

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1121 Session of
2011

INTRODUCED BY REICHLEY, BAKER, BOBACK, BOYD, CLYMER, D. COSTA,
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MILLER, DeLUCA, ROCK, CALTAGIRONE, MURT AND FARRY,
MARCH 17, 2011

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, OCTOBER 1, 2012

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 AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND ←
6 JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED
7 STATUTES, PROVIDING FOR THE OFFENSE OF RECRUITING CRIMINAL
8 ~~STREET~~ GANG MEMBERS AND FOR SENTENCING FOR OFFENSES COMMITTED ←
9 IN ASSOCIATION WITH A CRIMINAL ~~STREET~~ GANG. ←

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 ~~Section 1. Title 42 of the Pennsylvania Consolidated~~ ←
13 ~~Statutes is amended by adding a section to read:~~
14 ~~§ 9720.3. Sentencing for offenses committed in association with~~
15 ~~a criminal street gang.~~

16 ~~(a) Sentencing enhancement. The Pennsylvania Commission on~~
17 ~~Sentencing shall provide for a sentence enhancement for crimes~~
18 ~~of violence or a violation of section 13(a)(30) of the act of~~

1 ~~April 14, 1972 (P.L.233, No.64), known as The Controlled~~
2 ~~Substance, Drug, Device and Cosmetic Act, if the offense was~~
3 ~~knowingly committed at the direction of or for the purpose of~~
4 ~~benefiting, promoting or furthering the interests of a criminal~~
5 ~~street gang.~~

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

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

18 ~~(d) Definitions. As used in this section, the following~~
19 ~~words and phrases shall have the meanings given to them in this~~
20 ~~subsection unless the context clearly indicates otherwise:~~

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

22 ~~(1) 18 Pa.C.S. § 901 (relating to criminal attempt),~~
23 ~~involving an attempt to commit an offense under 18 Pa.C.S. §~~
24 ~~2502(a) or (b) (relating to murder), 2507(a) or (b) (relating~~
25 ~~to criminal homicide of law enforcement officer) or any of~~
26 ~~the offenses under paragraph (4), (5), (6), (7), (8), (9),~~
27 ~~(10), (11), (12), (13), (14), (15), (16), (17), (18), (19),~~
28 ~~(19.1) or (19.2).~~

29 ~~(2) 18 Pa.C.S. § 902 (relating to criminal~~
30 ~~solicitation), involving solicitation to commit an offense~~

~~under 18 Pa.C.S. § 2502(a) or (b), 2507(a) or (b) or any of the offenses under paragraph (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (19.1) or (19.2).~~

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

~~(4) 18 Pa.C.S. § 2502(c).~~

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

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

~~(7) 18 Pa.C.S. § 2507(c) or (d).~~

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

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

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

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

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

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

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

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

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

~~(17) 18 Pa.C.S. § 3502 (relating to burglary), if at the~~

~~time of the offense the structure entered was adapted for overnight accommodation.~~

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

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

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

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

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

~~(21) A crime equivalent to one listed under paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (19.1) or~~

1 ~~(19.2) under Federal law or in a jurisdiction outside this~~
2 ~~Commonwealth.~~
3 ~~"Criminal street gang." A formal or informal confederation,~~
4 ~~alliance, network, conspiracy, understanding or similar~~
5 ~~conjoining of persons who operate individually or collectively~~
6 ~~as a group or subgroup, with or without an established~~
7 ~~hierarchy, that, through its membership obtained by pledge,~~
8 ~~oath, swearing, ritual, distinct membership markings, symbolism,~~
9 ~~common identifiers or other criteria that law enforcement~~
10 ~~personnel use to identify the groups or subgroups, engages in~~
11 ~~criminal activity.~~

12 Section 2. ~~This act shall take effect in 60 days.~~

13 SECTION 1. CHAPTER 51 OF TITLE 18 OF THE PENNSYLVANIA
14 CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

15 SUBCHAPTER C

16 CRIMINAL STREET GANGS

17 SEC.

18 5131. RECRUITING CRIMINAL STREET GANG MEMBERS.

19 § 5131. RECRUITING CRIMINAL STREET GANG MEMBERS.

20 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF
21 RECRUITING CRIMINAL STREET GANG MEMBERS BY:

22 (1) KNOWINGLY SOLICITING, INVITING, ENCOURAGING OR
23 OTHERWISE CAUSING OR ATTEMPTING TO CAUSE A PERSON TO
24 PARTICIPATE OR REMAIN IN A CRIMINAL STREET GANG;

25 (2) KNOWINGLY INFLICTING BODILY INJURY AS DEFINED IN
26 SECTION 2301 (RELATING TO DEFINITIONS) OR USING PHYSICAL
27 MENACE, FORCE, THREATS OR OTHER INTIMIDATION CAUSING OR
28 ATTEMPTING TO CAUSE A PERSON TO PARTICIPATE OR REMAIN IN A
29 CRIMINAL STREET GANG; OR

30 (3) KNOWINGLY INFLICTING SERIOUS BODILY INJURY AS

1 DEFINED IN SECTION 2301 ~~(RELATING TO DEFINITIONS)~~ ON ANY ←
2 PERSON CAUSING OR ATTEMPTING TO CAUSE A PERSON TO PARTICIPATE
3 OR REMAIN IN A CRIMINAL STREET GANG. ←

4 ~~(B) GRADING.~~ ←

5 ~~(1) AN OFFENSE UNDER SUBSECTION (A) (1) IS A MISDEMEANOR~~
6 ~~OF THE SECOND DEGREE. EXCEPT AS PROVIDED FOR IN THIS~~
7 ~~SUBSECTION, AN OFFENSE UNDER SUBSECTION (A) (2) IS A~~
8 ~~MISDEMEANOR OF THE FIRST DEGREE AND AN OFFENSE UNDER~~
9 ~~SUBSECTION (A) (3) IS A FELONY OF THE THIRD DEGREE.~~

10 ~~(2) A VIOLATION OF SUBSECTION (A) (2) OR (3) IN WHICH THE~~
11 ~~SUBJECT OF THE RECRUITING IS UNDER 16 YEARS OF AGE IS A~~
12 ~~FELONY OF THE THIRD DEGREE.~~

13 (B) GRADING.-- ←

14 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), THE
15 FOLLOWING SHALL APPLY:

16 (I) AN OFFENSE UNDER SUBSECTION (A) (1) IS A
17 MISDEMEANOR OF THE SECOND DEGREE.

18 (II) AN OFFENSE UNDER SUBSECTION (A) (2) IS A
19 MISDEMEANOR OF THE FIRST DEGREE.

20 (III) AN OFFENSE UNDER SUBSECTION (A) (3) IS A FELONY
21 OF THE THIRD DEGREE.

22 (2) A VIOLATION OF THIS SECTION SHALL BE GRADED ONE
23 DEGREE HIGHER THAN PROVIDED UNDER PARAGRAPH (1) IF THE
24 SUBJECT OF THE RECRUITING IS UNDER 16 YEARS OF AGE.

25 (C) DEFENSES.--IT SHALL NOT BE A DEFENSE TO THIS OFFENSE
26 THAT THE SUBJECT OF THE RECRUITING DID NOT JOIN, PARTICIPATE OR
27 REMAIN IN A CRIMINAL STREET GANG. ←

28 (D) LIABILITY FOR OTHER VIOLATIONS OF STATUTES.--THIS
29 SECTION SHALL NOT BE CONSTRUED TO LIMIT PROSECUTION UNDER ANY
30 OTHER PROVISION OF LAW.

1 (E) DEFINITION.--AS USED IN THIS SECTION, THE TERM "CRIMINAL
2 STREET GANG" MEANS A FORMAL OR INFORMAL ONGOING ORGANIZATION, ←
3 ASSOCIATION OR GROUP, WITH OR WITHOUT AN ESTABLISHED HIERARCHY,
4 THAT HAS AS ONE OF ITS PRIMARY ACTIVITIES THE COMMISSION OF
5 CRIMINAL OR DELINQUENT ACTS AND THAT CONSISTS OF THREE OR MORE
6 PERSONS WHO HAVE A COMMON NAME OR COMMON IDENTIFYING SIGNS, ←
7 COLORS OR SYMBOLS THAT LAW ENFORCEMENT PERSONNEL USE TO IDENTIFY
8 THE GROUPS OR SUBGROUPS.

9 SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:
10 § 9720.4. SENTENCING FOR OFFENSES COMMITTED IN ASSOCIATION WITH
11 A CRIMINAL STREET GANG. ←

12 (A) SENTENCING ENHANCEMENT.--IN ADDITION TO ANY MINIMUM TERM
13 OF IMPRISONMENT AUTHORIZED OR ESTABLISHED BY LAW FOR THE
14 OFFENSE, THE PENNSYLVANIA COMMISSION ON SENTENCING, IN ←
15 ACCORDANCE WITH SECTION 2154 (RELATING TO ADOPTION OF GUIDELINES
16 FOR SENTENCING), SHALL PROVIDE FOR A SENTENCE ENHANCEMENT WITHIN
17 ITS GUIDELINES FOR A CRIME OF VIOLENCE, AS DEFINED IN SECTION
18 9714(G) (RELATING TO SENTENCES FOR SECOND AND SUBSEQUENT
19 OFFENSES), A VIOLATION OF 18 PA.C.S. § 5131(A)(3) (RELATING TO ←
20 RECRUITING CRIMINAL STREET GANG MEMBERS) OR A VIOLATION OF
21 SECTION 13(A)(30) OF THE ACT OF APRIL 14, 1972 (P.L.233, NO.64),
22 KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC
23 ACT, IF THE OFFENSE WAS KNOWINGLY COMMITTED AT THE DIRECTION OF
24 OR FOR THE PURPOSE OF BENEFITING, PROMOTING OR FURTHERING THE
25 INTERESTS OF A CRIMINAL STREET GANG. ←

26 (B) PROOF AT SENTENCING. THE PROVISIONS OF THIS SECTION ←
27 SHALL NOT BE AN ELEMENT OF THE CRIME, AND NOTICE OF THE
28 PROVISIONS OF THIS SECTION TO THE DEFENDANT SHALL NOT BE
29 REQUIRED PRIOR TO CONVICTION, BUT REASONABLE NOTICE OF THE
30 COMMONWEALTH'S INTENTION TO PROCEED UNDER THIS SECTION SHALL BE

1 ~~PROVIDED AFTER CONVICTION AND BEFORE SENTENCING.~~

2 ~~(C) APPLICABILITY. THE APPLICABILITY OF THIS SECTION SHALL~~
3 ~~BE DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY~~
4 ~~EVIDENCE PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH~~
5 ~~AND THE DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY~~
6 ~~ADDITIONAL EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF~~
7 ~~THE EVIDENCE, IF THIS SECTION IS APPLICABLE.~~

8 ~~(D)~~ (B) DEFINITION.--AS USED IN THIS SECTION, THE TERM ←
9 "CRIMINAL STREET GANG" HAS THE MEANING GIVEN IN 18 PA.C.S. § ←
10 5131(E) (RELATING TO RECRUITING CRIMINAL STREET GANG MEMBERS). ←

11 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.