

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1028 (Delegate Washington)  
 Judiciary

Public Safety - Criminal Gangs - Database (Fair and Accurate Gang Database Act)

This bill requires that, in order to designate a person as a criminal gang member or criminal gang associate in a shared gang database, a law enforcement agency must provide written notice to the person and the person’s guardian if the person is a minor. The bill establishes a process through which a person is able to contest the designation within specified timeframes. By January 1, 2020, the Office of the Attorney General (OAG) must adopt regulations governing the use, operation, and oversight of shared gang databases, as specified, and by December 1, each year beginning in 2019, OAG must publish and place on its website an annual report with specified information regarding the use, operation, and oversight of shared gang databases. Finally, the bill establishes a Gang Database Advisory Committee.

Fiscal Summary

**State Effect:** General fund expenditures increase by at least \$567,300 in FY 2020. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	567,300	269,900	278,900	288,400	298,300
Net Effect	(\$567,300)	(\$269,900)	(\$278,900)	(\$288,400)	(\$298,300)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Potential significant increase in local government expenditures. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** None.

## Analysis

### Bill Summary:

*Shared Gang Database:* Written notice regarding a designation must (1) detail the legal process for the person, the person's attorney, or, if the person is a minor, the person's guardian, to contest the designation of the person in the shared gang database and (2) inform the person of the basis for the designation, unless providing this information would compromise a criminal investigation or compromise the health or safety of a minor suspected of criminal gang activity.

The person, the person's attorney, or, if the person is a minor, the person's guardian, may request in writing specified information regarding the designation. Within 30 days of the receipt of a request, the law enforcement agency must provide the requested information, unless doing so would compromise a criminal investigation or the health or safety of a minor suspected of criminal gang activity.

The person, the person's attorney, or, if the person is a minor, the person's guardian, may submit written documentation to the law enforcement agency contesting the designation. The law enforcement agency must review the documentation and provide written verification of the agency's decision within 30 days regarding removal of the person from the shared gang database or denial of the request, as specified. If a person contests a designation and the request is denied, the person, the person's attorney, or, if the person is a minor, the person's guardian, may petition the court to review the law enforcement agency's denial within 90 days after the law enforcement agency's denial. The bill establishes provisions regarding such a petition. The evidentiary record for a court's ruling on the petition must be limited as specified, and if, on review of the record, the court finds that the law enforcement agency failed to establish that the person is a criminal gang member or a criminal gang associate by clear and convincing evidence, the court must order removal of the name of the person from the shared gang database.

*Gang Database Advisory Committee:* The advisory committee must meet quarterly. A member of the advisory committee may not receive compensation, but is entitled to reimbursement for expenses, as provided in the State budget.

*Office of the Attorney General:* By January 1, 2020, OAG, with the advice of the advisory committee, must adopt regulations governing the use, operation, and oversight of shared gang databases that include, among other things, policies and procedures for entering, reviewing, and purging criminal gang documentation; retention periods for information; policies and procedures to locate equipment related to the operation of a shared gang database in a secure area; and policies and procedures prohibiting the advisory committee from discussing or accessing individual records contained in a shared gang database.

OAG must instruct each law enforcement agency to (1) review the records of criminal gang members entered into a shared gang database to ensure the existence of proper support for each criterion for entry in the shared gang database and (2) purge from a shared gang database any record of a person entered into the database designated as a suspected criminal gang member or criminal gang associate that does not meet criteria for entry. OAG is responsible for overseeing shared gang database system discipline and conformity with all applicable State and federal regulations, statutes, and guidelines, and may enforce a violation of a State or federal law with respect to a shared gang database or a violation of a regulation, policy, or procedure established by OAG under the bill's provisions, as specified.

OAG must temporarily suspend or revoke access to a shared gang database for an individual who shares information from a shared gang database for employment or military screening purposes or for federal immigration law purposes, unless required by State or federal law.

**Current Law:** Title 9, Subtitle 8 of the Criminal Law Article prohibits a variety of activities related to criminal gangs. The offenses vary based on the level of an individual's involvement in a gang, the nature of the gang activity, or the location of the gang activity.

### *Definitions*

A "criminal gang" is defined as a group or association of three or more persons whose members (1) individually or collectively engage in a pattern of criminal gang activity; (2) 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 by adults; and (3) have in common an overt or covert organizational or command structure.

Statute defines a "pattern of criminal gang activity" as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.

The following offenses are underlying crimes under the criminal gang statutes:

- a crime of violence as defined under § 14-101 of the Criminal Law Article;
- a violation of § 3-203 (second-degree assault), § 4-203 (wearing, carrying, or transporting a handgun), § 9-302 (inducing false testimony or avoidance of subpoena), § 9-303 (retaliation for testimony), § 9-305 (intimidating or corrupting

- juror), § 11-303 (human trafficking), § 11-304 (receiving earnings of prostitute), or § 11-306(a)(2), (3), or (4) (house of prostitution) of the Criminal Law Article;
- a felony violation of § 3-701 (extortion), § 4-503 (manufacture or possession of destructive device), § 5-602 (distribution of a controlled dangerous substance), § 5-603 (manufacturing a controlled dangerous substance or equipment), § 5-604(b) (creating or possessing a counterfeit substance), § 5-606 (false prescription), § 6-103 (second-degree arson), § 6-202 (first-degree burglary), § 6-203 (second-degree burglary), § 6-204 (third-degree burglary), § 7-104 (theft), or § 7-105 (unauthorized use of a motor vehicle) of the Criminal Law Article; or
  - a felony violation of § 5-133 of the Public Safety Article.

*Criminal Gang Activity (General), § 9-802 of the Criminal Law Article*

A person may not threaten 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 \$10,000.

*Criminal Gang Activity (Schools), § 9-803 of the Criminal Law Article*

A person may not make the types of threats listed above or use physical violence to engage in the prohibited activities listed above 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 \$20,000 fine. A conviction under § 9-803 may not merge with a conviction under § 9-802.

*Participation in a Criminal Gang, § 9-804 of the Criminal Law Article*

A person may not (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity and (2) knowingly and willfully direct or participate 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. Also, a criminal gang or an individual belonging to a criminal gang may not:

- receive proceeds known to have been derived directly or indirectly from an underlying crime; or
- use or invest, directly or indirectly, an aggregate of \$10,000 or more of the proceeds from an underlying crime in (1) the acquisition of a title to, right to, interest in, or equity in real property or (2) the establishment or operation of any enterprise.

A criminal gang is also prohibited from acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime. A person may not conspire to violate specified prohibitions.

In general, a violator is guilty of a felony, punishable by imprisonment for up to 15 years and/or a \$1,000,000 maximum fine. However, if the offense resulted in the death of a victim, a violator is subject to an increased penalty of imprisonment for up to 25 years and/or a \$5,000,000 maximum fine.

A sentence for a first offense that did not result in the death of a victim may be separate from and consecutive to or concurrent with a sentence imposed for any act establishing the gang violation. However, a sentence imposed for an offense that resulted in the death of a victim or a second or subsequent offense that did not result in the death of a victim must be separate from and consecutive to a sentence imposed for any act establishing the gang violation. The State must file a specified notice at least 30 days before trial in order for a consecutive sentence for a second or subsequent offense to be mandatory.

In addition to any penalties for this offense, on conviction the court may:

- order a person or criminal gang to be divested of any interest in an enterprise or real property;
- order the dissolution or reorganization of an enterprise; and
- order the suspension or revocation of any license, permit, or prior approval granted to the enterprise or person by a unit of the State or political subdivision of the State.

If the divested assets are derived from the commission of, attempted commission of, conspiracy to commit, or solicitation of specified crimes related to controlled dangerous substances, either in whole or in part, the assets must be held in the Addiction Treatment Divestiture Fund in the Maryland Department of Health. With respect to violations of § 9-804, the Attorney General, at the request of the Governor or the State's Attorney for a county in which a violation or an act establishing a violation of this section occurs, may aid in the investigation of the violation or act and prosecute the violation or act. Under these circumstances, the Attorney General has all the powers and duties of a State's Attorney, including the use of the grand jury in the county, to prosecute the violation.

If violations of § 9-804 are alleged to have been committed in more than one county, the respective State's Attorney of each county, or the Attorney General, may join the causes of action in a single complaint with the consent of each State's Attorney having jurisdiction over an offense sought to be joined. The grand jury may issue subpoenas, summon witnesses, and otherwise conduct an investigation of the alleged criminal gang's activities and offenses in other counties, so long as at least one criminal gang activity of a criminal gang allegedly occurred in the county in which a grand jury is sitting.

## *Venue for Violations of the Criminal Gang Statutes*

For purposes of venue, any violation of the criminal gang statutes is considered to have been committed in any county (1) in which any act was performed in furtherance of a violation of the criminal gang offenses statutes; (2) that is the principal place of the operations of the criminal gang in the State; (3) in which an offender had control or possession of proceeds of a violation of the criminal gang offenses statutes or of records or other material or objects that were used in furtherance of a violation; or (4) in which an offender resides.

**Background:** According to the *2013 Maryland Gang Threat Assessment* completed by the Maryland Coordination and Analysis Center within the Governor's Office of Crime Control and Prevention, Maryland communities are experiencing an overall increase in the presence of gangs, gang members, and gang activities. The assessment identifies the following challenges to gang enforcement by law enforcement: (1) the lack of a mandated central repository for gang-related investigative information in the State; (2) the difficulty in investigating and identifying gang members; and (3) limited funding and manpower for a specialized unit.

In an executive order dated December 5, 2017, Governor Lawrence J. Hogan, Jr. announced the creation of the Governor's Council on Gangs and Violent Criminal Networks. The council's membership consists of various stakeholders, including State's Attorneys, police chiefs, the Secretary of State Police, and the Secretary of Public Safety and Correctional Services. According to the order, the council's mission is to (1) provide leadership, policy oversight, and coordination of data collection and data-sharing strategies related to violent crime and victimization, including establishing performance measures for data-sharing and reporting results and (2) use data-sharing and collaboration to support and assist programs and entities engaged in efforts to identify and dismantle gangs and violent criminal networks, with the goal of providing information to prosecutors for the development of gang- and racketeering-related charges. The Governor simultaneously announced the creation of the Maryland Criminal Intelligence Network. This data-sharing initiative aims to assist law enforcement and prosecutors in eliminating criminal enterprises by connecting local entities with 36 federal, State, and local task forces.

**State Expenditures:** General fund expenditures increase by at least \$567,309 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. Future year expenditures are annualized and reflect ongoing costs.

*Office of the Attorney General*

General fund expenditures for OAG increase by at least \$133,978 in fiscal 2020. This estimate reflects the cost of hiring one assistant Attorney General and one administrative officer to develop the required policies and procedures and to develop and enforce the required regulations. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$123,260
Operating Expenses	<u>10,718</u>
<b>Total FY 2020 OAG Expenditures</b>	<b>\$133,978</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Although the bill does not specify which agency must provide staff to the Gang Database Advisory Committee, this analysis assumes that any staff support needed for the advisory committee could be handled by the additional staff hired within OAG under the bill.

This estimate does not include any costs for OAG to create a new gang database. It assumes that the bill's provisions apply to existing gang databases maintained by law enforcement agencies. However, it is unclear how OAG can enforce the bill's requirements with respect to multiple databases maintained by multiple jurisdictions. To the extent OAG must create a new database, costs increase further.

*Department of Public Safety and Correctional Services*

General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by \$433,331 in fiscal 2020. This estimate reflects the cost of hiring one assistant Attorney General to assist with legal and administrative requirements regarding the gang databases maintained by the department. It includes a salary, fringe benefits, one-time start-up costs (including costs to update one of the gang databases), and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$77,972
Gang Database Update	350,000
Other Operating Expenses	<u>5,359</u>
<b>Total FY 2020 DPSCS Expenditures</b>	<b>\$433,331</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

In addition, DPSCS advises that the bill's requirements result in significant operational impacts, as DPSCS uses multiple gang databases for classification purposes within State correctional facilities to help maintain safety and security. DPSCS has an administrative process in place for notification and for an inmate to contest a gang classification; however, the bill requires significant changes to the process.

### *Judiciary*

The Judiciary advises that the bill may increase civil court filings due to review of gang database designations. While the number of individuals designated on the criminal gang database is unclear, it is possible that the numbers could be significant. Any increases in caseloads creates operational and fiscal impacts on the courts; however, without actual experience under the bill, it is not possible to reliably predict how many individuals will contest gang designations through the courts.

### *Department of State Police*

The Department of State Police advises that the bill likely results in minimal fiscal and operational impacts for the department.

**Local Expenditures:** The bill may result in a significant increase in local government expenditures for local law enforcement agencies to meet the bill's administrative requirements. The extent of any increase in local expenditures depends on whether local governments use and/or maintain gang databases and the extent of suspected gang activity within each jurisdiction.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, Garrett, and Montgomery counties; City of Laurel; Maryland Municipal League; Department of Information Technology; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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