

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1121 Session of  
2011

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MARCH 17, 2011

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY  
4, 2011

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for sentencing  
3 for offenses committed in association with a criminal street  
4 gang.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 42 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 9720.3. Sentencing for offenses committed in association with  
10 a criminal street gang.

11 (a) Sentencing enhancement.--The Pennsylvania Commission on  
12 Sentencing shall provide for a sentence enhancement for crimes  
13 of violence or a violation of section 13(a)(30) of the act of  
14 April 14, 1972 (P.L.233, No.64), known as The Controlled  
15 Substance, Drug, Device and Cosmetic Act, if the offense was  
16 knowingly committed at the direction of or for the purpose of

1 benefiting, promoting or furthering the interests of a criminal  
2 street gang.

3 (b) Proof at sentencing.--The provisions of this section  
4 shall not be an element of the crime and notice of the  
5 provisions of this section to the defendant shall not be  
6 required prior to conviction, but reasonable notice of the  
7 Commonwealth's intention to proceed under this section shall be  
8 provided after conviction and before sentencing.

9 (c) Applicability.--The applicability of this section shall  
10 be determined at sentencing. The court shall consider any  
11 evidence presented at trial and shall afford the Commonwealth  
12 and the defendant an opportunity to present any necessary  
13 additional evidence and shall determine, by a preponderance of  
14 the evidence, if this section is applicable.

15 (d) Definitions.--As used in this section, the following  
16 words and phrases shall have the meanings given to them in this  
17 subsection unless the context clearly indicates otherwise:

18 "Crimes of violence." An offense under any of the following:

19 (1) 18 Pa.C.S. § 901 (relating to criminal attempt),  
20 involving an attempt to commit an offense under 18 Pa.C.S. §  
21 2502(a) or (b) (relating to murder), 2507(a) or (b) (relating  
22 to criminal homicide of law enforcement officer) or any of  
23 the offenses under paragraph ~~(3)~~, (4), (5), (6), (7), (8), ←  
24 (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), ←  
25 (19), (19.1) or (19.2).

26 (2) 18 Pa.C.S. § 902 (relating to criminal  
27 solicitation), involving solicitation to commit an offense  
28 under 18 Pa.C.S. § 2502(a) or (b), 2507(a) or (b) or any of  
29 the offenses under paragraph ~~(3)~~, (4), (5), (6), (7), (8), ←  
30 (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), ←

1 (19), (19.1) or (19.2).

2 (3) 18 Pa.C.S. § 903 (relating to criminal conspiracy),  
3 involving conspiracy to commit an offense under 18 Pa.C.S. §  
4 2502(a) or (b), 2507(a) or (b) or any of the offenses under  
5 paragraph ~~(3)~~, (4), (5), (6), (7), (8), (9), (10), (11), ←  
6 (12), (13), (14), (15), (16), (17), (18), (19), (19.1) or ←  
7 (19.2).

8 (4) 18 Pa.C.S. § 2502(c).

9 (5) 18 Pa.C.S. § 2503 (relating to voluntary  
10 manslaughter).

11 (6) 18 Pa.C.S. § 2506 (relating to drug delivery  
12 resulting in death).

13 (7) 18 Pa.C.S. § 2507(c) or (d).

14 (8) 18 Pa.C.S. § 2701(a)(3) (relating to simple  
15 assault).

16 (9) 18 Pa.C.S. § 2702 (relating to aggravated assault).

17 (10) 18 Pa.C.S. § 2702.1 (relating to assault of law  
18 enforcement officer).

19 (11) 18 Pa.C.S. § 2901 (relating to kidnapping).

20 (12) 18 Pa.C.S. § 3121 (relating to rape).

21 (13) 18 Pa.C.S. § 3123 (relating to involuntary deviate  
22 sexual intercourse).

23 (14) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

24 (15) 18 Pa.C.S. § 3125 (relating to aggravated indecent  
25 assault).

26 (16) 18 Pa.C.S. § 3301(a) (relating to arson and related  
27 offenses).

28 (17) 18 Pa.C.S. § 3502 (relating to burglary), if at the  
29 time of the offense the structure entered was adapted for  
30 overnight accommodation.

1           (18) 18 Pa.C.S. § 3701 (relating to robbery).

2           (19) 18 Pa.C.S. § 3702 (relating to robbery of motor  
3 vehicle).

4           (19.1) 18 Pa.C.S. § 4952 (relating to intimidation of  
5 witnesses or victims), involving a witness to or a victim of  
6 a violation of 18 Pa.C.S. § 2502 or 2507 or any of the  
7 offenses under paragraph (1), (2), (3), (4), (5), (6), (7),  
8 (8), (9), (10), (11), (12), (13), (14), (15), (16), (17),  
9 (18), (19), (19.2), (20) or (21) or a violation of section  
10 13(a)(30) of the act of April 14, 1972 (P.L.233, No.64),  
11 known as The Controlled Substance, Drug, Device and Cosmetic  
12 Act.

13           (19.2) 18 Pa.C.S. § 4953 (relating to retaliation  
14 against witness, victim or party), involving a witness to,  
15 victim of or party to a proceeding alleging, a violation of ←  
16 18 Pa.C.S. § 2502 or 2507 or any of the offenses under  
17 paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10),  
18 (11), (12), (13), (14), (15), (16), (17), (18), (19), (19.1),  
19 (20) or (21) or a violation of section 13(a)(30) of The  
20 Controlled Substance, Drug, Device and Cosmetic Act.

21           (20) A crime equivalent to one listed under paragraph  
22 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11),  
23 (12), (13), (14), (15), (16), (17), (18), (19), (19.1) or ←  
24 (19.2) under the laws of this Commonwealth in effect at the  
25 time of the commission of the offense.

26           (21) A crime equivalent to one listed under paragraph  
27 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11),  
28 (12), (13), (14), (15), (16), (17), (18), (19), (19.1) or  
29 (19.2) under Federal law or in a jurisdiction outside this  
30 Commonwealth.

1       "Criminal street gang." A formal or informal confederation,  
2 alliance, network, conspiracy, understanding or similar  
3 conjoining of persons who operate individually or collectively  
4 as a group or subgroup, with or without an established  
5 hierarchy, that, through its membership obtained by pledge,  
6 oath, swearing, ritual, distinct membership markings, symbolism,  
7 common identifiers or other criteria that law enforcement  
8 personnel use to identify the groups or subgroups, engages in  
9 criminal activity.

10       Section 2. This act shall take effect in 60 days.