

HOUSE No. 2848

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 adoption 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>434 Hyde Park Avenue, Boston, MA 02131</i> |

HOUSE No. 2848

By Mr. O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 2848) of Eugene L. O'Flaherty, Nick Collins and Vincent A. Pedone for legislation to establish safety zones within municipalities to reduce criminal gang activity. 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
2 the 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;

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
66 exists and designated by the district attorney, in consultation with the municipality, the
67 boundaries of which should be specifically described by streets and landmarks. The zone should
68 be outlined on an official municipal map of the area and published in municipal notices, bulletins
69 and official records as well as local publications and media.

70 Section 2. Proceedings under this chapter shall be filed, heard and determined in the
71 superior court department of the trial court or the Boston municipal court department or

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

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

80 (a) prohibiting or limiting gang members' association within the safety zone, including,
81 but not limited to, driving, standing, sitting, walking, gathering or appearing anywhere in public
82 view or anyplace accessible to the public, with any known member, but not including: (1) when
83 all individuals are inside a school attending class or on school business, and (2) when all
84 individuals are inside a church or other formal place of religious worship; provided however that
85 this 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
92 view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm,
93 ammunition or illegal weapon, (2) knowingly remaining in the presence of anyone who is in

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

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

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

109 (f) being present on or in any property not open to the general public, except (1) with the
110 prior written consent of the owner, owner's agent or the person in lawful possession of the
111 property, or (2) in the presence of and with the voluntary consent of the owner, owner's agent or
112 the person 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
114 following day, unless (1) going to or from a legitimate meeting or entertainment activity, (2)

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

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

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

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

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

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

132 "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE"

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

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

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

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

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

154 Section 4. A summons and complaint may be served individually upon any member,
155 associate, agent, officer, leader, or organizer of a criminal street gang by service as provided for
156 in Rule 4 of the Massachusetts Rules of Civil Procedure. Any judgment, order or decree

157 rendered by the court after service under this section shall constitute a binding adjudication
158 against the entire criminal streetgang.

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

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

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