

CHAPTER 496

(House Bill 713)

AN ACT concerning

Maryland Gang Prosecution Act of 2007

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

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

BY adding to
 Article – Criminal Law
 Section 9–804
 Annotated Code of Maryland

(2002 Volume and 2006 Supplement)

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

Article – Criminal Law

9–801.

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

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

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

(1) [that forms to] ~~INDIVIDUALLY OR~~ 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** ~~CRIMINAL ACTIVITIES UNDERLYING CRIMES~~, including acts by juveniles that would be UNDERLYING crimes if committed by adults[, for the purposes of pecuniary gain or to create an atmosphere of fear and intimidation either collectively or with knowledge of the acts of the members of the group]; and

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

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

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

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

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

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

(F) "UNDERLYING CRIME" MEANS:

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

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

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

9-804.

(A) A PERSON MAY NOT:

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

~~(2) WILLFULLY PROMOTE, FURTHER, OR ASSIST IN A CRIMINAL OFFENSE~~ KNOWINGLY AND WILLFULLY DIRECT OR PARTICIPATE IN THE COMMISSION OF 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.

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

~~(B)~~ (C) (1) (I) A EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 10 YEARS OR A FINE NOT EXCEEDING \$100,000 OR BOTH.

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

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

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

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

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

(II) PROSECUTE THE VIOLATION OR ACT.

(2) IN EXERCISING AUTHORITY UNDER PARAGRAPH (1) OF THIS SUBSECTION, 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.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN CIRCUMSTANCES IN WHICH VIOLATIONS OF THIS SECTION 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.

~~(E)~~ (F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND PROVIDED AT LEAST ONE CRIMINAL GANG ACTIVITY OF A CRIMINAL GANG ALLEGEDLY OCCURRED IN THE COUNTY IN WHICH A GRAND JURY IS SITTING, 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.

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

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

Approved by the Governor, May 17, 2007.