

SENATE No. 00639

The Commonwealth of Massachusetts

PRESENTED BY:

Frederick E. Berry

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:

.....
Frederick E. Berry

.....
Second Essex

.....
John Hart, Jr.

.....
First Suffolk

SENATE No. 00639

By Mr. Berry, petition (accompanied by bill, Senate, No. 639) of Hart and Berry for legislation relative to anti gang injunctions [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
7 and protected from fear, intimidation, and physical harm caused by the activities of violent
8 groups of individuals. It is not the intent of the General Court to interfere with the exercise of
9 the constitutionally protected rights of freedom of expression and association. The General
10 Court recognizes the constitutional right of every citizen to harbor and express beliefs on any
11 lawful 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
15 in a state of crisis which has been caused by violent street gangs whose members threaten,
16 terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods.
17 These activities, both individually and collectively, present a clear and present danger to public
18 order and safety and are not constitutionally protected.

19 (c) The General Court finds that there are criminal street gangs operating in various cities
20 and 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
25 criminal street gang activity is through civil actions authorizing injunctive relief, through
26 criminal penalties for any violations of injunctive orders, and through the forfeiture of profits,
27 proceeds, 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
37 person who knowingly acts in the capacity of an agent for or accessory to a gang, or is
38 accountable for, or voluntarily associates with or engages in a pattern of criminal gang activity,
39 as defined herein, whether in a preparatory, executive or cover-up phase of any such activity, or
40 who knowingly performs, aids or abets any such activity. Any evidence reasonably tending to
41 show or demonstrate the existence of or membership in a criminal street gang, shall be
42 admissible in any action or proceeding brought under this act .

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

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

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

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

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

56 v. discharging or permitting the discharge of a firearm from a motor vehicle; prohibited
57 possession of a firearm; carrying a concealed firearm or carrying a loaded firearm; the illegal
58 sale, delivery, or transfer of a firearm; unlawful possession of a

59 pistol, revolver, or other firearm capable of being concealed upon the person; vi. arson; the
60 intimidation of witnesses and victims; kidnapping; extortion; rape; and

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

62 "Safety zone," an area within a municipality where a pattern of criminal gang activity
63 exists and designated by the district attorney, in consultation with the municipality, the
64 boundaries of which should be specifically described by streets and landmarks. The zone should
65 be outlined on an official municipal map of the area and published in municipal notices, bulletins
66 and official records as well as local publications and media.

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

71 Section 3. A civil action may be brought in the name of the people of the
72 commonwealth to enjoin a pattern of criminal gang activity within a safety zone as defined in
73 this chapter by the district attorney of any district in which such pattern of criminal gang activity
74 exists. Said district attorney may seek, and a court may order, any such relief that may be

75 necessary to abate and enjoin the pattern of criminal gang activity within the safety zone
76 including, but not limited, to the following:

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

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

88 (c) knowingly remaining in the presence of an unlawful firearm, anywhere in public
89 view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm,
90 ammunition or illegal weapon, (2) knowingly remaining in the presence of anyone who is in
91 possession of such firearm, imitation firearm, ammunition or dangerous weapon, or (3)
92 knowingly remaining in the presence of such firearm, imitation firearm, ammunition or
93 dangerous weapon. For purposes of this provision, an imitation firearm means a replica of a
94 firearm that is so substantially similar in physical properties to an existing firearm as to lead a
95 reasonable person to conclude that the replica is a firearm;

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

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

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

110 (g) requiring a curfew between the hours of 10:00 p.m. on any day and sunrise of the
111 following day, unless (1) going to or from a legitimate meeting or entertainment activity, (2)
112 actively engaged in some business, trade, profession or occupation which requires such
113 presence, or (3) involved in a legitimate emergency situation that requires immediate attention;

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

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

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

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

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

129 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE"

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

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

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

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

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

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

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

156 Section 5. Upon the filing of a complaint under this chapter, the court may enter such
157 temporary orders as it deems necessary to protect the community within the safety zone,
158 including relief as provided in section 3. If the plaintiff demonstrates a substantial likelihood of

159 immediate danger, the court may enter such temporary relief orders without notice as it deems
160 necessary to protect the individual and public and shall immediately thereafter notify the
161 defendant that the temporary orders have been issued. Notice shall be made by the appropriate
162 law enforcement agency. The court shall give the defendant an opportunity to be heard on the
163 question of continuing the temporary order and of granting other relief as requested by the
164 plaintiff no later than 10 court business days after such orders are entered.

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

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