

SENATE BILL 745

E1

0lr1920
CF HB 1083

By: **Senator Hough**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2020

CHAPTER _____

1 AN ACT concerning

2 **Criminal Organizations – Penalties, and Procedure, ~~and Elements~~**

3 FOR the purpose of replacing the term “gang” as it pertains to certain prohibitions against
4 participation in a criminal gang with the term “organization”; requiring certain local
5 jurisdictions to use certain divested assets for certain purposes under certain
6 circumstances; ~~providing that in a certain prosecution, a defendant may be found to~~
7 ~~have been a member of or belonged to a criminal organization only under certain~~
8 ~~circumstances~~; requiring the Attorney General, in consultation with the Maryland
9 State’s Attorneys’ Association, to develop a certain plan; requiring the Attorney
10 General to submit a certain report to the Governor and the General Assembly on or
11 before a certain date; altering certain definitions; making conforming changes; and
12 generally relating to criminal organizations.

13 BY repealing and reenacting, with amendments,
14 Article – Correctional Services
15 Section 6–112(b)(4)
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2019 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Criminal Law
20 Section 9–801, 9–802, 9–803(a), 9–804, 9–805(a), and 9–807(2) to be under the
21 amended subtitle “Subtitle 8. Criminal Organizations”
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2019 Supplement)

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.



~~BY adding to~~
~~Article – Criminal Law~~
~~Section 9–808~~
~~Annotated Code of Maryland~~
~~(2012 Replacement Volume and 2019 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Education
Section 7–303(a)(2)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Real Property
Section 14–125.2(a)(3)(iv)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – Correctional Services

6–112.

(b) (4) If the defendant has been convicted of a felony or misdemeanor that is related to the defendant’s membership in a criminal [gang] **ORGANIZATION**, as defined in § 9–801 of the Criminal Law Article, the report may include information regarding the group affiliation of the defendant.

Article – Criminal Law

Subtitle 8. Criminal [Gang Offenses] **ORGANIZATIONS**.

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 association of three or more persons] **ORGANIZATION” MEANS AN ENTERPRISE** whose members:

(1) individually or collectively engage in a pattern of [criminal gang] **ORGANIZED CRIME** 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.

(d) “Enterprise” includes:

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

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

(e) “Pattern of [criminal gang] **ORGANIZED CRIME** activity” means 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.

(f) “Solicit” has the meaning stated in § 11–301 of this article.

(g) “Underlying crime” means:

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

(2) a violation of § 3–203 (second degree assault), § 3–1102 (sex trafficking), § 3–1103 (forced marriage), § 4–203 (wearing, carrying, or transporting a handgun), § **7–113 (EMBEZZLEMENT BY FIDUCIARY), § 7–315 (THEFT – TELECOMMUNICATIONS–RELATED), § 9–102 (SUBORNATION OF PERJURY), § 9–202(A) (BRIBERY OF JUROR), § 9–302 (inducing false testimony or avoidance of subpoena), § 9–303 (retaliation for testimony), § 9–305 (intimidating or corrupting juror), § 9–306 (OBSTRUCTION OF JUSTICE), § 9–307 (DESTRUCTION OF EVIDENCE), § 9–413 (CONTRABAND – FOR ESCAPE), § 9–416 (CONTRABAND – CONTROLLED DANGEROUS SUBSTANCE), § 9–417 (CONTRABAND – TELECOMMUNICATIONS–RELATED), § 11–304 (receiving earnings of prostitute), [or] § 11–307 (house of prostitution), OR § 12–104 (GAMING OFFENSES), of this article;**

(3) a felony violation of § 3–701 (extortion), § 4–503 (manufacture or possession of destructive device), § 5–602 (distribution of CDS), § 5–603 (manufacturing CDS 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 this article; [or]

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

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

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

9–802.

(a) 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] **ORGANIZATION**.

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

9–803.

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

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

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

9–804.

(a) A person may not:

(1) participate in a criminal [gang] **ORGANIZATION** knowing that the members of the [gang] **CRIMINAL ORGANIZATION** engage in a pattern of [criminal gang] **ORGANIZED CRIME** 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] **ORGANIZATION**.

(b) A criminal [gang] ORGANIZATION or an individual belonging to a criminal [gang] ORGANIZATION may not:

(1) receive proceeds known to have been derived directly or indirectly from an underlying crime; and

(2) use or invest, directly or indirectly, an aggregate of \$10,000 or more of the proceeds from an underlying crime in:

(i) the acquisition of a title to, right to, interest in, or equity in real property; or

(ii) the establishment or operation of any enterprise.

(c) A criminal [gang] ORGANIZATION may not acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime.

(d) A person may not conspire to violate subsection (a), (b), or (c) of this section.

(e) A person may not violate subsection (a) of this section that results in the death of a victim.

(f) (1) (i) 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 15 years or a fine not exceeding \$1,000,000 or both.

(ii) A person who violates subsection (e) of this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding \$5,000,000 or both.

(2) (i) A sentence imposed under paragraph (1)(i) of this subsection for a first offense 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.

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

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

(3) In addition to the other penalties provided in this subsection, on conviction the court may:

(i) order a person or criminal [gang] ORGANIZATION to be divested of any interest in an enterprise or real property;

(ii) order the dissolution or reorganization of an enterprise; and

(iii) 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 a political subdivision of the State.

(g) (1) This subsection applies to a violation of § 5–602, § 5–603, § 5–604(b), § 5–606, § 5–612, § 5–613, § 5–614, or § 5–617 of this article.

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

(I) IF THE STATE INVESTIGATED AND PROSECUTED A VIOLATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, shall be deposited in the Addiction Treatment Divestiture Fund established under § 8–6D–01 of the Health – General Article; OR

(II) IF A LOCAL JURISDICTION INVESTIGATED AND PROSECUTED A VIOLATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, SHALL BE USED BY THE LOCAL JURISDICTION:

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

2. TO COMBAT CRIMINAL ORGANIZATIONS THROUGH EDUCATION, TRAINING, AND RESOURCES; OR

3. TO PROVIDE ASSISTANCE TO VICTIMS OF CRIMINAL ORGANIZATION–RELATED CRIMES; AND

(III) IF MORE THAN ONE JURISDICTION PARTICIPATED IN AN INVESTIGATION OR A PROSECUTION OF A VIOLATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, SHALL BE DIVIDED IN THE MANNER AGREED ON BY THE JURISDICTIONS AND USED AS PROVIDED IN ITEM (I) OR (II) OF THIS PARAGRAPH.

(h) A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

(i) (1) 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:

(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.

(j) Notwithstanding any other provision of law and provided at least one criminal [gang] ORGANIZATION activity of a criminal [gang] ORGANIZATION 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] ORGANIZATION'S activities and offenses in other counties.

9-805.

(a) A person may not organize, supervise, promote, sponsor, finance, or manage a criminal [gang] ORGANIZATION.

9-807.

For purposes of venue, any violation of this subtitle is considered to have been committed in any county:

(2) that is the principal place of the operations of the criminal [gang] ORGANIZATION in the State;

~~9-808.~~

~~IN A PROSECUTION UNDER THIS SUBTITLE, A DEFENDANT MAY BE FOUND TO HAVE BEEN A MEMBER OF OR BELONGED TO A CRIMINAL ORGANIZATION ONLY IF THE COURT OR JURY FINDS BEYOND A REASONABLE DOUBT THAT THE DEFENDANT:~~

~~(1) WAS CONNECTED OR ASSOCIATED WITH THE CRIMINAL ORGANIZATION IN A MEANINGFUL WAY;~~

~~(2) KNEW OF THE CRIMINAL ORGANIZATION'S EXISTENCE; AND~~

~~(3) HAD AT LEAST A GENERAL UNDERSTANDING OF THE NATURE OF
THE CRIMINAL ORGANIZATION'S ACTIVITIES.~~

Article – Education

7–303.

(a) (2) “Criminal [gang] ORGANIZATION” has the meaning stated in § 9–801 of the Criminal Law Article.

Article – Real Property

14–125.2.

(a) (3) “Nuisance” means:

(iv) A property where the tenant, owner, or other occupant has been convicted of violations of any criminal law occurring on, in, or in relation to the property and is related to the activities of a criminal [gang] ORGANIZATION as defined in § 9–801 of the Criminal Law Article; or

SECTION 2. AND BE IT FURTHER ENACTED, That the Attorney General, in consultation with the Maryland State’s Attorneys’ Association, shall develop a plan for a formal process for oversight of prosecutions of offenses involving criminal organizations under Title 9, Subtitle 8 of the Criminal Law Article. On or before December 31, 2020, the Attorney General shall report to the Governor and, in accordance with § 2–1257 of the State Government Article, the General Assembly on the plan developed under this section.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.