

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2256 Session of
2008

INTRODUCED BY TURZAI, BAKER, BEYER, BOBACK, BOYD, CALTAGIRONE, CAPPELLI, CAUSER, CIVERA, CREIGHTON, CUTLER, DALLY, DENLINGER, ELLIS, EVERETT, FAIRCHILD, GABIG, GEIST, GINGRICH, GRELL, HARKINS, HELM, HESS, HUTCHINSON, MANN, MENSCH, MILLARD, MOYER, MUSTIO, O'NEILL, PALLONE, PAYNE, PEIFER, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, READSHAW, REED, REICHLEY, ROSS, RUBLEY, SAYLOR, SCAVELLO, SONNEY, STERN, R. STEVENSON, STURLA, SWANGER, TRUE, VEREB, VULAKOVICH, WOJNAROSKI AND YUDICHAK, MARCH 10, 2008

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 2008

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 criminal gang activity forfeiture and for disposition of
7 criminal gang activity offenders; further providing for
8 disposition of delinquent child and for controlled substance
9 forfeiture; providing for alcohol and drug treatment;
10 imposing penalties; and making an 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 defined.--A person commits the offense if
8 criminal gang activity if the person:

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 consecutively 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 restricted account to be known as the Criminal Gang
15 Deterrence Fund. The fund shall be administered by the
16 Pennsylvania Commission on Crime and Delinquency for the purpose
17 of developing, implementing and administering a grant program
18 as described under subsection (e).

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

22 "Criminal gang."

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

1 or representative.

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

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

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

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

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

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

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

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

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

26 (vi) Identification as a criminal gang member by a
27 Commonwealth law enforcement agency.

28 (vii) Identification as a criminal gang member by a
29 law enforcement agency outside this Commonwealth and
30 whose criteria or recognition is similar to that set

1 forth under this definition.

2 "Pattern of criminal activity." The ongoing commission of,
3 attempted commission of, the conspiracy or solicitation to
4 commit or the intimidation of another to commit criminal
5 offenses with a grading of third degree misdemeanor or higher.

6 § 915. Criminal gang solicitation and recruitment.

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

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

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

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

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

21 § 916. Criminal gang activity forfeiture.

22 (a) Forfeitures generally.--The following assets within this
23 Commonwealth shall be subject to forfeiture to the Commonwealth,
24 and no property right shall exist in them:

25 (1) Assets of an individual, entity or organization
26 engaged in planning or perpetrating an act in this
27 Commonwealth which violates section 914 (relating to criminal
28 gang activity) or 915 (relating to criminal gang solicitation
29 and recruitment) and all assets, foreign or domestic,
30 affording a person a source of influence over such an entity

1 or organization.

2 (2) Assets acquired or maintained by a person with the
3 intent and for the purpose of supporting, planning,
4 conducting or concealing an act in this Commonwealth which
5 violates section 914 or 915.

6 (3) Assets derived from, involved in or used or intended
7 to be used to commit an act in this Commonwealth which
8 violates section 914 or 915.

9 (b) Process and seizures.--Property subject to forfeiture
10 under this section may be seized by the law enforcement
11 authority upon process issued by a court of common pleas having
12 jurisdiction over the property. Seizure without process may be
13 made if any of the following apply:

14 (1) The seizure is incident to an arrest, a search under
15 a search warrant or an inspection under an administrative
16 inspection warrant.

17 (2) The property subject to seizure has been the subject
18 of a prior judgment in favor of the Commonwealth in a
19 criminal injunction or forfeiture proceeding under this
20 chapter.

21 (3) There is probable cause to believe that the property
22 is dangerous to health or safety.

23 (4) There is probable cause to believe that the property
24 has been or is intended to be used in the commission of an
25 act which violates section 914 or 915.

26 (c) Seizure without process.--In the event seizure is made
27 without process, proceedings for the issuance of forfeiture
28 shall be instituted forthwith.

29 (d) Custody of property.--Property taken or detained under
30 this section shall not be subject to replevin, but is deemed to

be in the custody of the law enforcement authority, subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General. When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(1) remove the property to a place determined by the law enforcement authority; or

(2) request that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Use of property held in custody.--Whenever property is forfeited under this section, it shall be transferred to the custody of the district attorney if the law enforcement authority seizing the property has local or county jurisdiction or of the Attorney General if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

(1) Retain the property for official use.

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, the proceeds from any such sale to be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with under subsections (f) and (g).

(f) Use of cash or proceeds of property.--Cash or proceeds of forfeited property transferred to the custody of the district attorney under subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected.

1 The appropriate county authority shall immediately release from
2 the operating fund, without restriction, a like amount for the
3 use of the district attorney in enforcing the criminal laws of
4 this Commonwealth. The entity having budgetary control shall not
5 anticipate future forfeitures or proceeds therefrom in adoption
6 and approval of the budget for the district attorney.

7 (g) Distribution of property among law enforcement
8 authorities.--

9 (1) The court having jurisdiction over the forfeiture
10 proceedings shall distribute 25% of the property forfeited
11 pursuant to this section to the Criminal Gang Deterrence
12 Fund.

13 (2) If both State and municipal law enforcement
14 authorities were substantially involved in effecting the
15 seizure, the court having jurisdiction over the forfeiture
16 proceedings shall equitably distribute the remaining property
17 between the district attorney and the Attorney General.

18 (h) Authorization to utilize property.--The district
19 attorney and the Attorney General shall utilize forfeited
20 property or proceeds thereof for the purpose of enforcing the
21 provisions of sections 914 and 915. In appropriate cases, the
22 district attorney and the Attorney General may designate
23 proceeds from forfeited property to be utilized for anti-gang
24 public safety programs and for relocation and protection of
25 witnesses in criminal cases.

26 (i) Annual audit of forfeited property.--It shall be the
27 responsibility of every county in this Commonwealth to provide,
28 through the controller, board of auditors or other appropriate
29 auditor and the district attorney, an annual audit of all
30 forfeited property and proceeds obtained under this section. The

1 audit shall not be made public but shall be submitted to the
2 Office of Attorney General. The county shall report all
3 forfeited property and proceeds obtained under this section and
4 the disposition thereof to the Office of Attorney General by
5 September 30 of each year.

6 (j) Annual report; confidential information regarding
7 property.--The Attorney General shall annually submit a report
8 to the Appropriations Committee and the Law and Justice
9 Committee of the Senate and the Appropriations Committee and the
10 Judiciary Committee of the House of Representatives specifying
11 the forfeited property or proceeds thereof obtained under this
12 section. The report shall give an accounting of all proceeds
13 derived from the sale of forfeited property and the use made of
14 unsold forfeited property. The Attorney General shall adopt
15 procedures and guidelines governing the release of information
16 by the district attorney to protect the confidentiality of
17 forfeited property or proceeds used in ongoing anti-gang
18 activities.

19 (k) Proceeds and appropriations.--The proceeds or future
20 proceeds from property forfeited under this section shall be in
21 addition to any appropriation made to the Office of Attorney
22 General.

23 (l) Procedures.--Any proceeding for forfeiture initiated by
24 the Commonwealth under this section shall follow the procedures
25 set forth under 42 Pa.C.S. § 6802 (relating to procedure with
26 respect to seized property subject to liens and rights of
27 lienholders).

28 Section 2. Title 42 is amended by adding a section to read:
29 § 1521.1. Disposition of criminal gang activity offenders.

30 If the offense which was the object of criminal gang activity

1 as defined under 18 Pa.C.S. § 914 (relating to criminal gang
2 activity) is a summary offense and the person who committed the
3 act is a juvenile offender, the magisterial district judge or
4 judge of the Philadelphia Municipal Court shall make every
5 effort to:

6 (1) Order payment by the child of reasonable amounts of
7 money as fines, costs or restitution as deemed appropriate as
8 part of the plan of rehabilitation considering the nature of
9 the acts committed and the earning capacity of the child.

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

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

14 § 6352. Disposition of delinquent child.

15 * * *

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

23 (d) Dispositions involving criminal gang activity.--If the
24 delinquent child is found to have committed criminal gang
25 activity as defined under 18 Pa.C.S. § 914 (relating to criminal
26 gang activity), the court shall make every effort to order, at a
27 minimum, disposition under subsection (a)(3), (4), (5) and (6)
28 and shall order an evaluation of drug or alcohol dependency as
29 well as a complete psychological and psychiatric evaluation with
30 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 Department of Health specifically to provide alcohol and drug addiction treatment services or other programs approved by the Department of Public Welfare or the Department of Education.

Section 4. Section 6801(g) of Title 42 is amended to read:
§ 6801. Controlled substances forfeiture.

* * *

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

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

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

(i) 50% to the district attorney.

(ii) 25% to the Attorney General.

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

1 * * *

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

3 § 9719.1. Alcohol and drug treatment.

4 Any person who is convicted in any court of this Commonwealth
5 of criminal gang activity as defined under 18 Pa.C.S. § 914
6 (relating to criminal gang activity) which is a misdemeanor or
7 felony shall be evaluated and examined for dependency on alcohol
8 or controlled substances and undergo a complete psychological
9 and psychiatric evaluation with all educational components. If
10 after evaluation and examination it is determined that the
11 person is dependent on alcohol or controlled substances or needs
12 other treatment based on other required evaluations, the court
13 shall make every effort to order the person committed for
14 treatment at a facility or institution licensed by the
15 Department of Health specifically to provide alcohol and drug
16 addiction treatment services or programs approved by the
17 Department of Public Welfare or the Department of Education.

18 Section 6. The amount of \$1,000,000, or as much thereof as
19 may be necessary, is hereby appropriated to the Criminal Gang
20 Deterrence Fund for the fiscal year July 1, 2008, to June 30,
21 2009, to carry out the provisions of this act.

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