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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1529 Session of  
2012

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INTRODUCED BY YUDICHAK, BAKER, GORDNER, TARTAGLIONE, FARNESE,  
SOLOBAY, COSTA, BLAKE, STACK, BREWSTER, SCHWANK, ARGALL,  
BOSCOLA, FONTANA, WASHINGTON, HUGHES, BROWNE AND FERLO,  
MAY 29, 2012

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REFERRED TO JUDICIARY, MAY 29, 2012

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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 the  
13 following:

14 (1) Where a person commits a crime of violence or a  
15 violation of section 13(a)(30) of the act of April 14, 1972  
16 (P.L.233, No.64), known as The Controlled Substance, Drug,  
17 Device and Cosmetic Act, if the offense was knowingly  
18 committed at the direction of or for the purpose of

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

3 (2) Where a person causes, encourages, recruits,  
4 solicits or coerces another to join, participate in or assist  
5 a criminal street gang in committing any criminal offense  
6 that is defined as a crime of violence or a violation of  
7 section 13(a) (30) of The Controlled Substance, Drug, Device  
8 and Cosmetic Act.

9 (3) Where a person communicates, directly or indirectly,  
10 to another person a threat of injury or damage to the person  
11 or property of that person or to an associate or relative of  
12 that person with the intent to do either of the following:

13 (i) Deter the other person from assisting a gang  
14 member or associate of a gang to withdraw from the gang.

15 (ii) Punish or retaliate against the other person  
16 for having withdrawn from a gang.

17 (b) Proof at sentencing.--The provisions of this section  
18 shall not be an element of the crime and notice of the  
19 provisions of this section to the defendant shall not be  
20 required prior to conviction, but reasonable notice of the  
21 Commonwealth's intention to proceed under this section shall be  
22 provided after conviction and before sentencing.

23 (c) Applicability.--The applicability of this section shall  
24 be determined at sentencing. The court shall consider any  
25 evidence presented at trial and shall afford the Commonwealth  
26 and the defendant an opportunity to present any necessary  
27 additional evidence and shall determine, by a preponderance of  
28 the evidence, if this section is applicable.

29 (d) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:

2 "Crime of violence." An offense under any of the following:

3 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

4 (2) 18 Pa.C.S. Ch. 26 (relating to crimes against unborn  
5 child).

6 (3) 18 Pa.C.S. Ch. 27 (relating to assault).

7 (4) 18 Pa.C.S. § 2901 (relating to kidnapping).

8 (5) 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

9 (6) 18 Pa.C.S. § 3125 (relating to aggravated indecent  
10 assault).

11 (7) 18 Pa.C.S. § 3301(a) (relating to arson and related  
12 offenses).

13 (8) 18 Pa.C.S. § 3502 (relating to burglary), if at the  
14 time of the offense the structure entered was adapted for  
15 overnight accommodation.

16 (9) 18 Pa.C.S. § 3701 (relating to robbery).

17 (10) 18 Pa.C.S. § 3702 (relating to robbery of motor  
18 vehicle).

19 (11) An offense under 18 Pa.C.S. Ch. 49, Subch. B  
20 (relating to victim and witness intimidation), involving a  
21 witness to or a victim of a violation of any offense  
22 enumerated under this definition.

23 (12) A crime equivalent to one listed under this  
24 subsection under the laws of this Commonwealth in effect at  
25 the time of the commission of the offense.

26 (13) A crime equivalent to one listed under this  
27 subsection under Federal law or in a jurisdiction outside  
28 this Commonwealth.

29 (14) A criminal attempt, conspiracy or solicitation to  
30 commit an offense enumerated under this subsection.

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.