code of Maryland
22 (2002 Volume and 2010 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3–8A–03.

2 (d) The court does not have jurisdiction over:

3 (4) A child at least 16 years old alleged to have committed any of the
4 following crimes, as well as all other charges against the child arising out of the same
5 incident, unless an order removing the proceeding to the court has been filed under §
6 4–202 of the Criminal Procedure Article:

7 (xvi) Attempted robbery under § 3–403 of the Criminal Law
8 Article; [or]

9 (xvii) A violation of § 4–203, § 4–204, § 4–404, or § 4–405 of the
10 Criminal Law Article; OR

11 **(XVIII) A VIOLATION OF § 9–802, § 9–803, OR § 9–804 OF THE**
12 **CRIMINAL LAW ARTICLE;**

13 **Article – Criminal Law**

14 9–802.

15 (a) A person may not threaten an individual, or a friend or family member of
16 an individual, with physical violence with the intent to coerce, induce, or solicit the
17 individual to participate in or prevent the individual from leaving a criminal gang.

18 (b) A person who violates this section is guilty of a misdemeanor and on
19 conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding
20 \$1,000 or both.

21 9–803.

22 (a) A person may not threaten an individual, or a friend or family member of
23 an individual, with or use physical violence to coerce, induce, or solicit the individual
24 to participate in or prevent the individual from leaving a criminal gang:

25 (1) in a school vehicle, as defined under § 11–154 of the
26 Transportation Article; or

27 (2) in, on, or within 1,000 feet of real property owned by or leased to
28 an elementary school, secondary school, or county board of education and used for
29 elementary or secondary education.

30 (b) Subsection (a) of this section applies whether or not:

31 (1) school was in session at the time of the crime; or

1 (2) the real property was being used for purposes other than school
2 purposes at the time of the crime.

3 (c) A person who violates this section is guilty of a misdemeanor and on
4 conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding
5 \$4,000 or both.

6 (d) Notwithstanding any other law, a conviction under this section may not
7 merge with a conviction under § 9–802 of this subtitle.

8 9–804.

9 (a) A person may not:

10 (1) participate in a criminal gang knowing that the members of the
11 gang engage in a pattern of criminal gang activity; and

12 (2) knowingly and willfully direct or participate in an underlying
13 crime, or act by a juvenile that would be an underlying crime if committed by an adult,
14 committed for the benefit of, at the direction of, or in association with a criminal gang.

15 (b) A person may not violate subsection (a) of this section that results in the
16 death of a victim.

17 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
18 person who violates this section is guilty of a felony and on conviction is subject to
19 imprisonment not exceeding 10 years or a fine not exceeding \$100,000 or both.

20 (ii) A person who violates subsection (b) of this section is guilty
21 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
22 fine not exceeding \$100,000 or both.

23 (2) (i) A sentence imposed under paragraph (1)(i) of this subsection
24 for a first offense may be separate from and consecutive to or concurrent with a
25 sentence for any crime based on the act establishing a violation of this section.

26 (ii) A sentence imposed under paragraph (1)(i) of this subsection
27 for a second or subsequent offense, or paragraph (1)(ii) of this subsection shall be
28 separate from and consecutive to a sentence for any crime based on the act
29 establishing a violation of this section.

30 (iii) A consecutive sentence for a second or subsequent offense
31 shall not be mandatory unless the State notifies the person in writing of the State's
32 intention to proceed against the person as a second or subsequent offender at least 30
33 days before trial.

1 (d) A person may be charged with a violation of this section only by
2 indictment, criminal information, or petition alleging a delinquent act.

3 (e) (1) The Attorney General, at the request of the State's Attorney for a
4 county in which a violation or an act establishing a violation of this section occurs,
5 may:

6 (i) aid in the investigation of the violation or act; and

7 (ii) prosecute the violation or act.

8 (2) In exercising authority under paragraph (1) of this subsection, the
9 Attorney General has all the powers and duties of a State's Attorney, including the use
10 of the grand jury in the county, to prosecute the violation.

11 (3) Notwithstanding any other provision of law, in circumstances in
12 which violations of this section are alleged to have been committed in more than one
13 county, the respective State's Attorney of each county, or the Attorney General, may
14 join the causes of action in a single complaint with the consent of each State's Attorney
15 having jurisdiction over an offense sought to be joined.

16 (f) Notwithstanding any other provision of law and provided at least one
17 criminal gang activity of a criminal gang allegedly occurred in the county in which a
18 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and
19 otherwise conduct an investigation of the alleged criminal gang's activities and
20 offenses in other counties.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
22 to offenses committed on or after the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2011.