



SPONSOR: Sen. Henry & Rep. Ewing

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 98

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE WITH RESPECT TO PARTICIPATION IN VIOLENT GANGS.

1 WHEREAS, law enforcement authorities have noted an increase in the number of criminal street gangs with
2 active presences in the State of Delaware; and

3 WHEREAS, Delaware needs the tools to deter active participation in illegal activities conducted by criminal
4 street gangs; and

5 WHEREAS, such legislation must be carefully tailored to ensure that it punishes illegal activities while
6 protecting Delawareans' constitutional rights;

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

8 Section 1. Amend Title 11 of the Delaware Code, by adding a new Section 616, to read as follows:

9 "§ 616. Gang Participation.

10 (a) Definitions. The following terms shall have the following meaning as used in this Section.

11 (1) 'Criminal street gang' means any ongoing organization, association, or group of
12 three or more persons, whether formal or informal, having as one of its primary
13 activities the commission of one or more of the criminal acts enumerated in
14 subsection (a)(2) of this Section, having a common name or common identifying
15 sign or symbol, and whose members individually or collectively engage in or have
16 engaged in a pattern of criminal gang activity.

17 (2) 'Pattern of criminal gang activity' means the commission of, attempted commission of, conspiracy
18 to commit, solicitation of, or conviction of two or more of the following criminal offenses, provided

that at least one of these offenses occurred after July 1, 2003 and that the last of those offenses occurred within three years after a prior offense, and provided that the offenses were committed on separate occasions, or by two or more persons:

- (i) Assault, as defined in Sections 612 or 613 of this Title.
- (ii) Any criminal acts causing death as defined in Sections 632 through 636 of this Title.
- (iii) Any criminal acts relating to sexual offenses defined in Sections 768 through 780 of this Title.
- (iv) Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in Sections 782 through 783A of this Title.
- (v) Any criminal acts of arson as defined in Sections 801 through 803 of this Title.
- (vi) Any criminal acts relating to burglary which are defined in Sections 824 through 826 of this Title.
- (vii) Any criminal acts relating to robbery which are defined in Sections 831 through 832 of this Title.
- (viii) Any criminal acts relating to theft or extortion which are defined in Sections 841, 849, or 851 of this Title, provided that such acts meet the requirements of felony offenses under said Sections.
- (ix) Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking, or bombs which are defined in Sections 1302, 1303, 1304, 1312A, or 1338 of this Title, provided that such acts meet the requirements of felony offenses under said Sections.
- (x) Any criminal acts involving deadly weapons or dangerous instruments which are defined in Sections 1442, 1444, 1447, 1447A, 1448, 1449, 1450, 1451, 1454, or 1455 of this Title.
- (xi) Any criminal acts involving controlled substances which are defined by Sections 4751, 4752, 4753A, 4755, 4756, 4761, 4761A of Title 16 of the Delaware Code.

(b) Forbidden Conduct. A person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who knowingly promotes, furthers, or assists in any criminal conduct by members of that gang which would constitute a felony under Delaware law, shall be guilty of illegal gang participation. Illegal gang participation is a Class F felony.

(c) Sentencing Enhancements.

- 47 (1) Any person who is convicted of a Class E felony committed for the benefit of, at the direction of, or
48 in association with any criminal street gang, with the specific intent to promote, further, or assist in
49 any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced
50 consistent with the sentence dictated by Delaware law for a Class D felony under 11 Del.C. §
51 4205(b)(4).
- 52 (2) Any person who is convicted of a Class D felony committed for the benefit of, at the direction of,
53 or in association with any criminal street gang, with the specific intent to promote, further, or assist
54 in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced
55 consistent with the sentence dictated by Delaware law for a Class C felony under 11 Del.C. §
56 4205(b)(3).
- 57 (3) Any person who is convicted of a Class C felony committed for the benefit of, at the direction of, or
58 in association with any criminal street gang, with the specific intent to promote, further, or assist in
59 any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced
60 consistent with the sentence dictated by Delaware law for a Class B felony under 11 Del.C. §
61 4205(b)(2).”

SYNOPSIS

This Bill creates a new Class F felony for active participation in a violent street gang, when that participation assists the gang in furthering activity which would constitute a felony under Delaware law. It also creates sentencing enhancements for other felonies committed in the course of active gang participation.

Author: Senator Henry