

HOUSE BILL No. 4073

January 24, 2017, Introduced by Rep. Kesto and referred to the Committee on Law and Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 411u (MCL 750.411u), as added by 2008 PA 564.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 411u. ~~(1) If a person who is an associate or a member of~~
2 ~~a gang commits a felony or attempts to commit a felony and the~~
3 ~~person's association or membership in the gang provides the motive,~~
4 ~~means, or opportunity to commit the felony, the person is guilty of~~
5 ~~a felony punishable by imprisonment for not more than 20 years. As~~
6 ~~used in this section:~~

7 ~~— (a) "Gang" means an ongoing organization, association, or~~
8 ~~group of 5 or more people, other than a nonprofit organization,~~
9 ~~that identifies itself by all of the following:~~

10 ~~— (i) A unifying mark, manner, protocol, or method of expressing~~
11 ~~membership, including a common name, sign or symbol, means of~~

~~recognition, geographical or territorial sites, or boundary or location.~~

~~(ii) An established leadership or command structure.~~

~~(iii) Defined membership criteria.~~

~~(b) "Gang member" or "member of a gang" means a person who belongs to a gang.~~

~~(2) A sentence imposed under this section is in addition to the sentence imposed for the conviction of the underlying felony or the attempt to commit the underlying felony and may be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.~~

(1) A PERSON WHO ACTIVELY PARTICIPATES IN A GANG AS A GANG MEMBER, WHO KNOWINGLY ACTS IN THE CAPACITY OF AN AGENT OR ACCESSORY FOR A GANG, OR WHO PROMOTES, FURTHERS, OR ASSISTS IN ANY CRIMINAL CONDUCT BY MEMBERS OF A GANG THAT CONSTITUTES A FELONY IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH. THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED UNDER THIS SUBSECTION TO BE SERVED CONSECUTIVELY TO A TERM OF IMPRISONMENT FOR ANY OTHER CONDUCT COMMITTED BY THE PERSON WHILE VIOLATING THIS SUBSECTION THAT CONSTITUTES A FELONY.

(2) AS USED IN THIS SECTION:

(A) "GANG" MEANS A FORMAL OR INFORMAL ORGANIZATION, ASSOCIATION, OR GROUP OF 3 OR MORE PERSONS HAVING AS 1 OF ITS PRIMARY ACTIVITIES THE COMMISSION OF 1 OR MORE CRIMINAL ACTS THAT ARE FELONIES, HAVING A COMMON NAME OR IDENTIFYING SIGN OR SYMBOL OR WHOSE MEMBERS OR ASSOCIATES INDIVIDUALLY OR COLLECTIVELY ENGAGE IN

1 OR HAVE BEEN ENGAGED IN A PATTERN OF CRIMINAL ACTIVITY CONSTITUTING
2 1 OR MORE FELONIES.

3 (B) "GANG MEMBER" MEANS A PERSON WHO MEETS AT LEAST 3 OF THE
4 FOLLOWING CRITERIA:

5 (i) ADMITS TO GANG MEMBERSHIP EITHER VERBALLY, THROUGH SOCIAL
6 NETWORKING, OR IN OTHER CORRESPONDENCE.

7 (ii) IS IDENTIFIED AS A GANG MEMBER BY A PARENT OR GUARDIAN.

8 (iii) IS IDENTIFIED AS A GANG MEMBER BY A DOCUMENTED RELIABLE
9 INFORMANT.

10 (iv) ADOPTS THE STYLE OF DRESS OF A GANG.

11 (v) ADOPTS THE USE OF A HAND SIGN OR HAND SIGNAL IDENTIFIED AS
12 USED BY A GANG.

13 (vi) HAS A TATTOO IDENTIFIED AS USED BY A GANG.

14 (vii) ASSOCIATES WITH 1 OR MORE KNOWN GANG MEMBERS.

15 (viii) IS IDENTIFIED AS A GANG MEMBER BY AN INFORMANT OF
16 PREVIOUSLY UNTESTED RELIABILITY IF THAT IDENTIFICATION IS
17 CORROBORATED BY INDEPENDENT INFORMATION.

18 (ix) IS IDENTIFIED AS A GANG MEMBER BY PHYSICAL EVIDENCE THAT
19 IS NOT LIMITED TO PERSONAL ITEMS BEARING SPECIFIC GANG TAGGING. FOR
20 PURPOSES OF THIS SUBPARAGRAPH, "TAGGING" MEANS PLACING AN
21 IDENTIFYING MARK ON ANY ITEM FOR THE PURPOSE OF SHOWING GANG
22 IDENTIFICATION OR AFFILIATION, INCLUDING THROUGH THE USE OF
23 GRAFFITI. TAGGED ITEMS INCLUDE THOSE FOUND IN AN INDIVIDUAL'S
24 LIVING AREA AND PUBLIC AND PRIVATE PROPERTY THAT IS MARKED TO SHOW
25 GANG OWNERSHIP OF A PARTICULAR AREA OR TO MARK TERRITORY.

26 (x) IS OBSERVED IN THE COMPANY OF 1 OR MORE KNOWN GANG MEMBERS
27 ON 4 OR MORE OCCASIONS. OBSERVATION IN A CUSTODIAL SETTING UNDER

1 THIS SUBPARAGRAPH REQUIRES THE EXHIBITION OF WILLFUL ASSOCIATION.
2 IT IS THE INTENT OF THE LEGISLATURE TO ALLOW THIS CRITERION TO BE
3 USED TO IDENTIFY GANG MEMBERS WHO RECRUIT AND ORGANIZE IN JAILS,
4 PRISONS, AND OTHER DETENTION SETTINGS.

5 (xi) AUTHORS ANY COMMUNICATION INDICATING RESPONSIBILITY FOR
6 THE COMMISSION OF ANY CRIME BY THE CRIMINAL GANG.

7 (xii) INDICATES GANG MEMBERSHIP, INCLUDING THROUGH SELF-
8 PUBLICATION USING SOCIAL MEDIA.

9 (xiii) IS ARRESTED MORE THAN ONCE IN THE COMPANY OF IDENTIFIED
10 GANG MEMBERS WHO ACT IN A MANNER CONSISTENT WITH USUAL GANG
11 ACTIVITY.

12 (xiv) IS STOPPED IN THE COMPANY OF KNOWN GANG MEMBERS ON 3 OR
13 MORE OCCASIONS.

14 (C) "PATTERN OF CRIMINAL ACTIVITY" MEANS 1 OR MORE OF THE
15 FOLLOWING:

16 (i) THE CONVICTION OF 1 OR MORE MEMBERS OF A GANG FOR THE
17 COMMISSION, ATTEMPTED COMMISSION, OR SOLICITATION TO COMMIT 2 OR
18 MORE FELONY OFFENSES.

19 (ii) THE CONVICTION OF 1 OR MORE MEMBERS OF A GANG FOR THE
20 COMMISSION, ATTEMPTED COMMISSION, OR SOLICITATION TO COMMIT 2 OR
21 MORE VIOLENT MISDEMEANOR OFFENSES.

22 (iii) THE CONVICTION OF 1 OR MORE MEMBERS OF A GANG OF ANY
23 COMBINATION OF ANY OFFENSES DESCRIBED IN SUBPARAGRAPHS (i) AND
24 (ii) .

25 (D) "VIOLENT MISDEMEANOR OFFENSE" MEANS 1 OR MORE OF THE
26 FOLLOWING:

27 (i) AN ASSAULTIVE OFFENSE.

1 (ii) ANY OFFENSE IN WHICH A WEAPON IS USED IN THE COMMISSION
2 OF THE OFFENSE.

3 (iii) ANY DOMESTIC ABUSE OFFENSE.

4 (iv) ANY CRIMINAL SEXUAL CONDUCT OFFENSE.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.