

HOUSE No. 4293

By Representative O’Flaherty of Chelsea and Senator Creedon, joint petition of Eugene L. O’Flaherty and Robert S. Creedon, Jr., relative to the filing of anti-gang injunctions in the courts of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Eugene L. O’Flaherty
Robert S. Creedon, Jr.
Jonathan W. Blodgett

Michael O’Keefe
Boston Police Detectives
Benevolent Society

In the Year Two Thousand and Seven.

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 The General Laws are hereby amended by inserting after Chapter
2 263A the following new chapter:—

**CHAPTER 263B.
ANTI-GANG INJUNCTIONS.**

5 Section 1. For the purposes of this chapter, the following words
6 shall have the following meanings:—

7 “Criminal street gang or streetgang or gang”, any ongoing organi-
8 zation, incorporated or unincorporated, association, or group of 3 or
9 more persons, whether formal or informal, having as one of its pri-
10 mary activities the commission of 1 or more of the criminal acts
11 enumerated in the definition of “Pattern of criminal gang activity”
12 below, inclusive, and having a common name or common identi-
13 fying sign, symbol or tattoo, and whose members individually or
14 collectively engage in or have engaged in a pattern of criminal gang
15 activity or who have joined together for profit, social, recreational or
16 other common purposes.

17 “Gang member or streetgang member”, any person who in fact
18 belongs to a gang, or any person who knowingly acts in the capacity
19 of an agent for or accessory to a gang, or is accountable for, or vol-
20 untarily associates himself with a course or pattern of criminal gang
21 activity, as defined herein, whether in a preparatory, executive or
22 cover-up phase of any such activity, or who knowingly performs,
23 aids or abets any such activity. Any evidence reasonably tending to
24 show or demonstrate the existence of or membership in a criminal
25 street gang, shall be admissible in any action or proceeding brought
26 under this act.

27 “Pattern of criminal gang activity”, the commission of, attempted
28 commission of, conspiracy to commit, or solicitation of, or convic-
29 tion of two or more of the following offenses, provided at least one
30 of these offenses occurred after the effective date of this act and the
31 last of those offenses occurred within 3 years after a prior offense,
32 and the offenses were committed on separate occasions, or by 3 or
33 more persons:—

34 i.) assault and battery with a deadly weapon; mayhem; aggravated
35 mayhem; torture; murder; manslaughter;

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

39 iii.) unlawful use of personal identifying information to obtain
40 credit, goods, services, or medical information; wrongfully obtaining
41 registry of motor vehicles documentation;

42 iv.) the sale, possession for sale, transportation, manufacture, offer
43 for sale of controlled substances, or offer to manufacture controlled
44 substances;

45 v.) discharging or permitting the discharge of a firearm from a
46 motor vehicle; prohibited possession of a firearm; carrying a con-
47 cealed firearm or carrying a loaded firearm; the illegal sale, delivery,
48 or transfer of a firearm; unlawful possession of a pistol, revolver, or
49 other firearm capable of being concealed upon the person;

50 vi.) arson; the intimidation of witnesses and victims; kidnapping;
51 extortion; rape; and

52 vii.) threats to commit crimes resulting in death or great bodily
53 injury.

54 “Safety zone”, an area within a municipality designated by the
55 district attorney, in consultation with the municipality, the bound-

56 aries of which should be specifically described by streets and land-
57 marks. The zone should be outlined on an official municipal map of
58 the area and published in municipal notices, bulletins and official
59 records as well as local publications and media.

60 Section 2. Proceedings under this chapter shall be filed, heard and
61 determined in the superior court department of the trial court or the
62 Boston municipal court department or respective divisions of the
63 district court department of the trial court having venue over the
64 location of the safety zone.

65 Section 3. A civil action may be brought in the name of the
66 people of the Commonwealth to enjoin a public nuisance within a
67 safety zone as defined in this chapter by the district attorney of any
68 district in which such nuisance exists. Said district attorney may
69 seek, and a court may order, any such relief that may be necessary to
70 abate and enjoin the activity of gang members within the safety zone
71 including, but not limited, to the following:—

72 (a) prohibiting or limiting gang members' association within the
73 safety zone, including, but not limited to, driving, standing, sitting,
74 walking, gathering or appearing anywhere in public view or any-
75 place accessible to the public, with any known member, but not
76 including:—

77 (1) when all individuals are inside a school attending class or on
78 school business; and

79 (2) when all individuals are inside a church; provided however
80 that this prohibition against associating shall apply to all claims of
81 travel to or from any of those locations;

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

87 (c) knowingly remaining in the presence of an unlawful firearm,
88 anywhere in public view or anyplace accessible to the public;

89 (1) possessing any firearm, imitation firearm, ammunition or
90 illegal weapon;

91 (2) knowingly remaining in the presence of anyone who is in pos-
92 session of such firearm, imitation firearm, ammunition or dangerous
93 weapon; or

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

99 (d) prohibiting, without a prescription;

100 (1) selling, possessing or using any controlled substance or related
101 paraphernalia, including but not limited to rolling papers and pipes
102 used for illegal drug use;

103 (2) knowingly remaining in the presence of anyone selling, pos-
104 sessed or using any controlled substance or such related parapher-
105 nalia; or

106 (3) knowingly remaining in the presence of any controlled sub-
107 stance or such related paraphernalia;

108 (e) prohibiting the possession of alcohol anywhere in public view
109 or anyplace accessible to the public, except on properly licensed
110 premises;

111 (1) possessing an open container of an alcoholic beverage;

112 (2) knowingly remaining in the presence of anyone possessing an
113 open container of an alcoholic beverage; or

114 (3) knowingly remaining in the presence of an open container of
115 an alcoholic beverage;

116 (f) being present on or in any property not open to the general
117 public; except

118 (1) with the prior written consent of the owner, owner's agent or
119 the person in lawful possession of the property; or

120 (2) in the presence of and with the voluntary consent of the
121 owner, owner's agent or the person in lawful possession of the prop-
122 erty;

123 (g) requiring a curfew between the hours of 10:00 p.m. on any
124 day and sunrise of the following day; unless

125 (1) going to or from a legitimate meeting or entertainment
126 activity;

127 (2) actively engaged in some business, trade, profession or occu-
128 pation which requires such presence; or

129 (3) involved in a legitimate emergency situation that requires
130 immediate attention;

131 (h) prohibiting graffiti or the possession of graffiti tools;

132 (1) damaging, defacing or marking any public property of
133 another; or

134 (2) possessing any spray paint container or felt tip marker;

135 (i) failing to obey all laws;

136 (1) which prohibit violence and threatened violence including
137 murder, rape, robbery by force or fear, assault and battery;

138 (2) which prohibit interference with the property rights of others
139 including trespass, theft, driving, or taking a vehicle without the
140 owner's consent, and vandalism; or

141 (3) which prohibit the commission of acts which create a nuisance
142 including the illegal sale of controlled substances and blocking the
143 sidewalk.

144 The court may order monetary damages and the forfeiture of
145 property received as a result of illegal gang activity. No filing fee
146 shall be charged for the filing of any complaint under the provisions
147 of this chapter. Any relief granted by the court shall be for a fixed
148 period of time of not less than 2 years and not more than 3 years.
149 Upon motion by either party, the court may modify its order at any
150 subsequent time. An action filed under this chapter shall not pre-
151 clude any other civil or criminal actions.

152 Each order issued by a court shall contain the following state-
153 ment:—

154 “Violation of this order is a criminal offense.”

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

158 A civil action may be brought against a criminal street gang or
159 against any member, associate, leader, officer, agent, or organizer of
160 a criminal streetgang who participates in a pattern of criminal gang
161 activity or authorizes, causes, orders, ratifies, requests or suggests a
162 pattern of criminal gang activity. An action brought under this
163 section shall also name as defendants the criminal streetgang and
164 any gang members that participated in the pattern of criminal gang
165 activity. An action brought under this section may name, as a class
166 of defendants, all unknown criminal gang members.

167 The plaintiff may bring a civil action under this section regardless
168 of whether there has been a criminal action related to the nuisance,
169 injury or damage and any outcome of said criminal action.

170 Section 4. A summons and complaint may be served individually
171 upon any member, associate, agent, officer, leader, or organizer of a
172 criminal street gang by service as provided for in Rule 4 of the
173 Massachusetts Rules of Civil Procedure. Any judgment, order or
174 decree rendered by the court after service under this section shall
175 constitute a binding adjudication against the entire criminal street-
176 gang.

177 Section 5. Upon the filing of a complaint under this chapter, the
178 court may enter such temporary orders as it deems necessary to pro-
179 tect the community within the safety zone, including relief as pro-
180 vided in Section 3. If the plaintiff demonstrates a substantial
181 likelihood of immediate danger, the court may enter such temporary
182 relief orders without notice as it deems necessary to protect the indi-
183 vidual and public and shall immediately thereafter notify the defen-
184 dant that the temporary orders have been issued. Notice shall be
185 made by the appropriate law enforcement agency. The court shall
186 give the defendant an opportunity to be heard on the question of con-
187 tinuing the temporary order and of granting other relief as requested
188 by the plaintiff no later than 10 court business days after such orders
189 are entered.

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

193 Section 6. Initial public notice of any safety zone shall be given at
194 least 30 days prior to any civil action being commenced under this
195 chapter. Said notice shall be given wide and diverse publication
196 throughout the area of the safety zone and in accordance with gener-
197 ally accepted municipal notice procedures as well as those methods
198 enumerated in the definition of “Safety zone” herein.