

HOUSE **No. 4418**

The Commonwealth of Massachusetts

PRESENTED BY:
Michael F. Kane

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 Public Safety in the City of Holyoke.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael F. Kane	5th Hampden
Michael R. Knapik	Second Hampden and Hampshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act Relative to Public Safety in the City of Holyoke.

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. (a) Whenever a police officer observes members of a criminal street gang engaged in gang loitering in any public place designated for the enforcement of this section under subsection (b), the police officer shall, subject to all applicable procedures promulgated by the chief of police: (i) inform such criminal street gang members that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited; (ii) order all such criminal street gang members to disperse and remove themselves from within sight and hearing of the place at which the order was issued; (iii) inform those criminal street gang members engaged in gang loitering that they will be subject to arrest if they fail to promptly obey the order or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next 3 hours.

(b) The chief of police shall by written directive designate areas of the city in which the chief of police has determined that enforcement of this section is necessary because gang loitering has enabled criminal street gangs to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities. Prior to making a determination under this subsection, the chief of police shall consult with persons who are knowledgeable about the effects of gang activity in areas in which the ordinance may be enforced, as he deems appropriate. Such persons may include, but need not be limited to, members of the department of police with special training or experience related to criminal street gangs; other personnel of that department with particular knowledge of gang activities in the proposed designated area; elected and appointed officials of the area; and community-based organizations. The chief of police shall develop and implement procedures for the periodic review and updating of designations made under this subsection.

(c) (1) The chief of police shall, by written directive, promulgate procedures to prevent the enforcement of this section against persons who are engaged in activities that are protected by the Constitution of the United States or of the commonwealth.

(2) There shall be a gang advisory board which shall consist of a representative of the Holyoke human right's commission to be chosen by such commission, a member of the professional

standards office of the Holyoke police department to be chosen by the chief of police, the city solicitor or his designee, a city councilor selected by the City Council, and 3 representatives of the community, at least 2 of whom shall be minority representatives, selected by the mayor and confirmed by the City Council to serve for a 2 year term. The board shall confer with the chief in the chief's establishment of the written procedures set forth in paragraph (1) of subsection (c) and shall provide recommendations on training of police personnel to implement this act, including issues raised as a result of complaints, if any. The board may also make recommendations to the mayor on policies and procedures to address gang issues in the city.

(3) The chief of police shall, by written directive, promulgate procedures to identify current members of criminal street gangs for updating criminal street gang records regularly including, but not limited to, removing former members of criminal street gangs from such lists and shall promulgate regulations to ensure that any required notices under this act are provided in a language reasonably calculated to be understood by the alleged violator.

(d) As used in this section, the following words shall have the following meanings:-

"Gang loitering", one who, with the intent to further the common purpose or existence of a criminal street gang: (i) engages in conduct with the intent to control identifiable areas which renders such areas impassable without unreasonable inconvenience or hazard; (ii) threatens to commit a crime; (iii) defaces real or personal property in violation of section 126A of chapter 266 of the General Laws; (iv) intimidates another; or (v) engages in disorderly behavior or a breach of the peace.

"Criminal street gangs", any ongoing organization, association in fact or group of 3 or more persons, whether formal or informal, having as 1 of its substantial activities the commission of 1 or more of the criminal acts enumerated in the definition of "criminal gang activity", and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

"Criminal gang activity", an adjudication by reason of or a conviction for the following offenses, if the offenses were committed by 2 or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members: murder; manslaughter; assault; assault and battery; indecent assault and battery on a child under 14 years of age; assault and battery to collect a loan; assault and battery upon a public employee; indecent assault and battery on a mentally retarded person; commission of a felony for hire; indecent assault and battery on a person 14 years of age or older; assault or assault and battery on an emergency medical technician, ambulance operator or ambulance attendant; assault and battery upon a child; assault and battery upon an elderly or disabled person; mayhem; assault with the intent to murder or maim; assault and battery with a dangerous weapon; assault and battery with a dangerous weapon on a victim 60 years of age or older; assault with dangerous weapon on a victim 60 years of age or older; attempt to murder; armed robbery; assault with intent to rob or murder; assault with a dangerous weapon in a dwelling house; use of firearms while committing a felony; entry of a dwelling place with persons present within; robbery by unarmed person; assault with intent to rob; stealing by confining or putting in fear; assault or confinement of a person for the purpose of stealing a

motor vehicle; rape; rape of a child; rape or abuse of a child; assault with the intent to commit rape; assault of a child with the intent to commit rape; attempted extortion; kidnapping; kidnapping of a minor or incompetent by a relative; drugging persons by kidnapping; use of poison with intent to injure; assault with intent to commit a felony; assault or battery for purpose of intimidation by using weapons; coercion of child under 18 years of age into criminal conspiracy; burning or aiding in burning of a dwelling house; burning or aiding in burning of a meeting house; burglary; armed burglary; assaulting occupants while committing burglary or armed burglary; unarmed burglary; breaking and entering; breaking and entering at night; breaking and entering in the day time; breaking and entering with the use of or possession of weapons; breaking and entering into a dwelling house; larceny by stealing from a victim 65 years of age or older; larceny; carrying dangerous weapons; possession of a machine gun or sawed-off shotgun; possession of a large capacity weapon or large capacity feeding device or; possession or carrying of a firearm in violation of the General Laws or any violation of chapter 94C of the General Laws or an offense similar to an offense included in this definition in violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

"Intimidate", putting in fear for the purpose of compelling or deterring conduct.

"Pattern of criminal gang activity", 2 or more acts of criminal gang activity, of which at least 2 such acts were committed within 5 years of each other.

"Public place", a public way or any other location open to the public, whether publicly or privately owned.

(e) Any person who fails to promptly obey an order issued under subsection (a), or who engages in further gang loitering within sight or hearing of the place at which such order was issued during the 3 hour period following the time an order to disperse was issued, shall be punished by a fine of not less than \$100 and not more than \$500 or imprisonment in the house of correction for not more than 6 months, or by both such fine and imprisonment. A second or subsequent offense shall be punished by a minimum mandatory sentence of not less than 5 days imprisonment in the house of correction.

SECTION 2. Any property subject to forfeiture pursuant to section 47 of chapter 94C of the General Laws shall be subject to civil forfeiture if used in any manner or part, to commit or to facilitate a violation of this act. Civil forfeiture proceedings shall be governed by the procedures contained in said section 47 of said chapter 94C, except that the final order of the court shall provide that the proceeds of the sale of any conveyance, real property, moneys, or other things of value forfeited under a court order shall be used to pay the reasonable expenses of forfeiture proceedings, including the cost of storage and custody and the balance shall be distributed to the city of Holyoke police department.

SECTION 3. This act shall take effect upon its passage.