

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 426  
Judiciary

(Delegate Love, *et al.*)

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**Criminal Law - Gang Activity - Jurisdiction over Juvenile Offenders**

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This bill establishes that the juvenile court does not have jurisdiction over a child at least 16 years old who is alleged to have committed specified gang-related crimes, unless the case is transferred back to the juvenile court under reverse waiver provisions.

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**Fiscal Summary**

**State Effect:** Potential minimal general fund revenue increase due to additional fines imposed on juveniles who are prosecuted as adults under the bill's provisions. Potential minimal increase in general fund expenditures due to additional sentences of incarceration to Division of Correction (DOC) facilities for juveniles who are members of criminal gangs.

**Local Effect:** Potential minimal revenue increase due to additional fines imposed on juveniles prosecuted as adults under the bill's provisions. Potential minimal increase in expenditures due to additional sentences of incarceration in local facilities for juveniles who are members of criminal gangs. Any increase in the workload for the circuit courts can be handled with existing budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A person is prohibited from threatening an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal

gang. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for two years and/or a fine of \$1,000.

A person is also prohibited from making such threats in a school vehicle or within 1,000 feet of a school. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for four years and/or a \$4,000 fine.

A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; or (2) knowingly and willfully directing or participating in 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 imprisonment not exceeding 10 years, or 20 years if death to a victim occurs, and/or a fine not exceeding \$100,000. A sentence for a second or subsequent offense of criminal gang participation or a violation resulting in the death of a victim must run consecutively to any sentence for an underlying crime on which the conviction was based.

Under the gang kingpin offense, a person is prohibited from organizing, supervising, financing, or managing a criminal gang. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 20 years and/or a \$100,000 fine. A sentence must run consecutively to a sentence for any crime based on the act establishing a violation.

Nothing in the criminal gangs subtitle may be construed inconsistently with the provisions relating to jurisdiction over juvenile causes contained in Title 3, Subtitle 8A of the Courts Article.

In general, the juvenile court has jurisdiction over a child alleged to be delinquent, in need of supervision, or who has received a citation for alcoholic beverage violations. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed a violent crime, children age 14 and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. However, a circuit court may transfer a case involving such a child to the juvenile court if a transfer is believed to be in the interests of the child or society ("reverse waiver"). Reverse waiver is not permitted in certain circumstances, including if a child was previously transferred to juvenile court and adjudicated delinquent. The District Court also has the authority to transfer cases to juvenile court under certain circumstances. In addition, the juvenile court may waive jurisdiction over a child alleged to be delinquent who is age 15 or older, or who is younger than age 15 and is charged

with committing an act which if committed by an adult, would be punishable by death or life imprisonment.

**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. State law enforcement agencies generally do not statistically distinguish between “youth” and “adult” street gangs, as most gangs tend to focus on recruitment across all age groups.

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 have been enacted. The report included a recommendation that a juvenile who is 16 years or older and accused of gang participation be subject to the jurisdiction of an adult court, subject to a “reverse waiver” that returns the juvenile to juvenile court.

The Department of Juvenile Services (DJS) advises that it regularly meets with law enforcement agencies to share information regarding youth gang activity. DJS provides gang awareness training to all new employees and to various community groups and has developed prevention and intervention guides that are written specifically for targeted groups. DJS also utilizes resources within the community to create plans to assist youth formerly involved in gang-related activities with being reintroduced to the community after detention and rehabilitation. These reentry plans include role modeling and mentoring, job training and placement, educational support, tattoo removal, and truancy prevention programs.

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 Revenues:** General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally due to juveniles being committed to DOC facilities and increased payments to counties for reimbursement

of inmate costs. The number of people convicted under this bill's provisions 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 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.

**Local Revenues:** Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State 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. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

## **Additional Information**

**Prior Introductions:** HB 609 of 2010 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 365, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Baltimore City; Montgomery, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

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