

HOUSE BILL 713

E1, E2

(71r2415)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by ~~The Speaker (By Request – Administration, Attorney General, and Maryland State’s Attorneys’ Association~~ Administration and Attorney General) and Delegates James, Riley, Rosenberg, Ali, Anderson, Aumann, Barkley, Barnes, Bartlett, Barve, Bates, Beidle, Beitzel, Benson, Bohanan, Boteler, Branch, Bromwell, Bronrott, Burns, Cane, Cardin, Carter, G. Clagett, V. Clagett, Conway, Costa, Davis, DeBoy, Donoghue, Doory, Dumais, Eckardt, Elmore, Feldman, Frank, Frush, Gaines, George, Gilchrist, Glassman, Glenn, Griffith, Guzzone, Haddaway, Hammen, Haynes, Healey, Hecht, Heller, Hixson, Holmes, Howard, Hucker, Jameson, Jennings, Jones, Kach, Kelly, J. King, N. King, Kipke, Kirk, Kramer, Krysiak, Kullen, Lafferty, Lawton, Lee, Levi, Levy, Love, Malone, Manno, Mathias, McComas, McHale, McIntosh, McKee, Miller, Mizeur, Montgomery, Morhaim, Murphy, Myers, Nathan-Pulliam, Niemann, Olszewski, Pena-Melnyk, Pendergrass, Proctor, Rice, Ross, Rudolph, Schuh, Schuler, Shank, Smigiel, Sophocleus, Sossi, Stein, Stifler, Stukes, Tarrant, Taylor, F. Turner, Vaughn, Waldstreicher, Walker, Weir, and Wood

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o’clock, _____ M.

Speaker.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



CHAPTER _____

1 AN ACT concerning

2 **Maryland Gang Prosecution Act of 2007**

3 FOR the purpose of prohibiting a person from participating in a certain criminal gang
 4 knowing that the members of the gang engage in ~~or have engaged in~~ a certain
 5 pattern of criminal gang activity; prohibiting a person from knowingly and
 6 willfully promoting, furthering, or assisting in a directing or participating in a
 7 certain criminal offense committed for the benefit of, at the direction of, or in
 8 association with a criminal gang; prohibiting a person from committing a
 9 violation of this Act involving the commission of an offense that results in the
 10 death of the victim; establishing penalties for a violation of this Act;
 11 establishing that a sentence imposed under this Act may be separate from and
 12 consecutive to or concurrent with a sentence for a crime based on the act
 13 establishing a violation of this Act; providing that a defendant may only be
 14 charged with a violation under this Act by indictment, criminal information, or
 15 a petition alleging a delinquent act; authorizing the Attorney General, ~~with the~~
 16 ~~consent~~ at the request of a certain State's Attorney, to aid in a certain
 17 investigation and prosecution under certain circumstances; establishing that
 18 the Attorney General has all the powers and duties of a State's Attorney in
 19 certain circumstances; authorizing certain State's Attorneys or the Attorney
 20 General to join certain causes of action in certain circumstances; authorizing a
 21 certain grand jury to conduct a certain investigation; requiring the Attorney
 22 General and the Maryland State's Attorneys' Association to provide the General
 23 Assembly with a certain report; ~~defining a certain term~~ certain terms; altering a
 24 certain term; and generally relating to criminal gangs.

25 BY repealing and reenacting, with amendments,
 26 Article – Criminal Law
 27 Section 9–801
 28 Annotated Code of Maryland
 29 (2002 Volume and 2006 Supplement)

30 BY adding to
 31 Article – Criminal Law
 32 Section 9–804
 33 Annotated Code of Maryland
 34 (2002 Volume and 2006 Supplement)

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

3 **Article – Criminal Law**

4 9–801.

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

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

8 (c) “Criminal gang” means a group or [any] ~~OTHER FORMAL OR INFORMAL~~
9 ONGOING association of three or more persons **WHOSE MEMBERS:**

10 (1) [that forms to] ~~INDIVIDUALLY OR~~ INDIVIDUALLY OR
11 COLLECTIVELY engage in A PATTERN OF criminal GANG activity;

12 (2) **HAVE AS ONE OF THEIR PRIMARY OBJECTIVES OR ACTIVITIES**
13 **THE COMMISSION OF ONE OR MORE ~~CRIMINAL ACTIVITIES~~ UNDERLYING**
14 **CRIMES**, including acts by juveniles that would be UNDERLYING crimes if committed
15 by adults[, for the purposes of pecuniary gain or to create an atmosphere of fear and
16 intimidation either collectively or with knowledge of the acts of the members of the
17 group]; and

18 [(2)] (3) [whose members] have [a] IN common AN identifying sign,
19 symbol, [or] name, **LEADER, OR PURPOSE.**

20 (d) **“PATTERN OF CRIMINAL GANG ACTIVITY” MEANS THE COMMISSION**
21 **OF, ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, OR SOLICITATION**
22 **OF TWO OR MORE ~~OF THE FOLLOWING~~ UNDERLYING CRIMES OR ACTS BY A**
23 **JUVENILE THAT WOULD BE ~~A~~ AN UNDERLYING CRIME IF COMMITTED BY AN**
24 **ADULT, PROVIDED THE CRIMES OR ACTS WERE NOT PART OF THE SAME**
25 **INCIDENT.**

26 (1) ~~A CRIME OF VIOLENCE AS DEFINED UNDER § 14 101 OF THIS~~
27 ~~ARTICLE;~~

28 (2) ~~A VIOLATION OF §§ 3 203, 3 210, 4 503, 5 601, 5 602, 6 103,~~
29 ~~6 107, 6 109, 6 202, 6 203, 6 204, 7 104, 7 105, 9 302, 9 303, 9 304, 11 303,~~
30 ~~11 304, 11 305, AND 11 306 OF THIS ARTICLE; AND~~

1 ~~(3) A VIOLATION OF §§ 5-133, 5-134, AND 5-136 OF THE PUBLIC~~
 2 ~~SAFETY ARTICLE.~~

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

4 (F) "UNDERLYING CRIME" MEANS:

5 (1) A CRIME OF VIOLENCE AS DEFINED UNDER § 14-101 OF THIS
 6 ARTICLE;

7 (2) A FELONY VIOLATION OF §§ ~~3-203, 3-701, 4-503, 5-602,~~
 8 ~~6-103, 6-109, 6-202, 6-203, 6-204, 7-104, 7-105, 9-302, 9-303, OR 9-305 OF §~~
 9 ~~3-203, § 3-701, § 4-503, § 5-602, § 6-103, § 6-109, § 6-202, § 6-203, § 6-204, §~~
 10 ~~7-104, § 7-105, § 9-302, § 9-303, OR § 9-305 OF THIS ARTICLE; OR~~

11 (3) A FELONY VIOLATION OF § 5-133 OF THE PUBLIC SAFETY
 12 ARTICLE.

13 **9-804.**

14 (A) A PERSON MAY NOT:

15 (1) PARTICIPATE IN A CRIMINAL GANG KNOWING THAT THE
 16 MEMBERS OF THE GANG ENGAGE IN ~~OR HAVE ENGAGED IN A~~ AN ONGOING
 17 PATTERN OF CRIMINAL GANG ACTIVITY; AND

18 (2) ~~WILLFULLY PROMOTE, FURTHER, OR ASSIST IN A CRIMINAL~~
 19 ~~OFFENSE~~ KNOWINGLY AND WILLFULLY DIRECT OR PARTICIPATE IN THE
 20 COMMISSION OF AN UNDERLYING CRIME, OR ACT BY A JUVENILE THAT WOULD
 21 BE AN UNDERLYING CRIME IF COMMITTED BY AN ADULT, COMMITTED FOR THE
 22 BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH A CRIMINAL
 23 GANG.

24 (B) A PERSON MAY NOT COMMIT A VIOLATION OF SUBSECTION (A) OF
 25 THIS SECTION INVOLVING THE COMMISSION OF AN UNDERLYING CRIME THAT
 26 RESULTS IN THE DEATH OF A VICTIM.

27 ~~(B)~~ (C) (1) (I) A EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)
 28 OF THIS PARAGRAPH, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A

1 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING
2 ~~30~~ 10 YEARS OR A FINE NOT EXCEEDING \$100,000 OR BOTH.

3 (II) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS
4 SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO
5 IMPRISONMENT NOT EXCEEDING 20 YEARS OR A FINE NOT EXCEEDING \$100,000
6 OR BOTH.

7 (2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE
8 SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE
9 FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS
10 SECTION.

11 ~~(C)~~ (D) A PERSON MAY ~~ONLY~~ BE CHARGED WITH A VIOLATION OF THIS
12 SECTION ONLY BY INDICTMENT, CRIMINAL INFORMATION, OR PETITION
13 ALLEGING A DELINQUENT ACT.

14 ~~(D)~~ (E) (1) THE ATTORNEY GENERAL, ~~WITH THE CONSENT AT THE~~
15 ~~REQUEST OF THE STATE'S ATTORNEY FOR A COUNTY IN WHICH A VIOLATION OR~~
16 AN ACT ESTABLISHING A VIOLATION OF THIS SECTION OCCURS, MAY:

17 (I) AID IN THE INVESTIGATION OF THE VIOLATION OR ACT;
18 AND

19 (II) PROSECUTE THE VIOLATION OR ACT.

20 (2) IN EXERCISING AUTHORITY UNDER PARAGRAPH (1) OF THIS
21 SUBSECTION, THE ATTORNEY GENERAL HAS ALL THE POWERS AND DUTIES OF A
22 STATE'S ATTORNEY, INCLUDING THE USE OF THE GRAND JURY IN THE COUNTY,
23 TO PROSECUTE THE VIOLATION.

24 (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN
25 CIRCUMSTANCES IN WHICH VIOLATIONS OF THIS SECTION ARE ALLEGED TO
26 HAVE BEEN COMMITTED IN MORE THAN ONE COUNTY, THE RESPECTIVE STATE'S
27 ATTORNEY OF EACH COUNTY, OR THE ATTORNEY GENERAL, MAY JOIN THE
28 CAUSES OF ACTION IN A SINGLE COMPLAINT WITH THE CONSENT OF EACH
29 STATE'S ATTORNEY HAVING JURISDICTION OVER AN OFFENSE SOUGHT TO BE
30 JOINED.

1 ~~(E)~~ (F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
 2 PROVIDED AT LEAST ONE CRIMINAL GANG ACTIVITY OF A CRIMINAL GANG
 3 ALLEGEDLY OCCURRED IN THE COUNTY IN WHICH A GRAND JURY IS SITTING,
 4 THE GRAND JURY MAY ISSUE SUBPOENAS, SUMMON WITNESSES, AND
 5 OTHERWISE CONDUCT AN INVESTIGATION OF THE ALLEGED CRIMINAL GANG'S
 6 ACTIVITIES AND OFFENSES IN OTHER COUNTIES.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General and
 8 the Maryland State's Attorneys' Association shall report to the General Assembly on or
 9 before January 1, 2008, in accordance with § 2-1246 of the State Government Article,
 10 on recommendations for additional legislation to aid in the prosecution of gang activity.

11 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
 12 effect October 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.