

SENATE BILL NO. 61

January 26, 1999, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to prohibit certain organized gang-related activity; to create the statewide organized gang data base; to prescribe the powers and duties of certain state and local officials and agencies; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan youth and gang crime act".

3 Sec. 2. As used in this act:

4 (a) "Course or pattern of criminal activity" means 2 or more
5 gang-related criminal offenses committed in whole or in part
6 within this state if all of the following circumstances exist:

7 (i) At least 1 of the offenses was committed after the
8 effective date of this act.

9 (ii) At least 2 offenses were committed within 5 years of
10 each other.

1 (iii) At least 1 offense involved the solicitation to
2 commit, conspiracy to commit, attempt to commit, or commission of
3 a felony.

4 (b) "Department" means the department of state police.

5 (c) "Designee" means any attorney for a public authority who
6 has received written permission from the prosecuting attorney to
7 file or join in a civil action authorized by this act.

8 (d) "Director" means the director of the department.

9 (e) "Gang-related" means any criminal activity, enterprise,
10 pursuit, or undertaking directed by, ordered by, authorized by,
11 consented to, agreed to, requested by, acquiesced in, or ratified
12 by any organized gang leader, officer, or governing or
13 policy-making person or authority, or by any agent, representa-
14 tive, or deputy of the organized gang leader, officer, person, or
15 policy-making person or authority under any of the following
16 circumstances:

17 (i) With the intent to increase the organized gang's size,
18 membership, prestige, dominance, or control in any geographical
19 area.

20 (ii) With the intent to provide the organized gang with any
21 advantage in, or any control or dominance over, any criminal
22 market sector, including, but not limited to, the manufacture,
23 delivery, or sale of a controlled substance, arson, traffic in
24 stolen property or stolen credit cards, traffic in prostitution
25 or obscenity, or any other crime that involves robbery, burglary,
26 or theft.

1 (iii) With the intent to obstruct justice or to intimidate
2 or eliminate any witness against the organized gang or any member
3 of the organized gang.

4 (iv) With the intent to otherwise directly or indirectly
5 cause any benefit, aggrandizement, gain, profit, or other advan-
6 tage to or for the organized gang, its reputation, influence, or
7 membership.

8 (f) "Organized gang" means any combination, confederation,
9 network, conspiracy, understanding, or other similar conjoining
10 in law or in fact of 3 or more persons with an established hier-
11 archy that through its membership or through the agency of any
12 member engages in a course or pattern of criminal activity.

13 (g) "Organized gang member" means a person who belongs to an
14 organized gang, and any person who knowingly acts as an agent for
15 or as an accessory to, or is legally accountable for, or volun-
16 tarily associates with an organized gang-related course or pat-
17 tern of criminal activity, whether in a preparatory, executory,
18 or cover-up phase of that activity, or who knowingly performs,
19 aids, or abets that activity.

20 (h) "Prosecuting attorney" means the prosecuting attorney
21 for a county, an assistant prosecuting attorney for a county, the
22 attorney general, the deputy attorney general, an assistant
23 attorney general, or a special prosecuting attorney.

24 (i) "Public authority" means any unit of local government or
25 school district created or established under the constitution or
26 laws of this state.

1 (j) "Public park" means property designated by this state or
2 a local unit of government of this state as a public park.

3 (k) "School property" means a building, playing field, or
4 property used for school purposes to impart instruction to chil-
5 dren in grades kindergarten through 12, when provided by a
6 public, private, denominational, or parochial school, except
7 those buildings used primarily for adult education or college
8 extension courses.

9 (l) "SWORD" means the statewide organized gang data base
10 created under this act.

11 Sec. 3. (1) Except as provided in subsections (2) and (3),
12 a person who expressly or impliedly threatens to do bodily harm
13 or does bodily harm to an individual or to that individual's
14 family or uses any other criminally unlawful means to solicit or
15 cause any person to join any organization or association is
16 guilty of a felony punishable by imprisonment for not more than 2
17 years or a fine of not more than \$1,000.00, or both.

18 (2) Except as provided in subsection (3), a person 18 years
19 of age or older who expressly or impliedly threatens to do bodily
20 harm or does bodily harm to a person less than 18 years of age or
21 uses any other criminally unlawful means to solicit or cause any
22 person less than 18 years of age to join any organization or
23 association is guilty of a felony punishable by imprisonment for
24 not more than 4 years or a fine of not more than \$2,000.00, or
25 both.

26 (3) A person who, on school property, or in a conveyance
27 owned, leased, or contracted by a school to transport students to

1 or from school property or a school related activity, or in a
2 public park, or on any public property within 1,000 feet of
3 school property or a public park, expressly or impliedly threat-
4 ens to do bodily harm or does bodily harm to an individual or to
5 that individual's family or uses any other criminally unlawful
6 means to solicit or cause any person to join any organization or
7 association is guilty of a felony punishable by imprisonment for
8 not more than 5 years or a fine of not more than \$3,000.00, or
9 both.

10 Sec. 4. The department may do 1 or more of the following:

11 (a) Provide a uniform reporting format for entering relevant
12 information regarding the report of an arrested organized gang
13 member into SWORD.

14 (b) Notify all law enforcement agencies that reports of
15 arrested organized gang members or organized gang affiliates
16 shall be entered into the SWORD data base as soon as the minimum
17 level of data specified by the department is available to the
18 reporting agency, and that no waiting period for the entry of
19 that data exists.

20 (c) Develop and implement a policy for notifying law
21 enforcement agencies of the creation of new organized gangs, or
22 the change of a name or other identifying sign by an existing
23 organized gang.

24 (d) Compile and retain information regarding organized
25 gangs, organized gang members, and organized gang affiliates, in
26 a manner that allows the information to be used by law

1 enforcement agencies and other agencies, considered appropriate
2 by the director, for investigative purposes.

3 (e) Compile and maintain a historic data repository relating
4 to organized gangs, organized gang members, and organized gang
5 affiliates in order to develop and improve techniques utilized by
6 law enforcement agencies and prosecutors in investigating, appre-
7 hending, and prosecuting organized gang members and organized
8 gang affiliates.

9 (f) Create a quality control program regarding confirmation
10 of organized gang membership and organized gang affiliation data,
11 timeliness and accuracy of information entered into SWORD, and
12 performance audits of all entering agencies.

13 (g) Locate all law enforcement agencies that could, in the
14 opinion of the director, benefit from access to SWORD, and notify
15 them of its existence.

16 (h) Cooperate with all law enforcement agencies wishing to
17 gain access to SWORD and facilitate their entry into the system
18 and their continued access to it.

19 Sec. 5. A local law enforcement agency that is a member of
20 the SWORD system may do 1 or more of the following:

21 (a) After arresting an individual the law enforcement agency
22 believes is a member of an organized gang or affiliate of an
23 organized gang, create or update that individual's electronic
24 file within SWORD.

25 (b) Notify the prosecuting attorney of the accused
26 individual's organized gang membership or organized gang
27 affiliate status.

1 Sec. 6. Information that may be placed in SWORD includes,
2 but is not required to be limited to, all of the following:

3 (a) The name, last known address, birth date, and physical
4 description of an arrested organized gang member.

5 (b) Officer safety information, organized gang affiliation,
6 and entering agency identifier.

7 Sec. 7. The department may develop an automated data
8 exchange system to compile, to maintain, and to make information
9 in SWORD electronically available to prosecutors and to other law
10 enforcement agencies. The information may be used by prosecutors
11 and other law enforcement agencies to combat the operations of
12 organized criminal gangs statewide.

13 Sec. 8. (1) A civil cause of action is created in favor of
14 any public authority expending money, allocating or reallocating
15 police, fire fighting, emergency, or other personnel or
16 resources, or otherwise incurring any loss, deprivation, or
17 injury, or sustaining any damage, impairment, or harm, proximi-
18 tely caused by any course or pattern of criminal activity.

19 (2) The cause of action created under subsection (1) is
20 against any of the following:

21 (a) Any organized gang in whose name, for whose benefit, on
22 whose behalf, or under whose direction the act was committed.

23 (b) Any organized gang officer or director who causes,
24 orders, suggests, authorizes, consents to, agrees to, requests,
25 acquiesces in, or ratifies the act.

1 (c) Any organized gang member who, in the furtherance of or
2 in connection with any organized gang-related activity, commits
3 the act.

4 (d) Any organized gang officer, director, leader, or
5 member.

6 (3) The cause of action under subsection (1) may be brought
7 by the prosecuting attorney or by his or her designee. The cause
8 of action shall be in addition to any other civil or criminal
9 proceeding authorized by the laws of this state or by federal
10 law, and does not require the prosecuting attorney or his or her
11 designee to elect a civil rather than criminal remedy, or replace
12 any other cause of action. Liability of the organized gang, its
13 officers, directors, leaders, and members is joint and severable
14 subject only to the apportionment and allocation of damages.

15 Sec. 9. (1) An action may be commenced under this act by
16 filing a verified complaint in the same manner as in civil
17 cases.

18 (2) A complaint filed under this act, and all other ancil-
19 lary or collateral matters arising including matter relating to
20 discovery, motions, trial, or perfecting or executing judgments
21 shall be subject to the revised judicature act of 1961, 1961 PA
22 236, MCL 600.101 to 600.9948, except as otherwise provided in
23 this act, or except as the court may otherwise order upon motion
24 of the prosecuting attorney or his or her designee in matters
25 relating to immunity or the physical safety of a witness.

1 (3) The complaint shall name each complaining prosecuting
2 attorney or his or her designee and the public authority
3 represented by that prosecuting attorney or his or her designee.

4 (4) The complaint shall name as defendants the organized
5 gang, all known organized gang officers, and any organized gang
6 members specifically identified or alleged in the complaint as
7 having participated in an organized gang-related course or pat-
8 tern of criminal activity. The complaint may also name, as a
9 class of defendants, all unknown organized gang members.

10 (5) When, at any point before trial, a specific organized
11 gang officer or organized gang member becomes known, the com-
12 plaint may be amended to include that person as a named
13 defendant.

14 Sec. 10. (1) In an action brought under this act, venue
15 lies in any county where an act charged in the complaint as part
16 of a course or pattern of organized gang-related criminal activ-
17 ity was committed.

18 (2) It is not necessary for all offenses necessary to estab-
19 lishing a course or pattern of criminal activity to have occurred
20 in any single county if the prosecuting attorneys of several
21 counties, or their designees, each complaining of an offense,
22 elect to join in a complaint. It is sufficient that the com-
23 plaint, taken as a whole, alleges a course or pattern of criminal
24 activity by an organized gang. Each count of the joint complaint
25 shall be considered as cumulative to other counts for purposes of
26 alleging or demonstrating a course or pattern of criminal
27 activity.

1 (3) If a course or pattern of criminal activity is alleged
2 to have been committed or to have occurred in more than 1 county,
3 the prosecuting attorney of each county, or his or her designee,
4 may join the several causes of action in a single complaint. The
5 complaint may be filed in any county agreed to by them, but join-
6 der shall not be had without the consent of the prosecuting
7 attorney having jurisdiction over each offense alleged as part of
8 the course or pattern of criminal activity.

9 Sec. 11. (1) All organized gangs and organized gang members
10 engaged in a course or pattern of criminal activity within this
11 state impliedly consent to service of process upon them as set
12 forth in this section, or as may be otherwise authorized by the
13 revised judicature act of 1961, 1961 PA 236, MCL 600.101 to
14 600.9948.

15 (2) Service of process upon an organized gang may be made in
16 the manner provided for service upon a voluntary unincorporated
17 association in a civil action, or in the manner provided for
18 service by publication in a civil action, or by leaving a copy of
19 the complaint and summons directed to any officer of the orga-
20 nized gang, commanding the organized gang to appear and answer
21 the complaint or otherwise plead at a time and place certain with
22 any of the following:

23 (a) Any organized gang officer.

24 (b) Any member of the organized gang simultaneously named in
25 the complaint and summons.

26 (c) Any parent, legal guardian, or legal custodian of a
27 person charged with a gang-related offense if any person sued

1 civilly under this act is less than 18 years of age and is also
2 charged criminally or as a delinquent minor.

3 (d) The director of any agency or department of this state
4 who is the legal guardian, guardianship administrator, or custo-
5 dian of any person sued under this act.

6 (e) The probation or parole officer of any person sued under
7 this act.

8 (f) Any other person or agent as the court upon petition of
9 a prosecuting attorney or his or her designee authorizes as
10 appropriate and reasonable under all of the circumstances.

11 (3) If after being summoned an organized gang does not
12 appear, the court shall enter an answer for the organized gang
13 neither affirming nor denying the allegations of the complaint
14 but demanding strict proof of the allegations contained in the
15 complaint, and proceed to trial and judgment without further
16 process.

17 (4) If a person is named as a defendant organized gang
18 member in a complaint, or subsequently becomes known and is added
19 or joined as a named defendant, service of process may be had as
20 authorized or provided for in the revised judicature act of 1961,
21 1961 PA 236, MCL 600.101 to 600.9948, for service of process in a
22 civil case.

23 (5) Unknown organized gang members may be sued as a class
24 and designated as a class in the caption of any complaint filed
25 under this act. Service of process upon unknown organized gang
26 members shall be made in the manner prescribed for providing
27 notice to members of a class in a class action, or as the court

1 directs for providing the best service and notice practicable
2 under the circumstances including individual, personal, or other
3 service upon all organized gang members who can be identified and
4 located through reasonable effort.

5 Sec. 12. (1) In any action brought under this act, and upon
6 the verified application of the prosecuting attorney or his or
7 her designee, the circuit court may at any time enter a restrain-
8 ing order, injunction, or other prohibition, or order any other
9 relief the court considers appropriate, including, but not
10 limited to, ordering any person to divest himself or herself of
11 any involvement or interest, direct or indirect, in any illegal
12 organized gang activity and imposing other reasonable restric-
13 tions on the future illegal activities of any defendant.

14 (2) A final judgment in favor of a public authority under
15 this act entitles the public authority to recover compensatory
16 damages for all damages, losses, impairments, or other harm prox-
17 imately caused, together with the costs of the suit and reason-
18 able attorneys' fees. Damages may be assessed against any orga-
19 nized gang or against any organized gang officer or organized
20 gang member found responsible for participating in or being
21 legally accountable for a course or pattern of criminal activity
22 under this act.

23 Sec. 13. (1) The prosecuting attorney may apply to the
24 court that an organized gang member who testifies on behalf of a
25 public authority in a civil proceeding brought against an orga-
26 nized gang under this act be granted immunity from prosecution in
27 a criminal case as to any information directly or indirectly

1 derived from the production of evidence by the organized gang
2 member. The court shall grant the order of immunity if all of
3 the following circumstances exist:

4 (a) Production of the evidence is necessary to a fair deter-
5 mination of a course of action under this act.

6 (b) The organized gang member has refused or is likely to
7 refuse to produce the evidence on the basis of his or her privi-
8 lege against self-incrimination.

9 (2) If an organized gang member refuses, on the basis of his
10 or her privilege against self-incrimination, to produce evidence
11 in an action brought under this act and the judge informs the
12 organized gang member of an order of immunity issued under this
13 section, the organized gang member may not refuse to comply with
14 the order on the basis of his or her privilege against
15 self-incrimination.

16 (3) The production of evidence compelled under an order
17 issued pursuant to subsection (1) and any information directly or
18 indirectly derived from it shall not be used against the orga-
19 nized gang member in a criminal case except in a prosecution for
20 perjury, false swearing, or an offense otherwise involving a
21 failure to comply with the order.

22 (4) Upon request of the organized gang member compelled, a
23 copy of the evidence produced under the order shall be furnished
24 to him or her.