

AN AMENDMENT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DATE: June 26, 2009

Amendment offered by Councilmember Evans to:

**“Omnibus Public Safety and Justice Amendment Act of 2009”**

P.R. No. \_\_\_\_\_  
Bill No. 18-151  
Other \_\_\_\_\_

Version: Introduced \_\_\_\_\_  
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First Reading \_\_\_\_\_  
Amended First Reading \_\_\_\_\_  
Engrossed \_\_\_\_\_  
Enrolled \_\_\_\_\_  
Unidentified \_\_\_\_\_  
Emergency Legislation \_\_\_\_\_

A new TITLE V is inserted to read as follows:

TITLE V. ANTI-GANG CIVIL ENFORCEMENT

Sec. 1001. Short title.

This title may be cited as the “Gang Civil Enforcement Act of 2009”.

Sec. 1002. Findings; declaration of necessity.

The purpose of this title is to create a mechanism so that civil actions may be brought to enjoin gangs and gang members from engaging in activities which create a public nuisance. In furtherance of

this purpose, it is hereby declared that the continued growth of gangs has contributed to the increase in the incidence of violent crime in the District of Columbia. Gang members intimidate the law-abiding residents of the area with their presence and threaten retaliation against persons who cooperate with law enforcement efforts. Gangs, operating as organizations, are establishing themselves within distinct geographic areas and are committing crimes within those areas. Citizens have noted an increase in gang-related tagging and graffiti as well as gang members displaying gang colors and using gang-related hand signs. Gangs are also responsible for quality-of-life crimes, such as drinking and using controlled substances in public, and disturbing the peace. Such gang activity injures the health, safety and security of the District's citizens, frightens or intimidates them, obstructs the free use of both private and public property, and interferes with the comfortable enjoyment of the lives and property of the District's residents, and is therefore a nuisance. The enactment of this title is hereby declared to be a public necessity.

Sec. 1003. Definitions.

For the purposes of this section, the term:

- (1) "Child" shall have the same meaning as provided in § 16-2301(3)."
- (2) "Controlled substance" shall have the same meaning as provided in § 48-901.02(4)."
- (3) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).
- (4) "Criminal street gang" means an association or group of 4 or more persons

that:

(A) Has as a condition of membership or continued membership, the committing of or actively participating in committing a crime of violence, or

(B) Has as one of its purposes or frequent activities, the violation of the criminal laws of the District, another state, or the United States, except for acts of civil disobedience;

(5) "Defined geographic area" means an area within the District, the boundaries of which are described by streets, street addresses, landmarks, or other identifying information

- (6) "Drug paraphernalia" shall have the same meaning as provided in § 48-1101

(7) “Firearm” shall have the same meaning as provided in provided in §7-2501.01(9) provided, that the term “firearm” shall include a destructive device as the term is defined in § 7-2501.01 (7).

(8) “Gang activity” means:

(A) The violation of or attempted violation of any of the laws of the District of Columbia, another state, or the United States; or

(B) The use of any private place or public space in the District of Columbia as a base for planning or engaging in activity in another jurisdiction when such activity would constitute a crime in that other jurisdiction and would be substantially similar to a crime under federal or District of Columbia law.

(9) “Member of a criminal street gang” means a person who participates in or acts in concert with a criminal street gang. The participation or acting in concert must be more than nominal, passive, inactive, or purely technical. Factors the court may consider in determining whether a person is a member of a criminal street gang include, whether:

(A) The person has claimed or admitted membership in a criminal street gang;

(B) A reliable informant identifies the person as a gang member;

(C) The person associates with known gang members;

(D) The person displays or has displayed gang symbols or hand signs;

(E) The person has a gang tattoo;

(F) The person attends or has attended a gang meeting; and

(G) The person is arrested in a gang area for an offense that is part of that gang’s criminal enterprise.

(10) “Public space” means a street, alley, sidewalk, bridge, path, or other vehicular or pedestrian right-of-way, a park, a public building, a private building that is open to the public, public housing, or the exterior of any public or private building, including yards, stairs, stoops, and porches. but not limited to

Sec. 1004. Public nuisance; per se.

It is a per se public nuisance for a criminal street gang to engage in gang activity in any private or

public space within a defined geographic area in the District of Columbia on 2 or more occasions when one such act occurs within 5000 feet and within a reasonable amount of time of any other.

Sec. 1005. Public nuisance; adverse impact on public space.

It is a public nuisance for a criminal street gang to engage in a pattern of behavior that has an adverse impact upon any considerable number of persons in a defined geographic area.

An adverse impact means the presence of any one or more of the following conditions relating to the criminal street gang:

(1) The existence of a reasonable fear of residents and other people to walk through or in the defined geographic area;

(2) The existence of a high number of ambulance or police calls to the defined geographic area;

(3) The display of dangerous weapons or the hiding of dangerous weapons in or near the defined geographic area;

(4) The sale or use of controlled substances or the hiding of controlled substances in or near the defined geographic area;

(5) The commission of civil infractions in or near the defined geographic area;

(6) Arrests of gang members in or near the defined geographic area;

(7) Seizures of gang members based upon curfew violations or truancy behavior in or near the defined geographic area:

(8) The execution of search warrants in or near the defined geographic area;

(9) A substantial number of complaints made to law enforcement and other government officials about activities in the defined geographic area;

(10) The discharge of a firearm in or near the defined geographic area; or

(11) The existence or violation of stay-away orders or barring notices from locations in the defined geographic area.

Sec. 1006. Public nuisance; use of place

The habitual use of a place in a defined geographic area by a criminal street gang for engaging in gang activity is a public nuisance.

Sec. 1007. Suit to abate nuisance.

(a) The Attorney General for the District of Columbia may file a complaint in the Civil Division of the Superior Court of the District of Columbia against a criminal street gang and its members to enjoin a public nuisance under this title.

(b)(1) The complaint shall:

(A) Identify the criminal street gang;

(B) Allege that the criminal street gang is a public nuisance within a defined geographic area, and describe the defined geographic area; and

(C) Identify at least 3 members of the criminal street gang who the Attorney General alleges should be designated to receive service on behalf of the criminal street gang as an entity.

(2) The complaint may allege that the criminal street gang is a public nuisance in multiple defined geographic areas; provided, that the boundaries for each alleged defined geographic area are described.

(c) In addition to the criminal street gang, a member of a criminal street gang may be made a defendant in the suit. Any person who owns or is responsible for maintaining a place that is used by the criminal street gang for engaging in gang activity also may be made a defendant in the suit.

(d) The Attorney General shall not be required to furnish bond or security.

(e) The action shall be in equity and shall be tried without a jury.

(f) The Attorney General must establish the existence of the public nuisance by clear and convincing evidence.

Sec. 1008. Confidentiality of identities; protection of witnesses.

(a) (1) If proof of the existence of the public nuisance depends, in whole or in part, upon evidence of delinquent conduct or information contained in juvenile case records, as that term is defined in D.C. Official Code § 16-2331, juvenile social file records, as that term is defined in D.C. Official Code § 16-2332, law enforcement records, as that term is defined in D.C. Official Code § 16-2333, or Department of Youth Rehabilitation Services records, as that term is defined in the Department of Youth Rehabilitation Services Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-335; D.C. Official Code § 2-1515.06), the court in its discretion may issue an order to protect the child by prohibiting the release of identifying information about the child. Such order may include, but not be limited to, placing under seal the supporting affidavits or the portions thereof that would identify, directly or indirectly, the child, and closing the courtroom to all persons other than the parties when matters before the court pertain to a child.

(b) Unless the court orders otherwise, in all filings with the court that contain a child's name, birth date, home address, or other identifying information, the party making the filing may only include the year of the child's birth, the child's initials, and the ward where the child lives, or if the child does not live in the District, the city and state of the child's home address. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record. A child waives the protection of this paragraph as to the child's own information by filing it without redaction and not under seal.

(c) If proof of the existence of the public nuisance depends, in whole or in part, upon information from one or more witnesses who are not law enforcement officers, the court in its discretion may issue an order to protect those witnesses, including, but not limited to, placing under seal the supporting affidavits or the portions thereof that would identify, directly or indirectly, the witness or witnesses and the

information the witness or witnesses provided. The court shall issue such other orders as are necessary to protect a witness who is not a law enforcement officer, including an order that the name, address, identifying features, and other information that, directly or indirectly, may identify a witness responding to interrogatories or depositions or testifying at trial shall not be disclosed to respondents or any other person. Upon the motion of a respondent or his/her attorney, the court may conduct an in camera, ex parte hearing, under seal, attended only by the witness and the Attorney General or his/her designee, and the attorney(s) for the respondent(s) to verify that the witness or witnesses live in the neighborhood or are affected by the gang activity. If the Attorney General establishes probable cause to believe that one or more members of the criminal street gang have committed a crime of violence as defined in D.C. Official Code § 23-1331 or have violated chapter 45 of Title 22, or if the Attorney General establishes probable cause to believe that there is any other reason not to disclose the name, address, identifying features, and other information that, directly or indirectly, may identify a witness who is not a law enforcement officer, the Court shall order that such information not be disclosed to any other person, including, but not limited to the attorney's client or any other respondent, unless the attorney for the respondent establishes by clear and convincing evidence that such disclosure would not put the witness at risk.

(d) For the purposes of this subsection, the term "law enforcement officer" does not include a law enforcement officer who (A) is acting in an undercover capacity or (B) resides in the defined geographic area.

#### Sec. 1009. Service of process.

(a) The Attorney General shall file the complaint, a motion to designate persons to receive service on behalf of the criminal street gang, and a motion for a preliminary injunction.

(b) Upon the filing of the complaint, the court shall issue a hearing date for the motion to designate persons to receive service on behalf of the criminal street gang and the motion for a preliminary injunction.

(c) Notice of the hearing shall be served together with a copy of the complaint, motion to designate persons to receive service on behalf of the criminal street gang, and motion for a preliminary injunction upon one or more persons who have been identified as criminal street gang members in section 1007(b).

(d) Service of process may also be made in court on any named members of the criminal street gang who appear at the hearing on the motions to designate persons to receive service on behalf of the criminal street gang and for preliminary injunction.

(e) Members of the Metropolitan Police Department are authorized to effect service of process required by this title.

Sec. 1010. Preliminary injunction hearing; designation of persons to receive process.

(a) At the hearing on the motions to designate persons to receive service on behalf of the criminal street gang and for preliminary injunction, the Attorney General shall submit documentation or other evidence showing that the persons named in the motion are members of the criminal street gang. The Attorney General may supplement the documentation with evidence presented at the hearing. [Evidence which is material and relevant shall be admissible at the hearing.

(b) If the Attorney General proves by clear and convincing evidence the existence of the criminal street gang and that one or more of the persons served with the motion to designate are members of the criminal street gang, the court shall designate such individuals as representatives of the criminal street gang.

(c) If it appears at the hearing, by affidavit or otherwise, that there is a substantial likelihood that the government will be able to prove, by clear and convincing evidence, that a public nuisance exists within the defined geographic area, the court may enter an order preliminarily enjoining the nuisance and granting such other relief as the court may deem appropriate, including those remedies provided in section 1011.

(d) The government need not prove irreparable harm to obtain a preliminary injunction.

(e) Where appropriate, the court may order a trial of the action on the merits to be advanced and consolidated with the hearing on the motion for preliminary injunction.

(f) Nothing in this section shall be construed to prohibit the application for or the granting of a temporary restraining order, or other equitable relief provided by law.

Sec. 1011 Permanent injunction.

(a) A hearing shall be held on the complaint.

(b)(1) The Attorney General must establish by clear and convincing evidence:

(A) The existence of the criminal street gang;

(B) That the criminal street gang constitutes a public nuisance within a defined geographic area; and

(C) That named defendants and identified individuals who are to be made subject to the injunction are members of the criminal street gang.

(2) If the complaint alleges that the criminal street gang constitutes a public nuisance within multiple defined geographic areas, the Attorney General must establish the existence of a public nuisance within each defined geographic area before an injunction may be issued under subsection (c) of this section covering that defined geographic area.. The court may issue a single injunctive order covering all of the defined geographic areas; provided, that the Attorney General has proven the existence of a public nuisance in each defined geographic area.

(c) If the court finds that a criminal street gang constitutes a public nuisance within a defined geographic area, the court shall enter an order permanently enjoining, abating, and preventing the continuance or recurrence of the nuisance. The court order shall be directed against the criminal street gang and its respective members, who shall be listed in an attachment to the order, prohibiting specified activities in a defined geographic area determined by the court. The court shall draw the boundaries for the defined geographic area to be covered by the injunction so as to encompass reasonably the area for which the court has found a public nuisance exists and must be abated, which may include a reasonable buffer zone around the area to prevent displacement of the nuisance.

(d) The order shall enjoin:

(1) The criminal street gang and its respective members from engaging in gang activities;

and

(2) The criminal street gang members from congregating with one or more other members of the criminal street gang in public space within the defined geographic area.

(e) The order also may impose other reasonable requirements to prevent the criminal street gang

from engaging in future gang activities. These requirements may include, but are not limited to, prohibiting criminal street gang members from:

(1) Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, or assaulting any person;

(2) Possessing or knowingly remaining in the presence of anyone who is in possession of any firearm, ammunition, or other weapon;

(3) The unlawful possession of any controlled substance or drug paraphernalia or knowingly remaining in the presence of anyone who is in possession of any controlled substance or drug paraphernalia;

(4) Being present on any private property within the defined geographic area without the written consent of the owner;

(5) Defacing any public or private property;

(6) Possessing graffiti material, as that term is defined in the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective June 12, 2001 (D.C. Law 4-203; D.C. Official Code § 22-3312.05(5)), with the intent to place graffiti on property without the consent of the owner; and

(7) Violating a court-defined curfew.

(f) The order may also require that any person who is served with a copy of the order shall not disclose any identifying information about a child who is also subject to the order or who had been subject to the order previously. Nothing in this subsection shall be construed to prohibit a person from revealing information about such a child to his or her attorney.

(g) The order may also direct a child who is subject to the order to appear at the social service liaison office, established pursuant to D.C. Official Code § 11-1105, to be evaluated to receive such social services and other related services to individuals and families as is determined by the representatives of the participating offices of the District government, provided that the child's participation in any program shall be voluntary and the failure of the

child to participate in any program shall not be considered contempt under Section 1017 of this Act.

Sec. 1012. Issuance, service, and enforcement of permanent injunction.

(a) The order may be issued against all members of the criminal street gang who have been served pursuant to section 1009(c) or a person who comes under the terms of the court order pursuant to subsection (c) of this section without the necessity of proving that each of them personally participated in the gang activity that supports the granting of the injunction.

(b) A member of the criminal street gang or a person who comes under the terms of the court order pursuant to subsection (c) of this section will not be subject to enforcement of the injunction, unless he or she has been personally served with the injunction.

(c) In addition to the criminal street gang, and its members listed in an attachment to the order, any court order issued pursuant to section 1011 shall also be effective as to other criminal street gang members, if:

(1) The Office of the Attorney General files a motion to add another criminal street gang member to the injunction and that motion is served upon that individual;

(2) At a hearing, the Office of the Attorney General presents information to the court that the person was a member of the criminal street gang at the time that the suit was filed but that the person was not served pursuant to section 1009(c), or that the person has joined a criminal street gang after the filing of the suit;

(3) The court, after reviewing the information, determines by clear and convincing evidence that the person was a member of the criminal street gang at the time that the suit was filed but was not made a party to that suit or has joined the criminal street gang after the filing of the suit, and therefore should be added to the list of persons subject to the injunctive relief;

(4) A copy of the court order and list of the persons who are subject to the order is served upon the person; and

(5) A copy of the return of service on the person is filed in the Superior Court.

(d) After a copy of the return of service is filed with the court, the court shall add each new person to the list attached to the order of gang members. The court shall then send a copy of the order, including the updated list, to the last known address of all persons on the list.

(e) If the court finds that a place is used in a manner that constitutes a public nuisance, the court may issue an order establishing reasonable requirements to prevent the use of the place for gang activity.

#### Sec. 1013. Injunction time limit.

(a) Unless renewed pursuant to subsection (b) of this section or terminated pursuant to section 1014, the order directed against individual members of the criminal street gang shall expire 5 years after the gang member was made part of the injunction . The injunction against the gang as an entity shall not expire.

(b)(1) The Attorney General may petition for renewal of the injunction against individual gang members. Upon a showing, by clear and convincing evidence, that nuisance activity, furthered by the criminal street gang members, still exists, the order shall be renewed against those members.

(2) The Attorney General need not reestablish the existence of the criminal street gang or an individual's gang membership;

(3) The court may redraw the boundaries of the defined geographic area to which the renewed injunction against the members shall apply so it is no larger than necessary to abate the nuisance.

(c) All enjoined individuals shall be reserved with notice of these renewal proceedings and afforded an opportunity to respond to the Attorney General's renewal petition

#### Sec. 1014. Injunction review and termination of gang affiliation.

(a) Any person who is the subject of a gang injunction may petition the court at any time to have the injunction lifted as to that individual because that person has:

- (1) Disassociated from the gang; and
- (2) Is no longer involved in criminal activity.

(b) In addition to any other factors, which the court sitting as a court of equity may consider, the court shall consider the following factors in determining if the injunction should be lifted:

- (1) Length of time that the person has been disassociated with the gang and gang activity;
- (2) Length of time that the person has been disassociated with criminal activity;
- (3) Length of time since that person has been incarcerated, on probation, or parole, or otherwise subject to court supervision;
- (4) Establishment of residency outside the enjoined area;
- (5) Obtaining of a high school or general equivalency diploma ("GED") or other educational or vocational certificate after the imposition of the injunction,
- (6) Establishment and maintenance of gainful employment; and
- (7) Completion of a court approved program which:
  - (A) Promotes a gang-free lifestyle;
  - (B) Identifies gang issues and options to participation;
  - (C) Makes the person aware of the consequences of their own behavior and the gang's behavior on self and others; or
  - (D) Otherwise is designed to reduce the likelihood of continued participation in a gang.

(c) The Office of the Attorney General, in consultation with the Metropolitan Police Department, will promulgate regulations within 120 days of the effective date of this act detailing the process a person may utilize to obtain the government's assistance in lifting the injunction. Prior to filing a motion to lift the injunction, a person may follow the procedures outlined in the regulations. Upon the submission, review, and corroboration of the materials submitted pursuant to these regulations, the Office of the

Attorney General may agree not to oppose a petition filed by a gang member to be released from the court order.

Sec. 1015. Continuation of activities pending trial or appeal; appeal.

If an appeal is not taken by a person temporarily enjoined under this title, the person is entitled to a trial on the merits.

Sec. 1016. Injunction for specified period.

In addition to any other order that may be issued under this section or other law, a court of appeals or a trial court acting under section 1011 may issue an order under this section stating that the injunction remains in effect during the course of the trial or until lifted by the court.

Sec. 1017. Violation of court order.

A person who violates a temporary or permanent injunctive order under this title is subject to the following sentences for contempt:

- (1) A fine of not more than \$1,000;
- (2) Imprisonment for not less than 30 days nor more than 180 days; or
- (3) Both.

Sec. 1018. Construction.

(a) This section shall be construed liberally in accordance with its remedial purposes.

(b) Establishment of a public nuisance shall not be subject to any restrictions or limitations upon public or private nuisance actions at common law.

(c) This action is civil in nature and none of its provisions should be construed as punishment.

Sec. 1019. Conforming amendments.

(a) Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(1) Section 16-2331(b) is amended by adding a new paragraph (14) to read as follows:

“(14) any court for the purpose of litigating a matter brought pursuant to Title VII of the Omnibus Anti-Crime Emergency Amendment Act of 2009 and all parties to that litigation.”.

(2) Section 16-2332(b)(1) is amended by adding a new subparagraph (K) to read as follows:

“(K) any court for the purpose of litigating a matter brought pursuant to Title VII of the Omnibus Anti-Crime Emergency Amendment Act of 2009 and all parties to that litigation.”.

(3) Section 16-2333(b) is amended by adding a new paragraph (13) to read as follows:

“(13) any court for the purpose of litigating a matter brought pursuant to Title VII of the Omnibus Anti-Crime Emergency Amendment Act of 2009 and all parties to that litigation.”.

(b) Section 101(e)(1) of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-951(e)(1)), is amended by striking the number “6” and inserting the number “4” in its place.

with the remaining subsections re-lettered accordingly.

**Rationale:**

We have an escalating gang problem in DC. We are seeing a greater presence from organized gangs based on the west coast. We need to stop these gangs before they take hold in our communities. This amendment would insert the gang civil injunctions provision into the legislation and provide the needed authority for our law enforcement agencies to attempt to break up gangs and gang activity, which are currently causing a public nuisance and disrupting our neighborhoods. This amendment also gives the Attorney General’s Office the ability to seek civil injunctions against gangs operating in the District. Judges would be granted the authority to issue orders designed to interfere with a gang’s ability to control the streets, plan new crimes, and recruit new members. The court’s order would be specific and carefully crafted to enjoin the gang and it’s identified members from gang activities, such as dealing drugs, violence, and carrying weapons, and from associating with each other within a defined geographic area. This amendment would also ensure that District Government Agencies who are represented at the Family Court Liaison’s Office are in a position to evaluate services to youth who are named in a civil gang injunction. This will give youthful gang members a better opportunity to walk away

from the gang and become productive citizens.

**Fiscal Impact:**

There is no fiscal impact to the amendment beyond that of the underlying legislation.