

By Mr. Keating, petition (accompanied by bill, Senate, No. 159) of William R. Keating, William C. Galvin, Michael W. Morrissey and Louis L. Kafka for legislation relative to prevention and penalties for criminal street gang activity. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO STREET GANG ENFORCEMENT AND PREVENTION.

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

1 The Massachusetts General Laws are hereby amended by
2 adding the following Chapter 265A: —

3 **STREET GANG ENFORCEMENT**
4 **AND PREVENTION ACT.**

5 Section 1. (a) As used in this chapter, “pattern of criminal gang
6 activity” means the commission, attempted commission or
7 solicitation of two or more of the following offenses, provided at
8 least one of those offenses occurred within three years after a prior
9 offense and the offenses are committed on separate occasions or
10 by two or more persons:

11 (1) Armed or unarmed robbery or assault with intent to rob
12 as defined in Chapter 265.

13 (2) Unlawful homicide or manslaughter as defined in
14 chapter 265.

15 (3) Other crimes against the person as defined in chapter 265,
16 sections 13-29.

17 (4) The manufacture, distribution, dispensing or possessing
18 with intent to manufacture, distribute or dispense or trafficking
19 in a controlled substance as defined in Chapter 94C.

20 (5) Arson, Burglary, Breaking and Entering, Malicious
21 Destruction and Malicious Explosion as defined in Chapter 266.

22 (6) Intimidation of a witness or juror as defined in
23 chapter 268.

24 (b) As used in this chapter, "criminal street gang" means any
25 ongoing organization, association or group of three or more
26 persons, whether formal or informal, having as one of its primary
27 activities the commission of one or more of the criminal acts
28 enumerated in paragraphs (1) to (6) inclusive of section 1, of which
29 has a common name or common identifying sign or symbol whose
30 members individually or collectively engage in or have engaged
31 in a pattern of criminal gang activity.

32 Section 2. (a) Any person who actively participates in any
33 criminal street gang with knowledge that its members engage in
34 or have engaged in a pattern of criminal gang activity and who
35 willfully promotes, furthers, or assists in any felonious criminal
36 conduct by members of that gang shall be punished by
37 imprisonment in jail or house of correction for a period of not
38 more than two years or by imprisonment in the state prison for
39 not more than ten years.

40 (b) Any person who is convicted of a felony or a misdemeanor
41 which is committed for the benefit of, at the direction of or in
42 association with any criminal street gang with the specific intent
43 to promote, further, or assist in any criminal conduct by gang
44 members shall be punished in the following manner:

45 (1) Any person who is convicted of a misdemeanor shall be
46 punished by imprisonment in a jail or house of correction for a
47 period not to exceed two and one-half years.

48 (2) Except as provided in paragraph (3), any person who is
49 convicted of a felony shall, upon conviction of that felony, in
50 addition to the punishment prescribed for the felony of which he
51 or she has been convicted, be punished by an additional term of
52 imprisonment in a jail or house of correction for period not to
53 exceed two and one-half years and in state prison for a period
54 not to exceed twenty years.

55 The sentence imposed upon such person shall not be reduced
56 to less than one year nor suspended nor shall any person convicted
57 under this paragraph(a) be eligible for probation, parole, or
58 furlough or receive any deduction from his sentence for good
59 conduct until he shall have served one year of such sentence,
60 provided, however, that the commissioner of correction may, on

61 the recommendation of the warden, superintendent, or other
62 person in charge of a correctional institution, or the administrator
63 of a county correctional institution, grant to an offender
64 committed under this paragraph a temporary release in the
65 custody of an officer of such institution for the following purposes
66 only: to attend the funeral of a relative; to visit a critically ill
67 relative; or to obtain emergency medical or psychiatric services
68 unavailable at said institution. Prosecutions commenced under
69 this section shall neither be continued without a finding nor placed
70 on file.

71 The provision of section eighty-seven of chapter two hundred
72 and seventy-six shall not apply to any person seventeen years of
73 age or over, charged with a violation of this paragraph or to any
74 child between age fourteen and seventeen, so charged, if the court
75 is of the opinion that the interests of the public require that he
76 should be tried for such offense instead of being dealt with as a
77 child.

78 (3) Any person who is convicted of a felony punishable by
79 imprisonment in the state prison for life, shall not be paroled until
80 a minimum of ten years have been served.

81 The sentence imposed upon such person shall not be reduced
82 to less than fifteen years, nor suspended, nor shall any person
83 convicted under this paragraph(a) be eligible for probation,
84 parole, or furlough or receive any deduction from his sentence
85 for good conduct until he shall have served fifteen years of such
86 sentence, provided, however, that the commissioner of correction
87 may, on the recommendation of the warden, superintendent, or
88 other person in charge of a correctional institution, or the admin-
89 istrator of a county correctional institution, grant to an offender
90 committed under this paragraph a temporary release in the
91 custody of an officer of such institution for the following purposes
92 only: to attend the funeral of a relative; to visit a critically ill
93 relative; or to obtain emergency medical or psychiatric services
94 unavailable at said institution. Prosecutions commenced under
95 this section shall neither be continued without a finding nor placed
96 on file.

97 The provisions of section eighty-seven of chapter two hundred
98 and seventy-six, shall not apply to any person seventeen years of
99 age or over, charged with a violation of this paragraph, or to any

100 child between age fourteen and seventeen, so charged, if the court
101 is of the opinion that the interests of the public require that he
102 should be tried for such offense instead of being dealt with as a
103 child.

104 Section 3. (a) Every building or place, other than residential
105 buildings in which there are three or fewer dwelling units, used
106 by members of a criminal street gang for the purpose of the
107 commission of the offenses listed in section 1 and every building
108 or place other than residential buildings in which there are three
109 or fewer dwelling units wherein or upon which that criminal
110 conduct by gang members takes place is a nuisance which shall
111 be enjoined, abated and prevented and for which damages may
112 be recovered.

113 (b) Any action for injunction or abatement filed pursuant to
114 this section shall proceed according to the provisions of
115 chapter 139, sections 16-20 except that all of the following shall
116 apply: —

117 (1) The court shall not assess a civil penalty against any
118 person unless that person knew or should have known of the
119 unlawful acts.

120 (2) All injunctions issued shall be limited to those necessary
121 to protect the health and safety of the residents or the public or
122 those necessary to prevent further criminal activity.

123 (3) Suit may not be filed until 30-day notice of the unlawful
124 use or criminal conduct has been provided to the owner by mail,
125 return receipt requested, postage prepaid to the last known
126 address.

127 (c) No nonprofit or charitable organization which is
128 conducting its affairs with ordinary care or skill and no govern-
129 mental entity shall be abated pursuant to this chapter.

130 (d) Nothing in this chapter shall preclude any aggrieved person
131 from seeking any other remedy provided by law.

132 Section 4. This chapter does not apply to employees engaged
133 in concerted activities for their mutual aid and protection or the
134 activities of labor organizations or their members or agents.

135 Section 5. If any part or provision of this chapter or the appli-
136 cation thereof to any person or circumstance is held invalid, the
137 remainder of the chapter, including the application of that part

138 or provision to other persons or circumstances shall not be
139 affected thereby and shall continue in full force and effect. To this
140 end, the provisions of this chapter are severable.

141 Section 6. Nothing in this chapter shall prevent a local
142 governing body from adopting and enforcing laws consistent with
143 this chapter relating to gangs and gang violence. Where local laws
144 duplicate or supplement this chapter, this chapter shall be
145 construed as providing alternative remedies and not as preempting
146 the field.

