

# HOUSE BILL 102

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EMERGENCY BILL

8lr0132  
CF 8lr0131

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By: **The Speaker (By Request – Administration) and Delegates Adams, Afzali, Arentz, Aumann, Beitzel, Buckel, Carozza, Cassilly, Ciliberti, Clark, Cluster, Corderman, Fisher, Flanagan, Folden, Ghrist, Glass, Grammer, Hornberger, S. Howard, Impallaria, Jacobs, Kipke, Kittleman, Krebs, Long, Malone, Mautz, McComas, McConkey, McDonough, McKay, Metzgar, Miele, W. Miller, Morgan, Otto, Parrott, Reilly, Rey, Rose, Saab, Shoemaker, Szeliga, Vogt, West, and Wivell**

Introduced and read first time: January 12, 2018

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Gang Offenses – Penalties, Procedure, and Elements**

3 FOR the purpose of providing that the juvenile court does not have jurisdiction over a  
4 certain child alleged to have committed a certain criminal gang offense under certain  
5 circumstances; altering penalties for certain criminal gang offenses; providing that  
6 certain sentences imposed shall be consecutive to certain sentences; altering the  
7 elements of a certain criminal gang offense; requiring certain local jurisdictions to  
8 use certain divested assets for certain purposes under certain circumstances;  
9 providing that a certain underlying crime is considered to have been committed in a  
10 certain county for purposes of venue; altering certain definitions; repealing a certain  
11 definition; making this Act an emergency measure; and generally relating to  
12 criminal gang offenses.

13 BY repealing and reenacting, with amendments,  
14 Article – Courts and Judicial Proceedings  
15 Section 3–8A–03(d)(4)  
16 Annotated Code of Maryland  
17 (2013 Replacement Volume and 2017 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Criminal Law  
20 Section 9–801, 9–802, 9–803, 9–804(a) and (g), and 9–807  
21 Annotated Code of Maryland  
22 (2012 Replacement Volume and 2017 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 3–8A–03.

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

6 (4) A child at least 16 years old alleged to have committed any of the  
7 following crimes, as well as all other charges against the child arising out of the same  
8 incident, unless an order removing the proceeding to the court has been filed under §  
9 4–202 of the Criminal Procedure Article:

- 10 (i) Abduction;
- 11 (ii) Kidnapping;
- 12 (iii) Second degree murder;
- 13 (iv) Manslaughter, except involuntary manslaughter;
- 14 (v) Second degree rape;
- 15 (vi) Robbery under § 3–403 of the Criminal Law Article;
- 16 (vii) Second degree sexual offense under § 3–306(a)(1) of the Criminal  
17 Law Article;
- 18 (viii) Third degree sexual offense under § 3–307(a)(1) of the Criminal  
19 Law Article;
- 20 (ix) A crime in violation of § 5–133, § 5–134, § 5–138, or § 5–203 of  
21 the Public Safety Article;
- 22 (x) Using, wearing, carrying, or transporting a firearm during and  
23 in relation to a drug trafficking crime under § 5–621 of the Criminal Law Article;
- 24 (xi) Use of a firearm under § 5–622 of the Criminal Law Article;
- 25 (xii) Carjacking or armed carjacking under § 3–405 of the Criminal  
26 Law Article;
- 27 (xiii) Assault in the first degree under § 3–202 of the Criminal Law  
28 Article;
- 29 (xiv) Attempted murder in the second degree under § 2–206 of the

1 Criminal Law Article;

2 (xv) Attempted rape in the second degree under § 3–310 of the  
3 Criminal Law Article;

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

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

8 (XVIII) **A CRIMINAL GANG OFFENSE UNDER TITLE 9,**  
9 **SUBTITLE 8 OF THE CRIMINAL LAW ARTICLE;**

10 **Article – Criminal Law**

11 9–801.

12 (a) In this subtitle the following words have the meanings indicated.

13 (b) “Coerce” means to compel or attempt to compel another by threat of harm or  
14 other adverse consequences.

15 (c) “Criminal gang” means a group or association of three or more persons whose  
16 members:

17 (1) [individually or collectively engage in a pattern of criminal gang  
18 activity] **CONSTITUTE AN ONGOING ENTITY;**

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

22 (3) have in common an overt or covert organizational or command  
23 structure.

24 (d) “Enterprise” includes:

25 (1) a sole proprietorship, partnership, corporation, business trust, or other  
26 legal entity; or

27 (2) any group of individuals associated in fact although not a legal entity.

28 (e) [“Pattern of criminal gang activity” means the commission of, attempted  
29 commission of, conspiracy to commit, or solicitation of two or more underlying crimes or  
30 acts by a juvenile that would be an underlying crime if committed by an adult, provided the

1 crimes or acts were not part of the same incident.

2 (f) "Solicit" has the meaning stated in § 11-301 of this article.

3 [(g)] (F) "Underlying crime" means:

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

5 (2) a violation of § 3-203 (second degree assault), § 4-203 (wearing,  
6 carrying, or transporting a handgun), **§ 9-102 (SUBORNATION OF PERJURY), § 9-202(A)**  
7 **(BRIBERY OF JUROR)**, § 9-302 (inducing false testimony or avoidance of subpoena),  
8 § 9-303 (retaliation for testimony), § 9-305 (intimidating or corrupting juror), **§ 9-306**  
9 **(OBSTRUCTION OF JUSTICE), § 9-307 (DESTRUCTION OF EVIDENCE), § 9-412**  
10 **(CONTRABAND – IN GENERAL), § 9-413 (CONTRABAND – FOR ESCAPE), § 9-414**  
11 **(CONTRABAND – WEAPON), § 9-416 (CONTRABAND – CONTROLLED DANGEROUS**  
12 **SUBSTANCE), § 9-417 (CONTRABAND – TELECOMMUNICATIONS-RELATED), § 11-303**  
13 (human trafficking), § 11-304 (receiving earnings of prostitute), or § 11-306(a)(2), (3), or  
14 (4) (house of prostitution) of this article;

15 (3) a felony violation of § 3-701 (extortion), § 4-503 (manufacture or  
16 possession of destructive device), § 5-602 (distribution of CDS), § 5-603 (manufacturing  
17 CDS or equipment), § 5-604(b) (creating or possessing a counterfeit substance), § 5-606  
18 (false prescription), § 6-103 (second degree arson), § 6-202 (first degree burglary), § 6-203  
19 (second degree burglary), § 6-204 (third degree burglary), § 7-104 (theft), or § 7-105  
20 (unauthorized use of a motor vehicle) of this article; [or]

21 (4) a felony violation of § 5-133 of the Public Safety Article;

22 **(5) A CRIME UNDER THE LAWS OF ANOTHER STATE OR OF THE**  
23 **UNITED STATES THAT WOULD BE A CRIME LISTED IN ITEMS (1) THROUGH (4) OF**  
24 **THIS SUBSECTION IF COMMITTED IN THIS STATE; OR**

25 **(6) THE ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, OR**  
26 **SOLICITATION OF A CRIME LISTED IN ITEMS (1) THROUGH (5) OF THIS SUBSECTION.**

27 9-802.

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

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

33 **(C) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE**

1 TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED UNDER ANY  
2 OTHER PROVISION OF LAW.

3 9–803.

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

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

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

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

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

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

16 (c) A person who violates this section is guilty of a misdemeanor and on conviction  
17 is subject to imprisonment not exceeding [4] 10 years or a fine not exceeding \$20,000 or  
18 both.

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

21 (D) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE  
22 TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED UNDER ANY  
23 OTHER PROVISION OF LAW.

24 9–804.

25 (a) A person may not[:

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

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

31 (g) (1) This subsection applies to a violation of § 5–602, § 5–603, § 5–604(b), §

1 5-606, § 5-612, § 5-613, § 5-614, or § 5-617 of this article.

2 (2) Assets divested under this section and derived from the commission of,  
3 attempted commission of, conspiracy to commit, or solicitation of a crime described in  
4 paragraph (1) of this subsection, either in whole or in part:

5 (I) IF THE STATE INVESTIGATED AND PROSECUTED A  
6 VIOLATION DESCRIBED IN THIS SUBSECTION, shall be deposited in the Addiction  
7 Treatment Divestiture Fund established under § 8-6D-01 of the Health – General Article;  
8 OR

9 (II) IF A LOCAL JURISDICTION INVESTIGATED AND  
10 PROSECUTED A VIOLATION DESCRIBED IN THIS SUBSECTION, SHALL BE USED BY  
11 THE LOCAL JURISDICTION TO:

12 1. SUPPORT ALTERNATIVES TO INCARCERATION,  
13 REENTRY PROGRAMS, AND ADDICTION TREATMENT SERVICES FOR PERSONS WITH  
14 SUBSTANCE-RELATED DISORDERS;

15 2. COMBAT CRIMINAL GANGS THROUGH EDUCATION,  
16 TRAINING, AND RESOURCES; OR

17 3. PROVIDE ASSISTANCE TO VICTIMS OF GANG-RELATED  
18 CRIMES.

19 (3) IF MORE THAN ONE JURISDICTION PARTICIPATED IN AN  
20 INVESTIGATION OR A PROSECUTION, ANY DIVESTED ASSETS SHALL BE DIVIDED IN  
21 THE MANNER AGREED ON BY THE JURISDICTIONS AND USED AS PROVIDED IN  
22 PARAGRAPH (2) OF THIS SUBSECTION.

23 9-807.

24 For purposes of venue, any violation of this subtitle AND ANY UNDERLYING CRIME  
25 is considered to have been committed in any county:

26 (1) in which any act was performed in furtherance of a violation of this  
27 subtitle;

28 (2) that is the principal place of the operations of the criminal gang in the  
29 State;

30 (3) in which a defendant had control or possession of proceeds of a violation  
31 of this subtitle or of records or other material or objects that were used in furtherance of a  
32 violation; or

1                   (4)     in which a defendant resides.

2                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
3 measure, is necessary for the immediate preservation of the public health or safety, has  
4 been passed by a yea and nay vote supported by three-fifths of all the members elected to  
5 each of the two Houses of the General Assembly, and shall take effect from the date it is  
6 enacted.