

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1121 Session of 2011

INTRODUCED BY REICHLEY, BAKER, BOBACK, BOYD, CLYMER, D. COSTA, EVERETT, FLECK, GEIST, GINGRICH, HARHART, HEFFLEY, HORNAMAN, KNOWLES, LONGIETTI, MANN, READSHAW, SABATINA, SWANGER, VULAKOVICH, GILLESPIE, HICKERNELL, TOOHIL, GILLEN, GROVE, MILLER, DeLUCA, ROCK AND CALTAGIRONE, MARCH 17, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 12, 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
17 benefiting, promoting or furthering the interests of a criminal



1 street gang.

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

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

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

17 ~~"Criminal street gang." A formal or informal confederation,~~ ←
18 ~~alliance, network, conspiracy, understanding or similar~~
19 ~~conjoining of persons who operate individually or collectively~~
20 ~~as a group or subgroup, with or without an established~~
21 ~~hierarchy, that, through its membership obtained by pledge,~~
22 ~~oath, swearing, ritual, distinct membership markings, symbolism,~~
23 ~~common identifiers or other criteria that law enforcement~~
24 ~~personnel use to identify the groups or subgroups, engages in~~
25 ~~criminal activity.~~

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

27 (1) 18 Pa.C.S. § 901 (relating to criminal attempt),
28 involving an attempt to commit murder or any of the offenses
29 under paragraph (3), (4), (5), (6), (7), (8), (9), (10),
30 (11), (12), (13), (14), (15), (16) or (17).

1 (2) 18 Pa.C.S. § 902 (relating to criminal
2 solicitation), involving solicitation to commit murder or any
3 of the offenses under paragraph (3), (4), (5), (6), (7), (8),
4 (9), (10), (11), (12), (13), (14), (15), (16) or (17).

5 (3) 18 Pa.C.S. § 903 (relating to criminal conspiracy),
6 involving conspiracy to commit murder or any of the offenses
7 under paragraph (3), (4), (5), (6), (7), (8), (9), (10),
8 (11), (12), (13), (14), (15), (16) or (17).

9 (4) 18 Pa.C.S. § 2502(c) (relating to murder).

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

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

14 (7) 18 Pa.C.S. § 2507(c) or (d) (relating to criminal
15 homicide of law enforcement officer).

16 (8) 18 Pa.C.S. § 2701(a)(3) (relating to simple
17 assault).

18 (9) 18 Pa.C.S. § 2702(a)(1) or (2) (relating to
19 aggravated assault).

20 (10) 18 Pa.C.S. § 2702.1 (relating to assault of law
21 enforcement officer).

22 (11) 18 Pa.C.S. § 2901 (relating to kidnapping).

23 (12) 18 Pa.C.S. § 3121 (relating to rape).

24 (13) 18 Pa.C.S. § 3123 (relating to involuntary deviate
25 sexual intercourse).

26 (14) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

27 (15) 18 Pa.C.S. § 3125 (relating to aggravated indecent
28 assault).

29 (16) 18 Pa.C.S. § 3301(a) (relating to arson and related
30 offenses).

1 (17) 18 Pa.C.S. § 3502 (relating to burglary), if at the
2 time of the offense the structure entered was adapted for
3 overnight accommodation.

4 (18) 18 Pa.C.S. § 3701 (relating to robbery).

5 (19) 18 Pa.C.S. § 3702 (relating to robbery of motor
6 vehicle).

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

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

16 "CRIMINAL STREET GANG." A FORMAL OR INFORMAL CONFEDERATION, ←
17 ALLIANCE, NETWORK, CONSPIRACY, UNDERSTANDING OR SIMILAR
18 CONJOINING OF PERSONS WHO OPERATE INDIVIDUALLY OR COLLECTIVELY
19 AS A GROUP OR SUBGROUP, WITH OR WITHOUT AN ESTABLISHED
20 HIERARCHY, THAT, THROUGH ITS MEMBERSHIP OBTAINED BY PLEDGE,
21 OATH, SWEARING, RITUAL, DISTINCT MEMBERSHIP MARKINGS, SYMBOLISM,
22 COMMON IDENTIFIERS OR OTHER CRITERIA THAT LAW ENFORCEMENT
23 PERSONNEL USE TO IDENTIFY THE GROUPS OR SUBGROUPS, ENGAGES IN
24 CRIMINAL ACTIVITY.

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