

SENATE BILL 388

E1, E2

6lr0159
CF 6lr0173

By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Edwards, Hershey, Jennings, Mathias, Norman, Ready, Reilly, Salling, Serafini, Simonaire, and Waugh**

Introduced and read first time: January 28, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Criminal Gangs – Prohibitions and Funding**

3 FOR the purpose of altering the penalties for certain offenses relating to criminal gangs;
4 prohibiting a criminal gang or an individual belonging to a criminal gang from
5 receiving or investing certain proceeds in a certain manner; prohibiting criminal
6 gangs and persons involved with criminal gangs from obtaining certain property
7 under certain circumstances; prohibiting a person from conspiring to commit certain
8 violations relating to criminal gangs; allowing a court to order a divestiture of certain
9 property and to take certain other actions relating to criminal gangs and persons
10 involved with criminal gangs; altering certain penalties; authorizing the Governor
11 to request the Attorney General to aid in certain investigations or prosecutions;
12 prohibiting a person from promoting or sponsoring a criminal gang; establishing
13 certain venue provisions for certain offenses; establishing the Addiction Treatment
14 Divestiture Fund as a special, nonlapsing fund in the Department of Health and
15 Mental Hygiene; specifying the purposes of the Fund; requiring the Secretary of
16 Health and Mental Hygiene to administer the Fund; requiring the State Treasurer
17 to hold the Fund and the Comptroller to account for the Fund; specifying the contents
18 of the Fund; specifying the purposes for which the Fund may be used; providing for
19 the investment of the Fund; exempting the Fund from a certain provision of law that
20 requires interest on State money in special funds to accrue to the General Fund;
21 defining a certain term; altering a certain definition; and generally relating to
22 criminal gangs.

23 BY repealing and reenacting, with amendments,
24 Article – Criminal Law
25 Section 9–801 through 9–805
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY adding to
2 Article – Criminal Law
3 Section 9–807
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2015 Supplement)
- 6 BY adding to
7 Article – Health – General
8 Section 8–6D–01 to be under the new subtitle “Subtitle 6D. Addiction Treatment
9 Divestiture Fund”
10 Annotated Code of Maryland
11 (2015 Replacement Volume)
- 12 BY repealing and reenacting, without amendments,
13 Article – State Finance and Procurement
14 Section 6–226(a)(2)(i)
15 Annotated Code of Maryland
16 (2015 Replacement Volume)
- 17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 6–226(a)(2)(ii)84. and 85.
20 Annotated Code of Maryland
21 (2015 Replacement Volume)
- 22 BY adding to
23 Article – State Finance and Procurement
24 Section 6–226(a)(2)(ii)86.
25 Annotated Code of Maryland
26 (2015 Replacement Volume)

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

29 **Article – Criminal Law**

30 9–801.

- 31 (a) In this subtitle the following words have the meanings indicated.
- 32 (b) “Coerce” means to compel or attempt to compel another by threat of harm or
33 other adverse consequences.
- 34 (c) “Criminal gang” means a group or association of three or more persons whose
35 members:
- 36 (1) individually or collectively engage in a pattern of criminal gang activity;

1 (2) have as one of their primary objectives or activities the commission of
2 one or more underlying crimes, including acts by juveniles that would be underlying crimes
3 if committed by adults; and

4 (3) have in common an overt or covert organizational or command
5 structure.

6 **(D) “ENTERPRISE” INCLUDES:**

7 **(1) A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION,**
8 **BUSINESS TRUST, OR OTHER LEGAL ENTITY; OR**

9 **(2) ANY GROUP OF INDIVIDUALS ASSOCIATED IN FACT ALTHOUGH**
10 **NOT A LEGAL ENTITY.**

11 **[(d)] (E)** “Pattern of criminal gang activity” means the commission of, attempted
12 commission of, conspiracy to commit, or solicitation of two or more underlying crimes or
13 acts by a juvenile that would be an underlying crime if committed by an adult, provided the
14 crimes or acts were not part of the same incident.

15 **[(e)] (F)** “Solicit” has the meaning stated in § 11–301 of this article.

16 **[(f)] (G)** “Underlying crime” means:

17 (1) a crime of violence as defined under § 14–101 of this article;

18 (2) a violation of § 3–203 (second degree assault), § 4–203 (wearing,
19 carrying, or transporting a handgun), § 9–302 (inducing false testimony or avoidance of
20 subpoena), § 9–303 (retaliation for testimony), § 9–305 (intimidating or corrupting juror), §
21 11–303 (human trafficking), § 11–304 (receiving earnings of prostitute), or § 11–306(a)(2),
22 (3), or (4) (house of prostitution) of this article;

23 (3) a felony violation of § 3–701 (extortion), § 4–503 (manufacture or
24 possession of destructive device), § 5–602 (distribution of CDS), § 5–603 (manufacturing
25 CDS or equipment), **§ 5–604(B) (CREATING OR POSSESSING A COUNTERFEIT**
26 **SUBSTANCE), § 5–606 (FALSE PRESCRIPTION),** § 6–103 (second degree arson), § 6–202
27 (first degree burglary), § 6–203 (second degree burglary), § 6–204 (third degree burglary),
28 § 7–104 (theft), or § 7–105 (unauthorized use of a motor vehicle) of this article; or

29 (4) a felony violation of § 5–133 of the Public Safety Article.

30 9–802.

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

4 (b) A person who violates this section is guilty of a misdemeanor and on conviction
5 is subject to imprisonment not exceeding 2 years or a fine not exceeding [~~\$1,000~~] **\$10,000**
6 or both.

7 9–803.

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

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

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

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

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

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

20 (c) A person who violates this section is guilty of a misdemeanor and on conviction
21 is subject to imprisonment not exceeding 4 years or a fine not exceeding [~~\$4,000~~] **\$20,000**
22 or both.

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

25 9–804.

26 (a) A person may not:

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

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

1 **(B) A CRIMINAL GANG OR AN INDIVIDUAL BELONGING TO A CRIMINAL GANG**
2 **MAY NOT:**

3 **(1) RECEIVE PROCEEDS KNOWN TO HAVE BEEN DERIVED DIRECTLY**
4 **OR INDIRECTLY FROM AN UNDERLYING CRIME; AND**

5 **(2) USE OR INVEST, DIRECTLY OR INDIRECTLY, AN AGGREGATE OF**
6 **\$10,000 OR MORE OF THE PROCEEDS FROM AN UNDERLYING CRIME IN:**

7 **(I) THE ACQUISITION OF A TITLE TO, RIGHT TO, INTEREST IN,**
8 **OR EQUITY IN REAL PROPERTY; OR**

9 **(II) THE ESTABLISHMENT OR OPERATION OF ANY ENTERPRISE.**

10 **(C) A CRIMINAL GANG MAY NOT ACQUIRE OR MAINTAIN, DIRECTLY OR**
11 **INDIRECTLY, ANY INTEREST IN OR CONTROL OF ANY ENTERPRISE OR REAL**
12 **PROPERTY THROUGH AN UNDERLYING CRIME.**

13 **(D) A PERSON MAY NOT CONSPIRE TO VIOLATE SUBSECTION (A), (B), OR (C)**
14 **OF THIS SECTION.**

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

17 **[(c)] (F)** (1) (i) Except as provided in subparagraph (ii) of this paragraph,
18 a person who violates this section is guilty of a felony and on conviction is subject to
19 imprisonment not exceeding **[10] 15** years or a fine not exceeding **[\$100,000] \$1,000,000**
20 or both.

21 (ii) A person who violates subsection **[(b)] (E)** of this section is guilty
22 of a felony and on conviction is subject to imprisonment not exceeding **[20] 25** years or a
23 fine not exceeding **[\$100,000] \$5,000,000** or both.

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

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

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

1 **(3) IN ADDITION TO THE OTHER PENALTIES PROVIDED IN THIS**
2 **SUBSECTION, ON CONVICTION THE COURT MAY:**

3 **(I) ORDER A PERSON OR CRIMINAL GANG TO BE DIVESTED OF**
4 **ANY INTEREST IN AN ENTERPRISE OR REAL PROPERTY;**

5 **(II) ORDER THE DISSOLUTION OR REORGANIZATION OF AN**
6 **ENTERPRISE; AND**

7 **(III) ORDER THE SUSPENSION OR REVOCATION OF ANY LICENSE,**
8 **PERMIT, OR PRIOR APPROVAL GRANTED TO THE ENTERPRISE OR PERSON BY A UNIT**
9 **OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE.**

10 **(G) (1) THIS SUBSECTION APPLIES TO A VIOLATION OF § 5-602, § 5-603,**
11 **§ 5-604(B), OR § 5-606 OF THIS ARTICLE.**

12 **(2) ASSETS DIVESTED UNDER THIS SECTION AND DERIVED FROM THE**
13 **COMMISSION OF, ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, OR**
14 **SOLICITATION OF A CRIME DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION,**
15 **EITHER IN WHOLE OR IN PART, SHALL BE HELD IN THE ADDICTION TREATMENT**
16 **DIVESTITURE FUND ESTABLISHED UNDER § 8-6D-01 OF THE HEALTH – GENERAL**
17 **ARTICLE.**

18 **[(d)] (H)** A person may be charged with a violation of this section only by
19 indictment, criminal information, or petition alleging a delinquent act.

20 **[(e)] (I)** (1) The Attorney General, at the request of the **GOVERNOR OR THE**
21 **State's Attorney** for a county in which a violation or an act establishing a violation of this
22 section occurs, may:

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

24 (ii) prosecute the violation or act.

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

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

1 **[(f)] (J)** Notwithstanding any other provision of law and provided at least one
2 criminal gang activity of a criminal gang allegedly occurred in the county in which a grand
3 jury is sitting, the grand jury may issue subpoenas, summon witnesses, and otherwise
4 conduct an investigation of the alleged criminal gang's activities and offenses in other
5 counties.

6 9-805.

7 (a) A person may not organize, supervise, **PROMOTE, SPONSOR**, finance, or
8 manage a criminal gang.

9 (b) A person who violates this section is guilty of a felony and on conviction is
10 subject to imprisonment not exceeding 20 years or a fine not exceeding **[\$100,000]**
11 **\$1,000,000** or both.

12 (c) A sentence imposed under this section shall be separate from and consecutive
13 to a sentence for any crime based on the act establishing a violation of this section.

14 **9-807.**

15 **FOR PURPOSES OF VENUE, ANY VIOLATION OF THIS SUBTITLE IS CONSIDERED**
16 **TO HAVE BEEN COMMITTED IN ANY COUNTY:**

17 **(1) IN WHICH ANY ACT WAS PERFORMED IN FURTHERANCE OF A**
18 **VIOLATION OF THIS SUBTITLE;**

19 **(2) THAT IS THE PRINCIPAL PLACE OF THE OPERATIONS OF THE**
20 **CRIMINAL GANG IN THE STATE;**

21 **(3) IN WHICH AN OFFENDER HAD CONTROL OR POSSESSION OF**
22 **PROCEEDS OF A VIOLATION OF THIS SUBTITLE OR OF RECORDS OR OTHER**
23 **MATERIAL OR OBJECTS THAT WERE USED IN FURTHERANCE OF A VIOLATION; OR**

24 **(4) IN WHICH AN OFFENDER RESIDES.**

25 **Article – Health – General**

26 **SUBTITLE 6D. ADDICTION TREATMENT DIVESTITURE FUND.**

27 **8-6D-01.**

28 **(A) THERE IS AN ADDICTION TREATMENT DIVESTITURE FUND IN THE**
29 **DEPARTMENT.**

1 **(B) THE PURPOSE OF THE FUND IS TO SUPPORT ADDICTION TREATMENT**
2 **SERVICES TO PERSONS WITH SUBSTANCE-RELATED DISORDERS.**

3 **(C) THE SECRETARY SHALL ADMINISTER THE FUND.**

4 **(D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT**
5 **SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

6 **(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY,**
7 **AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

8 **(E) THE FUND CONSISTS OF:**

9 **(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 9-804 OF THE**
10 **CRIMINAL LAW ARTICLE;**

11 **(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**
12 **AND**

13 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
14 **THE BENEFIT OF THE FUND.**

15 **(F) THE FUND MAY BE USED ONLY TO SUPPORT THE ACTIONS OF THE**
16 **SECRETARY TO PROVIDE TREATMENT FOR SUBSTANCE-RELATED DISORDERS.**

17 **(G) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN**
18 **THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

19 **(H) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE**
20 **WITH THE STATE BUDGET.**

21 **Article – State Finance and Procurement**

22 6-226.

23 (a) (2) (i) Notwithstanding any other provision of law, and unless
24 inconsistent with a federal law, grant agreement, or other federal requirement or with the
25 terms of a gift or settlement agreement, net interest on all State money allocated by the
26 State Treasurer under this section to special funds or accounts, and otherwise entitled to
27 receive interest earnings, as accounted for by the Comptroller, shall accrue to the General
28 Fund of the State.

29 (ii) The provisions of subparagraph (i) of this paragraph do not apply
30 to the following funds:

1 84. the Economic Development Marketing Fund; [and]

2 85. the Military Personnel and Veteran-Owned Small
3 Business No-Interest Loan Fund; AND

4 **86. THE ADDICTION TREATMENT DIVESTITURE FUND.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2016.