
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2372 Session of
2008

INTRODUCED BY LONGIETTI, BAKER, BEYER, BOYD, CAPPELLI, CASORIO,
COHEN, DENLINGER, EACHUS, FLECK, GEIST, GIBBONS, GRUCELA,
HARHAI, HENNESSEY, KORTZ, KOTIK, KULA, MANN, MELIO, MENSCH,
R. MILLER, MOUL, MURT, PETRARCA, RAPP, READSHAW, ROCK,
SANTONI, SAYLOR, SCAVELLO, SIPTROTH, K. SMITH, STABACK,
STERN, SWANGER, J. TAYLOR AND YOUNGBLOOD, SEPTEMBER 12, 2008

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 12, 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 penalties for the offense of
4 participation in a criminal street gang and for the
5 forfeiture of property associated with criminal street gang
6 activity, for process and seizure and for the powers and
7 duties of the Attorney General.

8 The General Assembly finds and declares as follows:

9 (1) There exists a great need to address the growing
10 crisis of criminal street gang presence in our communities.

11 (2) It is the right of every citizen to be secure and
12 protected from fear, intimidation and physical harm caused by
13 the activities of violent criminal street gangs.

14 (3) These activities, both individually and
15 collectively, present a clear and present danger to public
16 order and safety.

17 (4) An effective means of punishing and deterring the
18 criminal activities of criminal street gangs is establishing

1 an offense of participation in a criminal street gang and
2 through forfeiture of the assets, profits, proceeds and
3 instrumentalities acquired, accumulated or used by street
4 gangs.

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

7 Section 1. Title 18 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 911.1. Criminal street gang member.

10 (a) General rule.--Any person who is a member of a criminal
11 street gang and engages in criminal street gang activity commits
12 an offense.

13 (b) Grading.--

14 (1) A person is guilty of a misdemeanor of the first
15 degree when the person is found to have committed one or more
16 criminal street gang activities while being a member of a
17 criminal street gang.

18 (2) A person is guilty of a felony of the third degree
19 if the person is found to be a member of a criminal street
20 gang and is convicted of one or more criminal street gang
21 activities within 1,000 feet of a public or private school or
22 engages a person under 18 years of age in any criminal
23 activity.

24 (c) Fund established.--The Criminal Street Gang Prevention
25 Fund is hereby established as an account in the State Treasury.
26 This fund shall be administered by the commission and shall be
27 comprised of costs imposed and collected in accordance with the
28 provisions of this section. All moneys in the fund and the
29 interest accruing thereon are hereby appropriated, upon approval
30 of the Governor, to the commission to carry out the provisions

1 of this section.

2 (d) Fine.--In addition to any other punishment imposed, the
3 court shall order the defendant to pay a fine of not less than
4 \$500 nor more than \$5,000, which shall be forwarded to the fund.

5 (e) Collection.--Costs imposed under this section shall be
6 collected in accordance with local court rules by the clerk of
7 courts in the county where the violation has occurred.

8 (f) Application.--All costs provided for in this section
9 shall be in addition to and not in lieu of any fine authorized
10 by law. Nothing in this section shall be construed to affect,
11 suspend or diminish any other criminal sanction, penalty or
12 property forfeiture permitted by law.

13 (g) Grants.--Notwithstanding any other provision of law, the
14 commission shall, upon written application and subsequent
15 approval, use moneys received under this section to annually
16 award grant moneys deposited into the fund each fiscal year to
17 local governments and nonprofit organizations to provide
18 research-based approaches to assessment, prevention,
19 intervention, training, education, public awareness campaigns
20 and media literacy to reduce criminal gang activity in
21 communities with evidence of gang violence.

22 (h) Administration.--The commission shall develop guidelines
23 and procedures necessary to implement the grant program. The
24 commission shall equitably distribute grant moneys to approved
25 applicants. Each fiscal year, the commission shall make
26 available grant moneys equaling, except for administrative funds
27 as provided under this subsection, the balance of moneys
28 deposited into the fund as of June 30 of the previous fiscal
29 year. No more than 5% of total moneys deposited in the fund
30 during a fiscal year may be used by the commission to administer

1 the provisions of this section.

2 (i) Other initiatives.--Funds disbursed under this section
3 shall not supplant Federal, State or local funds that would have
4 otherwise been made available for substance abuse prevention,
5 education, support, treatment and outreach initiatives.

6 (j) Definitions.--As used in this section, the following
7 words and phrases shall have the meanings given to them in this
8 subsection:

9 "Commission." The Pennsylvania Commission on Crime and
10 Delinquency."

11 "Criminal street gang." A formal or informal confederation,
12 alliance, network, conspiracy, understanding or other similar
13 conjoining of persons who operate individually or collectively
14 as a group or subgroup, with or without an established
15 hierarchy, that, through its membership obtained by pledge,
16 oath, swearing, ritual, distinct membership markings, symbolism,
17 common identifiers or other criteria that law enforcement
18 personnel use to identify criminal street gangs, engages in
19 criminal activity.

20 "Criminal street gang activity." The commission of,
21 attempted commission of, conspiracy to commit or solicitation to
22 commit an act of violence or an act to achieve illegal pecuniary
23 gain committed as a matter of course or pattern by a juvenile or
24 an adult who has been identified as a member of a criminal
25 street gang, which act is prohibited as follows:

26 (1) Under this title:

27 Section 903 (relating to criminal conspiracy)

28 Section 907 (relating to possessing instruments of
29 crime)

30 Section 908 (relating to prohibited offensive

1 weapons)

2 Section 911 (relating to corrupt organizations)

3 Section 2501 (relating to criminal homicide)

4 Section 2502 (relating to murder)

5 Section 2506 (relating to drug delivery resulting in

6 death)

7 Section 2701 (relating to simple assault)

8 Section 2702 (relating to aggravated assault)

9 Section 2705 (relating to recklessly endangering

10 another person)

11 Section 2706 (relating to terroristic threats)

12 Section 2707 (relating to propulsion of missiles into

13 an occupied vehicle or onto a roadway)

14 Section 2707.1 (relating to discharge of a firearm

15 into an occupied structure)

16 Section 2709 (relating to harassment)

17 Section 2901 (relating to kidnapping)

18 Section 2903 (relating to false imprisonment)

19 Section 2906 (relating to criminal coercion)

20 Section 3121 (relating to rape)

21 Section 3123 (relating to involuntary deviate sexual

22 intercourse)

23 Section 3124.1 (relating to sexual assault)

24 Section 3301 (relating to arson and related offenses)

25 Section 3304 (relating to criminal mischief)

26 Section 3307 (relating to institutional vandalism)

27 Section 3502 (relating to burglary)

28 Section 3503 (relating to criminal trespass)

29 Section 3701 (relating to robbery)

30 Section 3702 (relating to robbery of motor vehicle)

1 Section 3921 (relating to theft by unlawful taking or
2 disposition)

3 Section 3923 (relating to theft by extortion)

4 Section 3925 (relating to receiving stolen property)

5 Section 3928 (relating to unauthorized use of
6 automobiles and other vehicles)

7 Section 3934 (relating to theft from a motor vehicle)

8 Section 4952 (relating to intimidation of witnesses
9 or victims)

10 Section 4953 (relating to retaliation against
11 witness, victim or party)

12 Section 6110.1 (relating to possession of firearm by
13 minor)

14 Section 6110.2 (relating to possession of firearm
15 with altered manufacturer's number)

16 Section 6111 (relating to sale or transfer of
17 firearms)

18 Section 6301 (relating to corruption of minors)

19 Section 6302 (relating to sale or lease of weapons
20 and explosives)

21 Section 6319 (relating to solicitation of minors to
22 traffic drugs)

23 Section 7611 (relating to unlawful use of computer
24 and other computer crimes).

25 (2) Under section 13 of the act of April 14, 1972
26 (P.L.233, No.64), known as The Controlled Substance, Drug,
27 Device and Cosmetic Act.

28 "Criminal street gang member." A person who:

29 (1) belongs to a criminal street gang;

30 (2) by self-proclamation asserts that the person is a

1 member of a criminal street gang; or

2 (3) knowingly acts in furtherance of criminal street
3 gang activities or acts as an accessory before or after the
4 fact.

5 "Fund." The Criminal Street Gang Prevention Fund.

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

7 § 6801.2. Criminal street gang forfeiture.

8 (a) General rule.--The following shall be subject to
9 forfeiture to the Commonwealth and no property right shall exist
10 in them:

11 (1) Money, negotiable instruments, securities or other
12 things of value furnished or intended to be furnished by any
13 person to facilitate criminal street gang activity.

14 (2) Real property used or intended to be used to
15 facilitate criminal street gang activity, including
16 structures or other improvements thereon, and any right,
17 title and interest in the whole or any lot or tract of land
18 any appurtenances or improvements, which is used or intended
19 to be used in any manner or part to commit or to facilitate
20 the commission of criminal street gang activity and things
21 growing on, affixed to and found in the land.

22 (b) Presumption.--

23 (1) No property shall be forfeited under this section,
24 to the extent of the interest of an owner, by reason of any
25 act or omission established by the owner to have been
26 committed or omitted without the knowledge or consent of that
27 owner. Such money and negotiable instruments found in
28 proximity or relation to criminal street gang activity shall
29 be rebuttably presumed to be proceeds derived from criminal
30 street gang activity.

1 (2) No valid lien or encumbrance on real property shall
2 be subject to forfeiture or impairment under this section. A
3 lien which is fraudulent or intended to avoid forfeiture
4 under this section shall be invalid.

5 (3) Any firearm, including, but not limited to, a rifle,
6 shotgun, pistol, revolver, machine gun, zip gun or any type
7 of prohibited offensive weapon as that term is defined under
8 18 Pa.C.S. (relating to crimes and offenses), which is used
9 or intended for use to facilitate criminal street gang
10 activity and such operable firearm as is found to be in
11 relation to criminal street gang activity shall be rebuttably
12 presumed to be used or intended for use to facilitate a
13 criminal street gang activity.

14 (c) Destruction of weapons.--A weapon forfeited under this
15 section shall be immediately destroyed by the receiving law
16 enforcement agency.

17 (d) Property subject to forfeiture.--In accordance with
18 subsection (k), property subject to forfeiture under this
19 section may be seized by the law enforcement authority upon
20 process issued by any court of common pleas having jurisdiction
21 over the property. Seizure without process may be made if:

22 (1) the seizure is incident to an arrest or a search
23 under a search warrant or inspection under an administrative
24 inspection warrant;

25 (2) the property subject to seizure has been the subject
26 of a prior judgment in favor of the Commonwealth in a
27 criminal injunction or forfeiture proceeding under this
28 section;

29 (3) there is a probable cause to believe that the
30 property is dangerous to public health or safety; or

1 (4) there is probable cause to believe that the property
2 has been used or is intended to be used in criminal street
3 gang activity.

4 (e) Seizure without process.--In the event seizure without
5 process occurs, as provided under this section, proceedings for
6 the issuance thereof shall be immediately initiated.

7 (f) Custody of property.--

8 (1) Property taken or detained under this section shall
9 not be subject to replevin but is deemed to be in the custody
10 of the law enforcement authority subject only to the orders
11 and decrees of the court of common pleas having jurisdiction
12 over the forfeiture proceedings and of the district attorney
13 or the Attorney General.

14 (2) When property is seized under this section, the law
15 enforcement authority shall place the property under seal and
16 either:

17 (i) remove the property to a place designated by it;

18 or

19 (ii) require that the district attorney or Attorney
20 General take custody of the property and remove it to an
21 appropriate location for disposition in accordance with
22 law.

23 (g) Use of property held in custody.--

24 (1) Whenever property is forfeited under this section,
25 the property shall be transferred to the custody of the
26 district attorney if the law enforcement authority seizing
27 the property has local or county jurisdiction or to the
28 Attorney General if the law enforcement authority seizing the
29 property has Statewide jurisdiction.

30 (2) The district attorney or the Attorney General, where

1 appropriate, may:

2 (i) retain the property for official use; or

3 (ii) sell any forfeited property which is not

4 required to be destroyed by law and which is not harmful

5 to the public. The proceeds from any such sale shall be

6 used to pay all proper expenses of the proceedings for

7 forfeiture and sale, including expenses of seizure,

8 maintenance of custody, advertising and court costs. The

9 balance of the proceeds shall be dealt with in accordance

10 with subsections (h) and (i).

11 (h) Use of cash or proceeds of property.--

12 (1) Cash or proceeds of forfeited property transferred

13 to the custody of the district attorney pursuant to

14 subsection (f) shall be placed in the operating fund of the

15 county in which the district attorney is elected.

16 (2) The appropriate county authority shall immediately

17 release from the operating fund, without restriction, a like

18 amount for the use of the district attorney in the

19 enforcement of the provisions of this section.

20 (3) The entity having budgetary control shall not

21 anticipate future forfeitures or proceeds from the operating

22 fund in adoption and approval of the budget for the district

23 attorney.

24 (i) Distribution of property among law enforcement

25 authorities.--If both municipal and State law enforcement

26 authorities were substantially involved in effecting a seizure

27 under this section, the court having jurisdiction over the

28 forfeiture proceedings shall equitably distribute the property

29 between the district attorney and the Attorney General.

30 (j) Authorization to utilize property.--The district

1 attorney and the Attorney General shall utilize forfeited
2 property or proceeds thereof for the purpose of enforcing the
3 provisions of this section. In appropriate cases, the district
4 attorney and the Attorney General shall designate proceeds from
5 forfeited property to be utilized by community-based drug and
6 crime-fighting programs and for relocation and protection of
7 witnesses in criminal cases.

8 (k) Annual audit of forfeited property.--

9 (1) Each county in this Commonwealth shall provide,
10 through the controller, board of auditors or other
11 appropriate auditor and the district attorney, an annual
12 audit of all forfeited property and proceeds obtained under
13 this section. The audit shall not be made public but shall be
14 submitted to the Office of Attorney General.

15 (2) Each county shall report all forfeited property and
16 proceeds obtained under this section and the disposition
17 thereof to the Attorney General by September 30 of each year.

18 (l) Annual report and confidential information regarding
19 property.--

20 (1) The Attorney General shall annually submit a report
21 to the Appropriations and Judiciary Committees of the Senate
22 and to the Appropriations and Judiciary Committees of the
23 House of Representatives, specifying the forfeited property
24 or proceeds thereof obtained under this section. The report
25 shall give an accounting of all proceeds derived from the
26 sale of forfeited property and the use made of unsold
27 forfeited property.

28 (2) The Attorney General shall adopt procedures and
29 guidelines governing the release of information by the
30 Attorney General to protect the confidentiality of forfeited

1 property or proceeds used in ongoing criminal street gang
2 activity.

3 (m) Proceeds and appropriations.--The proceeds or future
4 proceeds from forfeited property under this section shall be in
5 addition to any appropriation made to the Office of Attorney
6 General.

7 (n) Applicability of forfeiture.--Property owned by a
8 defendant who is convicted under 18 Pa.C.S. § 911.1 (relating to
9 criminal street gang member) shall be subject to forfeiture upon
10 a conviction which occurs on or after the effective date of this
11 section.

12 (o) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection:

15 "Criminal street gang." A formal or informal confederation,
16 alliance, network, conspiracy, understanding or other similar
17 conjoining of persons who operate individually or collectively
18 as a group or subgroup, with or without an established
19 hierarchy, that through its membership obtained by pledge, oath,
20 swearing, ritual, distinct membership markings, symbolism,
21 common identifiers or other criteria that law enforcement
22 personnel use to identify criminal street gangs, engages in
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25 attempted commission of, conspiracy to commit or solicitation to
26 commit an act of violence or an act to achieve illegal pecuniary
27 gain committed as a matter of course or pattern by a juvenile or
28 an adult who has been a member of a criminal street gang, which
29 act is prohibited as follows:

30 (1) Under 18 Pa.C.S. (relating to crimes and offenses):

1 Section 903 (relating to criminal conspiracy)
2 Section 907 (relating to possessing instruments of
3 crime)
4 Section 908 (relating to prohibited offensive
5 weapons)
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14 another person)
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17 an occupied vehicle or onto a roadway)
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13 or victims)
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26 traffic drugs)
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28 and other computer crimes).
29 (2) Under section 13 of the act of April 14, 1972
30 (P.L.233, No.64), known as The Controlled Substance, Drug,

1 Device and Cosmetic Act.

2 "Criminal street gang member." A person who:

3 (1) belongs to a criminal street gang;

4 (2) by self-proclamation asserts that the person is a
5 member of a criminal street gang; or

6 (3) knowingly acts in furtherance of criminal street
7 gang activities or acts as an accessory before or after the
8 fact.

9 Section 3. This act shall take effect in 60 days.