

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 326 Session of
2007

INTRODUCED BY STURLA, MANN, CALTAGIRONE, SANTONI, FREEMAN,
GRUCELA, BELFANTI, BEYER, BUXTON, CAPPELLI, CARROLL, COHEN,
CREIGHTON, CURRY, DALEY, DeLUCA, DePASQUALE, DONATUCCI,
EACHUS, FABRIZIO, FRANKEL, GEIST, GERGELY, GOODMAN, GRELL,
HARHAI, HESS, JOSEPHS, W. KELLER, KOTIK, KULA, MAHONEY,
MELIO, M. O'BRIEN, O'NEILL, PALLONE, PARKER, PETRONE, PYLE,
READSHAW, ROSS, RUBLEY, SAINATO, SAMUELSON, SAYLOR, SCAVELLO,
SHAPIRO, SONNEY, VEREB, WALKO, WOJNAROSKI, YOUNGBLOOD,
YUDICHAK, BOYD AND COSTA, FEBRUARY 9, 2007

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 9, 2007

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, providing for the offenses of criminal gang
4 activity and criminal gang solicitation and recruitment;
5 establishing the Criminal Gang Deterrence Fund; providing for
6 disposition for criminal gang activity offenders; further
7 providing for disposition of delinquent child and for
8 controlled substance forfeiture; providing for alcohol and
9 drug treatment; imposing penalties; and making an
10 appropriation.

11 The General Assembly finds and declares as follows:

12 (1) It is the right of every person, regardless of race,
13 color, creed, religion, national origin, sex, age, sexual
14 orientation or handicap to be secure and protected from fear,
15 intimidation and physical harm caused by the activities of
16 violent groups and individuals. It is not the intent of the
17 General Assembly to interfere with the exercise of
18 constitutionally protected rights of freedom of expression

1 and association. The General Assembly recognizes the
2 constitutional right of every citizen to harbor and express
3 beliefs on any lawful subject whatsoever, to lawfully
4 associate with others who share beliefs, to petition lawfully
5 constituted authority for a redress of perceived grievances
6 and to participate in the electoral process.

7 (2) This Commonwealth is facing a mounting crisis caused
8 by criminal gangs whose members threaten and terrorize
9 peaceful citizens and commit crimes. These activities both
10 individually and collectively present a clear and present
11 danger to the public order and safety and are not
12 constitutionally protected.

13 (3) There is an urgent need to address violent acts by
14 youth. Strategies to combat youth violence should include
15 mechanisms aimed at controlling such incidents and holding
16 youth accountable for their actions. Communities should take
17 the responsibility to craft comprehensive solutions which
18 actively involve community leaders, schools, public agencies
19 and other key organizations, churches, families and youth.
20 Communities should be aware of factors which increase the
21 risk of youth violence and of factors which serve to reduce
22 the impact of these risk factors. Communities should be
23 encouraged to establish violence prevention task forces to
24 identify local issues, resources and risk factors relating to
25 youth violence and to formulate appropriate responses which
26 should be linked to a local governance structure that can
27 ensure implementation.

28 (4) The juvenile justice system must be strengthened to
29 enable an immediate and effective response to incidents of
30 juvenile crime, particularly those involving the use or

1 threat of violence and weapons.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Title 18 of the Pennsylvania Consolidated
5 Statutes is amended by adding sections to read:

6 § 914. Criminal gang activity.

7 (a) Offense.--A person commits the offense of criminal gang
8 activity if he:

9 (1) Knowingly commits a crime for the benefit of, at the
10 direction of or in affiliation with a criminal gang with the
11 intent to promote, further or assist the activities of the
12 criminal gang.

13 (2) Knowingly commits a crime for the benefit of, at the
14 direction of or in affiliation with a criminal gang with the
15 intent to promote, further or assist the activities of the
16 criminal gang:

17 (i) Within 1,000 feet of a public or private
18 elementary, vocational, junior high or high school during
19 hours in which the facility is open for classes or
20 school-related programs or when minors are using the
21 facility.

22 (ii) Within 1,000 feet of a public housing project,
23 public park or community recreation center.

24 (iii) At a school bus stop.

25 (iv) By engaging a minor under 18 years of age in
26 any criminal activity.

27 (b) Grading.--

28 (1) An offense under subsection (a)(1) is a crime of the
29 same grade and degree as the most serious offense which is
30 the object of the criminal gang activity.

1 (2) An offense under subsection (a)(2) is a crime of the
2 same grade and degree as the most serious offense which is
3 the object of the criminal gang activity for which the
4 offender may be sentenced to a term of imprisonment for two
5 years in addition to any sentence imposed for the offense.

6 (c) Consecutive sentences.--If a person is convicted of
7 criminal gang activity, all sentences imposed for the same
8 activity shall be served consecutive to each other and to any
9 other sentence imposed for any other offense.

10 (d) Assessment.--Each person found in violation of this
11 section shall be assessed a minimum of \$500 and a maximum of
12 \$5,000 which shall be transmitted to the Criminal Gang
13 Deterrence Fund established under subsection (g).

14 (e) Responsibilities of Pennsylvania Commission on Crime and
15 Delinquency.--The Pennsylvania Commission on Crime and
16 Delinquency shall award grants to:

17 (1) Community organizations which implement programs to
18 deter criminal gang activity. The commission shall give
19 preference to programs which engage community organizations
20 in identifying and prioritizing delinquency risk factors
21 operating in their communities and which include a
22 comprehensive plan to reduce the impact of these risk factors
23 on children. Criminal gang deterrence programs may include:

24 (i) Aftercare and monitoring to ensure that former
25 criminal gang members are able to integrate into society.

26 (ii) Rehabilitative and educational support
27 services.

28 (2) District attorneys to be used for the formation of
29 special prosecution units, grand jury investigations and
30 other strategies to deter criminal gang activity.

1 (f) Civil cause of action.--A person, organization or
2 municipality which has been coerced, intimidated, threatened or
3 otherwise harmed in violation of this section shall have a civil
4 cause of action for treble damages, an injunction, nuisance
5 abatement, asset forfeiture or any other appropriate relief in
6 law or equity. This civil action may be brought against any
7 criminal gang member reasonably believed to have been involved
8 in the violation, including, but not limited to, criminal gang
9 leaders and criminal gang members who have personal knowledge of
10 the crime. Upon prevailing in this civil action based on the
11 clear and convincing evidence presented, the plaintiff may
12 recover reasonable attorney fees and costs.

13 (g) Fund.--There is hereby established within the State
14 Treasury a separate nonlapsing revolving account to be known as
15 the Criminal Gang Deterrence Fund. The fund shall be
16 administered by the Pennsylvania Commission on Crime and
17 Delinquency for the purpose of developing, implementing and
18 administering a grant program as described under subsection
19 (e).

20 (h) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Criminal gang."

24 (1) A combination, confederation, alliance, network,
25 conspiracy, in law or in fact, of three or more persons that
26 are primarily organized to engage in a pattern of criminal
27 activity through its membership or through the agency of any
28 member at the direction, order, solicitation or request of a
29 leader, officer, director, organizer or other governing or
30 policymaking person in the conspiracy, or at the direction,

1 order, solicitation or request of such person's agent, deputy
2 or representative.

3 (2) Any evidence reasonably tending to show or
4 demonstrate, in law or in fact, the existence of or
5 membership in any conspiracy, confederation or other
6 association described in this definition, or probative of the
7 existence of or membership in any such association, shall be
8 admissible in any action or proceeding brought under this
9 section.

10 "Criminal gang member." A person who demonstrates
11 affiliation with a criminal gang by:

12 (1) an admission of criminal gang membership; or

13 (2) any two or more of the following indicia:

14 (i) Identification as a criminal gang member by a
15 parent, guardian, spouse or sibling.

16 (ii) Identification by an informant, verified by
17 independent information.

18 (iii) More than one arrest while in the company of
19 identified criminal gang members for any criminal
20 offense.

21 (iv) Identification as a criminal gang member by
22 physical evidence such as photographs or other
23 documentation.

24 (v) Residing in or frequenting a particular criminal
25 gang area and affecting the criminal gang's style of
26 dress, use of hand signs or tattoos.

27 (vi) Identification as a gang member by a
28 Pennsylvania law enforcement agency.

29 (vii) Identification as a gang member by a law
30 enforcement agency outside this Commonwealth and whose

criteria or recognition is similar to that set forth
under this definition.

"Pattern of criminal activity." The ongoing commission of,
attempted commission of, the conspiracy or solicitation to
commit or the intimidation of another to commit criminal
offenses with a grading of third degree misdemeanor or higher.
§ 914.1. Criminal gang solicitation or recruitment.

(a) Offense.--Any person who solicits or entices another
person to join a criminal gang, or intimidates or threatens
another person because the other person refuses to join a
criminal gang or has withdrawn or is attempting to withdraw from
a criminal gang commits the offense of criminal gang
solicitation or recruitment.

(b) Grading.--An offense under subsection (a) constitutes a:

(1) Misdemeanor of the first degree when the offense is
a first offense.

(2) Felony of the third degree when the offense is a
second or subsequent offense.

(c) Definition.--As used in this section, the term "criminal
gang" has the meaning ascribed to it under section 914(h)
(relating to criminal gang activity).

Section 2. Title 42 is amended by adding a section to read:

§ 1521.1. Disposition for criminal gang activity offenders.

If the offense which was the object of criminal gang activity
as defined in 18 Pa.C.S. § 914 (relating to criminal gang
activity) is a summary offense and the person who committed the
act is a juvenile offender, the magisterial district judge or
judge of the Philadelphia Municipal Court shall make every
effort to:

(1) Order payment by the child of reasonable amounts of

money as fines, costs or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child.

(2) Place the child in a program under section 1520(b) (relating to adjudication alternative program).

Section 3. Section 6352 of Title 42 is amended by adding subsections to read:

§ 6352. Disposition of delinquent child.

* * *

(c) Community service.--The court and probation officers shall make every effort to include constructive community service alternatives designed to impress upon the child a sense of responsibility for injuries caused to a person or property as a component of dispositions under subsection (a) if the child is found to be a delinquent child or is under a consent decree under section 6340 (relating to consent decree).

(d) Dispositions involving criminal gang activity.--If the delinquent child is found to have committed criminal gang activity as defined under 18 Pa.C.S. § 914 (relating to criminal gang activity), the court shall make every effort to order, at a minimum, disposition under subsection (a)(3), (4), (5) and (6) and shall order an evaluation of drug or alcohol dependency as well as a complete psychological and psychiatric evaluation with all educational components. If it is determined that the juvenile is alcohol dependent or drug dependent or in need of other treatment based on other required evaluations, the court shall make every effort to order the juvenile to be committed for treatment at a facility or institution licensed by the Bureau of Drug and Alcohol Programs within the Department of Health or other programs approved by the Department of Public

1 Welfare or the Department of Education.

2 Section 4. Section 6801(g) of Title 42 is amended to read:

3 § 6801. Controlled substances forfeiture.

4 * * *

5 (g) Distribution of property among law enforcement
6 authorities.--

7 (1) If both municipal and State law enforcement
8 authorities were substantially involved in effecting the
9 seizure, the court having jurisdiction over the forfeiture
10 proceedings shall equitably distribute the property between
11 the district attorney and the Attorney General[.],
12 notwithstanding the provisions of paragraph (2).

13 (2) If the offense under The Controlled Substance, Drug,
14 Device and Cosmetic Act was the object of criminal gang
15 activity as defined in 18 Pa.C.S. § 914 (relating to criminal
16 gang activity) and if State law enforcement authorities were
17 substantially involved in effecting the seizure, the court
18 having jurisdiction over the forfeiture proceedings shall
19 equitably distribute the property as follows:

20 (i) 50% to the district attorney.

21 (ii) 25% to the Attorney General.

22 (iii) 25% to the Criminal Gang Deterrence Fund
23 established under 18 Pa.C.S. § 914.

24 * * *

25 Section 5. Title 42 is amended by adding a section to read:

26 § 9719.1. Alcohol and drug treatment.

27 Any person who is convicted in any court of this Commonwealth
28 of criminal gang activity as defined in 18 Pa.C.S. § 914
29 (relating to criminal gang activity) which is a misdemeanor or
30 felony shall be evaluated and examined for dependency on alcohol

1 or controlled substances and undergo a complete psychological
2 and psychiatric evaluation with all educational components. If
3 after evaluation and examination it is determined that the
4 person is dependent on alcohol or controlled substances or needs
5 other treatment based on other required evaluations, the court
6 shall make every effort to order the person committed for
7 treatment at a facility or institution licensed by the Bureau of
8 Drug and Alcohol Programs within the Department of Health or
9 programs approved by the Department of Public Welfare or the
10 Department of Education.

11 Section 6. The amount of \$1,000,000, or as much thereof as
12 may be necessary, is hereby appropriated to the Criminal Gang
13 Deterrence Fund for the fiscal year July 1, 2007, to June 30,
14 2008, to carry out the provisions of this act.

15 Section 7. This act shall take effect in 60 days.