

HOUSE No. 02848

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:	DISTRICT/ADDRESS:
<i>Eugene L. O'Flaherty</i>	<i>2nd Suffolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Vincent A. Pedone</i>	<i>15th Worcester</i>
<i>Bost Police Detective Benevolent Society</i>	<i>435 Hyde Park Avenue, Boston, MA 02131</i>

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By Mr. O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 2848) of Collins and others for legislation to establish safety zones within municipalities to reduce criminal gang activity Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

3 CHAPTER 263B

4 ANTI-GANG INJUNCTIONS

5 Preamble

6 (a) The General Court finds and declares that it is the right of every person to be secure and
7 protected from fear, intimidation, and physical harm caused by the activities of violent groups of
8 individuals. It is not the intent of the General Court to interfere with the exercise of the
9 constitutionally protected rights of freedom of expression and association. The General Court
10 recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful

11 subject whatsoever, to associate lawfully with others who share similar beliefs, to petition
12 lawfully constituted authority for a redress of perceived grievances, and to participate in the
13 electoral process.

14 (b) The General Court, however, recognizes that the Commonwealth of Massachusetts is in a
15 state of crisis which has been caused by violent street gangs whose members threaten, terrorize,
16 and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These
17 activities, both individually and collectively, present a clear and present danger to public order
18 and safety and are not constitutionally protected.

19 (c) The General Court finds that there are criminal street gangs operating in various cities and
20 towns throughout the Commonwealth of Massachusetts and that the number of gang-related
21 crimes is increasing. It is the intent of the General Court in enacting this law to seek eradication
22 of criminal street gang activity by focusing on their patterns of criminal activity and their
23 organized nature which together are the chief source of terror created by criminal street gangs.

24 (d) The General Court further finds that an effective means of punishing and deterring criminal
25 street gang activity is through civil actions authorizing injunctive relief, through criminal
26 penalties for any violations of injunctive orders, and through the forfeiture of profits, proceeds,
27 and instrumentalities acquired, accumulated, or used by criminal street gangs.

28 Section 1. For the purposes of this chapter, the following words shall have the following
29 meanings:

30 "Criminal street gang or streetgang or gang," any ongoing organization, incorporated or
31 unincorporated, association, or group of three or more persons, whether formal or informal, and
32 having as one of its primary activities the commission of or involvement in one or more of the

33 criminal acts enumerated in the definition of "Pattern of criminal gang activity" below, inclusive,
34 and having a common name or common identifying sign, symbol or tattoo, and whose members
35 individually or collectively engage in or have engaged in a pattern of criminal gang activity.

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

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

48 i. assault and battery with a deadly weapon; mayhem; aggravated mayhem;

49 torture; murder; manslaughter;

50 ii. robbery; burglary; larceny or larceny of any firearm, vehicle, trailer, or vessel;

51 theft and unlawful taking or driving of a vehicle; looting; money laundering;

52 vandalism; carjacking;

53 iii. unlawful use of personal identifying information to obtain credit, goods, services,

54 or medical information; wrongfully obtaining registry of motor vehicles

55 documentation;

56 iv. the sale, possession for sale, transportation, manufacture, offer for sale of

57 controlled substances, or offer to manufacture controlled substances;

58 v. discharging or permitting the discharge of a firearm from a motor vehicle;

59 prohibited possession of a firearm; carrying a concealed firearm or carrying a loaded

60 firearm; the illegal sale, delivery, or transfer of a firearm; unlawful possession of a

61 pistol, revolver, or other firearm capable of being concealed upon the person;

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

63 and

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

65 "Safety zone," an area within a municipality where a pattern of criminal gang activity exists and

66 designated by the district attorney, in consultation with the municipality, the boundaries of which

67 should be specifically described by streets and landmarks. The zone should be outlined on an

68 official municipal map of the area and published in municipal notices, bulletins and official

69 records as well as local publications and media.

70 Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior

71 court department of the trial court or the Boston municipal court department or respective

72 divisions of the district court department of the trial court having venue over the location of the
73 safety zone.

74 Section 3. A civil action may be brought in the name of the people of the commonwealth to
75 enjoin a pattern of criminal gang activity within a safety zone as defined in this chapter by the
76 district attorney of any district in which such pattern of criminal gang activity exists. Said
77 district attorney may seek, and a court may order, any such relief that may be necessary to abate
78 and enjoin the pattern of criminal gang activity within the safety zone including, but not limited,
79 to the following:

80 (a) prohibiting or limiting gang members' association within the safety zone, including, but not
81 limited to, driving, standing, sitting, walking, gathering or appearing anywhere in public view or
82 anyplace accessible to the public, with any known member, but not including: (1) when all
83 individuals are inside a school attending class or on school business, and (2) when all individuals
84 are inside a church or other formal place of religious worship; provided however that this
85 prohibition against associating shall apply to all claims of travel to or from any of those
86 locations;

87 (b) prohibiting confronting, intimidating, annoying, harassing, threatening, challenging,
88 provoking, assaulting or battering any person known to be a witness to any gang activity, known
89 to be a victim of any gang activity or known to be a person who has complained about any gang
90 activity.

91 (c) knowingly remaining in the presence of an unlawful firearm, anywhere in public view or
92 anyplace accessible to the public, (1) possessing any firearm, imitation firearm, ammunition or
93 illegal weapon, (2) knowingly remaining in the presence of anyone who is in possession of such

94 firearm, imitation firearm, ammunition or dangerous weapon, or (3) knowingly remaining in the
95 presence of such firearm, imitation firearm, ammunition or dangerous weapon. For purposes of
96 this provision, an imitation firearm means a replica of a firearm that is so substantially similar in
97 physical properties to an existing firearm as to lead a reasonable person to conclude that the
98 replica is a firearm;

99 (d) prohibiting, without a prescription, (1) selling, possessing or using any controlled substance
100 or r elated paraphernalia, including, but not limited to rolling papers and pipes used for illegal
101 drug use, (2) knowingly remaining in the presence of anyone selling, possessing or using any
102 controlled substance or such related paraphernalia, or (3) knowingly remaining in the presence of
103 any controlled substance or such related paraphernalia;

104 (e) prohibiting the possession of alcohol anywhere in public view or anyplace accessible to the
105 public, except on properly licensed premises (1) possessing an open container of an alcoholic
106 beverage, (2) knowingly remaining in the presence of anyone possessing an pen container of an
107 alcoholic beverage, or (3) knowingly remaining in the presence of an open container of an
108 alcoholic beverage;

109 (f) being present on or in any property not open to the general public, except (1) with the prior
110 written consent of the owner, owner's agent or the person in lawful possession of the property, or
111 (2) in the presence of and with the voluntary consent of the owner, owner's agent or the person
112 in lawful possession of the property;

113 (g) requiring a curfew between the hours of 10:00 p.m. on any day and sunrise of the following
114 day, unless (1) going to or from a legitimate meeting or entertainment activity, (2) actively

115 engaged in some business, trade, possession or occupation which requires such presence, or (3)
116 involved in a legitimate emergency situation that requires immediate attention;

117 (h) prohibiting graffiti or the possession of graffiti tools, (1) damaging, defacing or marking any
118 public property of another, or (2) possessing any spray paint container or felt tip marker;

119 (i) failing to obey all laws (1) which prohibit violence and threatened violence including murder,
120 rape, robbery by force or fear, assault and battery, (2) which prohibit interference with the
121 property rights of others including trespass, theft, driving, or taking a vehicle without the
122 owner's consent, and vandalism, or (3) which prohibit the commission of acts which create a
123 public nuisance including the illegal sale of controlled substances and blocking the sidewalk.

124 The court may order monetary damages and the forfeiture of property received as a result of
125 illegal gang activity. No filing fee shall be charged for the filing of any complaint under the
126 provisions of this chapter. Any relief granted by the court shall be for a fixed period of time of
127 not less than 2 years and not more than 3 years.

128 Upon motion by either party, the court may modify its order at any subsequent time. An action
129 filed under this chapter shall not preclude any other civil or criminal actions.

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

131 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE"

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

134 A civil action may be brought against a criminal street gang or against any member, associate,
135 leader, officer, agent, or organizer of a criminal streetgang who participates in a pattern of

136 criminal gang activity or authorizes, causes, orders, ratifies, requests or suggests a pattern of
137 criminal gang activity. An action brought under this section shall also name as defendants the
138 criminal streetgang and any gang members that participated in the pattern of criminal gang
139 activity. An action brought under this section may name, as a class of defendants, all unknown
140 criminal gang members.

141 The District Attorney may bring a civil action under this section regardless of whether there has
142 been a criminal action related to or in connection with the pattern of criminal gang activity, or
143 any injury or damage resulting therefrom and regardless of the outcome of any such criminal
144 action.

145 Upon consideration of a complaint for injunctive relief or a cause of action for damages, or both,
146 the Court may, in its discretion, conduct an evidentiary hearing and allow either party to call
147 witnesses and present evidence as deemed necessary by the Court.

148 If a street gang, or any member of such gang, is found in violation of any order of the Court
149 issued under this chapter, and it becomes necessary for the Commonwealth to bring a contempt
150 action seeking enforcement of said order, the Commonwealth shall be entitled to, and the
151 defendant or defendants, jointly or severally, shall be liable for, any reasonable attorney's fees
152 and costs of prosecuting the contempt action.

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

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

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

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