

HOUSE No. 1582

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to anti gang injunctions

PETITION OF:

NAME:

Eugene L. O'Flaherty

Boston Police Detectives Benevolent Society

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4293 OF .]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO ANTI GANG INJUNCTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1 The General Laws are hereby amended by inserting after chapter 263A the following new chapter:-

CHAPTER 263B

ANTI-GANG INJUNCTIONS

Section 1 For the purposes of this chapter, the following words shall have the following meanings:-

“Criminal street gang or streetgang or gang”, any ongoing organization, incorporated or unincorporated, association, or group of 3 or more persons, whether formal or informal, having as one of its primary activities the commission of 1 or more of the criminal acts enumerated in the definition of “Pattern of criminal gang activity” below, inclusive, and having a common name or common identifying sign, symbol or tattoo, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity or who have joined together for profit, social, recreational or other common purposes.

“Gang member or streetgang member”, any person who in fact belongs to a gang, or any person who knowingly acts in the capacity of an agent for or accessory to a gang, or is accountable for, or voluntarily associates himself with a course or pattern of criminal gang activity, as defined herein, whether in a preparatory, executive or cover-up phase of any such activity, or who knowingly performs, aids or abets any such activity. Any evidence reasonably tending to show or demonstrate the existence of or membership in a criminal street gang, shall be admissible in any action or proceeding brought under this act.

“Pattern of criminal gang activity”, the commission of, attempted commission of, conspiracy to commit, or solicitation of, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this act and the last of those offenses occurred within 3 years after a prior offense, and the offenses were committed on separate occasions, or by 3 or more persons:□

□i.□ assault and battery with a deadly weapon; mayhem; aggravated mayhem; torture;□ murder; manslaughter;□

□ii.□ robbery; burglary; larceny or larceny of any firearm, vehicle, trailer, or vessel; theft and unlawful taking or driving of a vehicle; looting; money laundering; vandalism; carjacking;

□iii.□ unlawful use of personal identifying information to obtain credit, goods, services, or medical information; wrongfully obtaining registry of motor vehicles documentation;

□iv.□ the sale, possession for sale, transportation, manufacture, offer for sale of controlled substances, or offer to manufacture controlled substances;

□v.□ discharging or permitting the discharge of a firearm from a motor vehicle; prohibited possession of a firearm; carrying a concealed firearm or carrying a loaded firearm; the illegal sale, delivery, or transfer of a firearm; unlawful possession of a pistol, revolver, or other firearm capable of being concealed upon the person;

□vi.□ arson; the intimidation of witnesses and victims;□ kidnapping; extortion; rape; and

□vii.□ threats to commit crimes resulting in death or great bodily injury.

□**“Safety zone”**, an area within a municipality designated by the district attorney, in consultation with the municipality, the boundaries of which should be specifically described by streets and landmarks□ The zone should be outlined on an official municipal map of the area and published in municipal notices, bulletins and official records as well as local publications and media.

Section 2□□ Proceedings under this chapter shall be filed, heard and determined in the superior court department of the trial court or the Boston municipal court department or respective divisions of the district court department of the trial court having venue over the location of the safety zone.

Section 3□□ A civil action may be brought in the name of the people of the commonwealth to enjoin a public nuisance within a safety zone as defined in this chapter by the district attorney of any district in which such nuisance

exists. Said district attorney may seek, and a court may order, any such relief that may be necessary to abate and enjoin the activity of gang members within the safety zone including, but not limited, to the following:

- (a) prohibiting or limiting gang members' association within the safety zone, including, but not limited to, driving, standing, sitting, walking, gathering or appearing anywhere in public view or anyplace accessible to the public, with any known member, but not including: (1) when all individuals are inside a school attending class or on school business, and (2) when all individuals are inside a church; provided however that this prohibition against associating shall apply to all claims of travel to or from any of those locations;
- (b) prohibiting confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting or battering any person known to be a witness to any gang activity, known to be a victim of any gang activity or known to be a person who has complained about any gang activity.
- (c) knowingly remaining in the presence of an unlawful firearm, anywhere in public view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm, ammunition or illegal weapon, (2) knowingly remaining in the presence of anyone who is in possession of such firearm, imitation firearm, ammunition or dangerous weapon, or (3) knowingly remaining in the presence of such firearm, imitation firearm, ammunition or dangerous weapon. For purposes of this provision, an imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm;
- (d) prohibiting, without a prescription, (1) selling, possessing or using any controlled substance or related paraphernalia, including, but not limited to rolling papers and pipes used for illegal drug use, (2) knowingly remaining in the presence of anyone selling, possessing or using any controlled substance or such related paraphernalia, or (3) knowingly remaining in the presence of any controlled substance or such related paraphernalia;
- (e) prohibiting the possession of alcohol anywhere in public view or anyplace accessible to the public, except on properly licensed premises (1) possessing an open container of an alcoholic beverage, (2) knowingly remaining in the presence of anyone possessing an open container of an alcoholic beverage, or (3) knowingly remaining in the presence of an open container of an alcoholic beverage;

- (f) being present on or in any property not open to the general public, except (1) with the prior written consent of the owner, owner's agent or the person in lawful possession of the property, or (2) in the presence of and with the voluntary consent of the owner, owner's agent or the person in lawful possession of the property;
- (g) requiring a curfew between the hours of 10:00 p.m. on any day and sunrise of the following day, unless (1) going to or from a legitimate meeting or entertainment activity, (2) actively engaged in some business, trade, possession or occupation which requires such presence, or (3) involved in a legitimate emergency situation that requires immediate attention;
- (h) prohibiting graffiti or the possession of graffiti tools, (1) damaging, defacing or marking any public property of another, or (2) possessing any spray paint container or felt tip marker;
- (i) failing to obey all laws (1) which prohibit violence and threatened violence including murder, rape, robbery by force or fear, assault and battery, (2) which prohibit interference with the property rights of others including trespass, theft, driving, or taking a vehicle without the owner's consent, and vandalism, or (3) which prohibit the commission of acts which create a nuisance including the illegal sale of controlled substances and blocking the sidewalk.

The court may order monetary damages and the forfeiture of property received as a result of illegal gang activity. No filing fee shall be charged for the filing of any complaint under the provisions of this chapter. Any relief granted by the court shall be for a fixed period of time of not less than 2 years and not more than 3 years. Upon motion by either party, the court may modify its order at any subsequent time. An action filed under this chapter shall not preclude any other civil or criminal actions.

Each order issued by a court shall contain the following statement:

“Violation of this order is a criminal offense.”

Notwithstanding any law, rule or regulation to the contrary, any violation of a court order under this chapter shall be punishable by not more than 1 year in a jail or house of correction.

A civil action may be brought against a criminal street gang or against any member, associate, leader, officer, agent, or organizer of a criminal streetgang who participates in a pattern of criminal gang activity or authorizes, causes, orders, ratifies, requests or suggests a pattern of criminal gang activity. An action brought under this section shall also name as defendants the criminal streetgang and any gang members that participated in the pattern of criminal

gang activity. An action brought under this section may name, as a class of defendants, all unknown criminal gang members.

The plaintiff may bring a civil action under this section regardless of whether there has been a criminal action related to the nuisance, injury or damage and any outcome of said criminal action.

Section 4. A summons and complaint may be served individually upon any member, associate, agent, officer, leader, or organizer of a criminal street gang by service as provided for in Rule 4 of the Massachusetts Rules of Civil Procedure. Any judgment, order or decree rendered by the court after service under this section shall constitute a binding adjudication against the entire criminal streetgang.

Section 5. Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect the community within the safety zone, including relief as provided in section 3. If the plaintiff demonstrates a substantial likelihood of immediate danger, the court may enter such temporary relief orders without notice as it deems necessary to protect the individual and public and shall immediately thereafter notify the defendant that the temporary orders have been issued. Notice shall be made by the appropriate law enforcement agency. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than 10 court business days after such orders are entered.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in the effect without further order of the court.

Section 6. Initial public notice of any safety zone shall be given at least 30 days prior to any civil action being commenced under this chapter. Said notice shall be given wide and diverse publication throughout the area of the safety zone and in accordance with generally accepted municipal notice procedures as well as those methods enumerated in the definition of "Safety zone" herein.