

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Givens**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO INSURE THE PEACE AND SECURITY OF THE PEOPLE OF
9 THE STATE OF ARKANSAS THROUGH THE REGULATION AND CONTROL
10 OF GANGS AND ACTIVITY RELATING TO GANGS; AND FOR OTHER
11 PURPOSES."

12
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14
15 SECTION 1. The Legislature hereby finds and declares that it is the
16 right of every person, regardless of race, color, creed, religion, national
17 origin, sex, age, sexual orientation, or handicap, to be secure and protected
18 from fear, intimidation, and physical harm caused by the activities of violent
19 groups and individuals. It is not the intent of this act to interfere with
20 the exercise of the constitutionally protected rights of freedom of expression
21 and association. The Legislature hereby recognizes the constitutional right
22 of every citizen to harbor and express beliefs on any lawful subject
23 whatsoever, to lawfully associate with others who share similar beliefs, to
24 petition lawfully constituted authority for a redress of perceived grievances,
25 and to participate in the electoral process. It is the intent of this chapter
26 that enforcement of this act will insure the constitutionally protected rights
27 of freedom of expression and association and those inherent rights of life,
28 liberty, and the pursuit of happiness, which are held by the citizens of the
29 State of Arkansas and are infringed upon by those who fit within the
30 definition of this act.

31 The Legislature further finds that the State of Arkansas faces a state
32 of crisis caused by violent gangs whose members threaten, terrorize, and
33 commit a multitude of crimes against the peaceful citizens or their
34 neighborhoods. These activities, both individually or collectively, present a
35 clear and present danger to public order and safety and are not

1 constitutionally protected. The Legislature finds that gang activity is
2 spreading across the land and is threatening the very fabric of our system of
3 government. It is the intent of the Legislature in enacting these provisions
4 to seek the eradication of criminal activity by gangs by focusing upon
5 patterns of criminal gang activity and upon the organized nature of gangs,
6 which together are the chief source of terror created by gangs. The
7 Legislature further finds that, in addition to laws which are already in
8 force, further effective means of punishing and deterring the criminal
9 activities of gangs is through forfeiture of the profits, proceeds, and
10 instrumentalities acquired, accumulated, or used by gangs.

11

12 SECTION 2. Participation in Criminal Gang; Elements; Punishment;
13 Parole.

14 (a) Any person who actively participates in any criminal gang with
15 knowledge that its members engage in a pattern of criminal gang activity, and
16 who purposely promotes, furthers, or assists in any felonious criminal conduct
17 by members of that gang, shall be punished by imprisonment in the county jail
18 for a period not to exceed one (1) year, or by imprisonment in the state
19 prison for one (1) to three (3) years.

20 (b) Any person who is convicted of a felony or a misdemeanor which is
21 committed for the benefit of, at the direction of, or in association with any
22 criminal gang, with the specific intent to promote, further, or assist in any
23 criminal conduct by gang members, shall be punished in the following manner:

24 (1) Any person who violates subsection (b) of this section in the
25 commission of a misdemeanor, shall be punished by imprisonment in the county
26 jail not to exceed one (1) year, or by imprisonment in the state prison for
27 one (1) to three (3) years, provided that any person sentenced to imprisonment
28 in the county jail pursuant to a misdemeanor shall be imprisoned for a period
29 not to exceed one (1) year, but not less than one hundred eighty (180) days,
30 and shall not be eligible for release upon completion of sentence, parole, or
31 any other basis, until he or she has served one hundred eighty (180) days. If
32 the Court grants probation or suspends the execution of sentence imposed upon
33 the defendant, it shall require as a condition thereof that the defendant
34 serve one hundred eighty (180) days in the county jail.

35 (2) Except as provided in subsection (b)(3) of this section, any

1 person who violates subsection (b) of this section in the commission of a
2 felony shall, upon conviction of that felony, in addition and consecutive to
3 the punishment prescribed for the felony or attempted felony of which he or
4 she has been convicted, be punished by an additional term of one (1) to three
5 (3) years. The Court shall order the imposition of the middle term of the
6 sentence enhancement of two (2) years, unless there are circumstances in
7 aggravation or mitigation. The Court shall state the reasons for its choice
8 of sentence enhancements on the record at the time of the sentencing.

9 (3) Any person who violates subsection (b) of this section in the
10 commission of a class Y felony shall not be eligible for parole until he has
11 served a minimum of one-third (1/3) of the prison time imposed by the Court or
12 the jury.

13 (4) Notwithstanding any other provision of law, the Court may
14 strike the additional punishment for the enhancements provided in this section
15 in an unusual case where the interests of justice would best be served, if the
16 Court specifies on the record the circumstances indicating that the interests
17 of justice would best be served by that disposition.

18 (c) As used in this act, "pattern of criminal gang activity" means the
19 commission, attempted commission, or solicitation of two or more of the
20 following offenses, provided at least one of those offenses occurred after the
21 effective date of this act and the last of those offenses occurred within
22 three (3) years after the commission of the prior offense, and the offenses
23 are committed on separate occasions, and by two (2) or more persons:

24 (1) Assault, as defined in Ark. Code Ann. 5-13-204 through 5-13-
25 207.

26 (2) Battery, as defined in Ark. Code. Ann. 5-13-201 through 5-13-
27 203.

28 (3) Robbery, as defined in Ark. Code Ann. 5-12-102 through 5-12-
29 103.

30 (4) Capital murder, murder, or manslaughter, as defined in Ark.
31 Code Ann. 5-10-101 through 5-10-104.

32 (5) The sale, possession for sale, transportation, manufacture,
33 offer for sale, or offer to manufacture controlled substances as defined in
34 Ark. Code Ann. 5-64-101, et seq., the Uniform Controlled Substances Act.

35 (6) The sale, possession for sale, transportation, manufacture,

1 offer for sale, or offer to manufacture weapons as defined in Ark. Code Ann.
2 5-73-103 through 5-73-211.

3 (7) Criminal mischief in the second degree, as defined in Ark.
4 Code Ann. 5-38-204.

5 (8) Arson and other burning, as defined in Ark. Code Ann. 5-38-
6 301, 302, and 311.

7 (9) Rape, as defined in Ark. Code Ann. 5-14-103.

8 (10) Prostitution, as defined in Ark. Code Ann. 5-70-101 through
9 5-70-106.

10 (11) Terrorism, as defined in Ark. Code Ann. 5-13-301 and 5-13-
11 310.

12 (12) Criminal conspiracy, as defined in Ark. Code Ann. 5-3-401
13 through 5-3-407.

14 (d) As used in this act, "criminal gang" means any ongoing organization,
15 association, or group of three (3) or more persons, whether formal or
16 informal, having as one of its primary activities the commission of one or
17 more of the criminal acts enumerated in paragraphs (1) to (12), inclusive, of
18 subsection (c) of this section, which has a common name or common identifying
19 sign or symbol, whose members individually or collectively engage in or have
20 engaged in a pattern of criminal gang activity.

21 (e) All proceeds from and instruments of gang or gang-related activity
22 shall become property of the State and will be used to fund the enforcement of
23 this act and an education program designed to educate the children of this
24 State to prevent their induction into and their rehabilitation out of gangs
25 and gang-related activity.

26

27 SECTION 3. Buildings or Places Used by Criminal Gang as Nuisance;
28 Actions for Injunction or Abatement; Notice of Unlawful Use; Charities.

29 (a) Nuisance Created:

30 (1) The conducting, maintaining, carrying on, or engaging in
31 criminal gang activity in violation of this act or any of the laws of this
32 State, in any building, structure, or place within this State, and all means,
33 appliances, fixtures, appurtenances, materials, and supplies used for the
34 purpose of conducting, maintaining, or carrying on of such criminal gang
35 activity is declared to be a nuisance and may be abated under the provisions

1 of this subchapter.

2 (2) Any person, persons, association, partnership, firm, or
3 corporation conducting, maintaining, carrying on, or engaging in any of the
4 criminal gang activities pursuant to subsection (a) of this section who shall
5 suffer or permit violations of any of the laws of this State in, upon, or
6 about the premises operated or maintained by him, them, or it, shall be deemed
7 and held to be conducting, maintaining, carrying on, and engaging in criminal
8 gang activity in violation of the laws of this State.

9 (b) Jurisdiction - Parties Who May Bring Action: Jurisdiction is
10 conferred upon the chancery and circuit courts of this State to abate the
11 public nuisances defined in subsection (a) of this section, upon petition in
12 the name of the State, upon relation of the Attorney General or any
13 prosecuting attorney of the State, or without the concurrence of the officers,
14 upon the relation of five (5) or more citizens and freeholders of the county
15 wherein the nuisances may exist, in the manner provided in subsection (c) of
16 this section.

17 (c) Petition for Abatement:

18 (1) Whenever a public nuisance, as defined in subsection (a) of
19 this Section, is kept, maintained, carried on, or exists in any county in this
20 State, a bill or petition may be filed in any chancery or circuit court of the
21 county, in the name of the State, by and upon the relation of any persons
22 named in subsection (b) of this section, against the person or persons
23 keeping, maintaining, or carrying on the nuisance, and all aiders and abettors
24 therein, and the owners, proprietors, or agents or persons or corporations, in
25 charge or control of the building or place wherein the nuisance exists, for
26 the purpose of having the nuisance abated and permanently discontinued.

27 (2) (i) However, where a bill or petition is filed by citizens and
28 freeholders, they shall make bond in such sums as the judges or chancellors
29 shall prescribe, conditioned to pay all costs and damages, in the event the
30 court trying the case shall find and adjudge that the proceedings were
31 instituted without probable cause.

32 (ii) No bond for costs or damages shall be required where
33 the proceedings are instituted by or upon the relation of the Attorney General
34 or a prosecuting attorney for the State.

35 (d) Hearings for Temporary and Permanent Injunction - Bond - Notice:

1 (1) In the proceedings, the court or a judge or chancellor in
2 vacation shall, upon the presentation of a bill or petition therefor alleging
3 that the nuisance complained of exists, award a temporary injunction, with
4 such bond as required by law in cases where the bill is filed by citizens and
5 freeholders. However, no bond shall be required where the bill or petition is
6 filed by the officers mentioned in subsection (c)(2)(ii) of this section if it
7 shall be made to appear to the satisfaction of the court, judge, or
8 chancellor, by petition under oath or of affidavits, depositions, oral
9 testimony, or otherwise, as the complainants or petitioners may elect, that
10 the allegations of the bill or petition are true, enjoining and restraining
11 the further continuance of the nuisance, and the closing of the building or
12 place wherein the nuisance is conducted until the further order of the court,
13 judge, or chancellor.

14 (2)(i) Ten (10) days' notice in writing shall be given the
15 defendant of the hearing of an application for a permanent injunction, but
16 notice may be waived for a temporary injunction upon application and showing
17 of just cause before the court.

18 (ii) When the injunction has been granted, it shall be
19 binding upon the defendant throughout the county until modified or set aside
20 by the court, judge, or chancellor having cognizance of the case. Any
21 violation thereof, by the defendant, or upon his procurement shall be
22 considered contempt of court and punishable as provided by law.

23 (e) Hearings for Temporary and Permanent Injunction - Procedures:

24 (1) Proceedings under this section, whether in the chancery or
25 circuit courts, shall be conducted in accordance with the procedures of the
26 courts of chancery where not otherwise expressly provided for in this act.
27 All of the courts having cognizance of the proceedings are given the full
28 jurisdiction and powers of courts of equity with respect to the proceedings.

29 (2) Upon the trial of all causes pursuant to this section,
30 evidence of the general reputation of the building or place where the nuisance
31 is alleged to exist shall be admissible for the purpose of proving or tending
32 to prove the existence of the nuisance.

33 (f) Order of Abatement:

34 (1) If, upon the trial of a cause pursuant to this section, the
35 existence of the nuisance is established, an order of abatement shall be

1 entered as part of the judgment or decree of the court.

2 (2) (i) The order shall direct the removal from the building or
3 place wherein the nuisance exists or is maintained of all means, appliances,
4 fixtures, appurtenances, materials, supplies, and instrumentalities used for
5 the purpose of conducting, maintaining, or carrying on the unlawful gang
6 activity constituting the nuisance and shall direct the sale thereof, or such
7 portion thereof as may be lawfully sold, upon terms as the court may order,
8 and the payment of the proceeds into court to be applied to costs or paid over
9 to the owner, and destruction of the portion thereof, if any, as cannot be
10 lawfully sold within this State.

11 (ii) The judgment or decree shall perpetually enjoin the
12 defendants from engaging in, conducting, continuing, or maintaining the
13 nuisance, directly or indirectly, by themselves or their agents or
14 representatives, and perpetually forbid the owner of the building from
15 permitting or suffering the same to be done or carried on in the building or
16 place.

17 (g) Proceedings Against Two or More Owners:

18 (1) When one (1) of two (2) or more joint owners has been served
19 with the notice prescribed in this section, the cause shall proceed against
20 the owner on whom notice has been served, and the proceeding shall not be a
21 bar to subsequent proceedings against one (1) or all of the joint owners not
22 proceeded against.

23 (2) If the notice prescribed in this section cannot be served on
24 the owner or owners of the building or place that may become a nuisance under
25 the provisions of this section, by reason of nonresidence or otherwise, then
26 and in that case, notice may be served on any agent or agents or trustee that
27 may have charge of, or be in control of, the building or place and the cause
28 shall proceed against the agent, agents, or trustee in all respects as if he
29 or they were the actual owner or owners of the building or place.

30 (h) Fees of Prosecuting Attorney: In all cases wherein the bill or
31 petition is filed upon the relation of a prosecuting attorney of this State
32 and a permanent injunction is granted therein, the officer shall receive such
33 fees as are now provided by law for convictions for criminal gang activity or
34 for contempt as provided for in this act. The fees shall be paid by defendant
35 as part of the costs of the case, multiple defendants shall be jointly and

1 severally responsible.

2 (i) Penalties:

3 (1) If any person shall break into or enter or use any building or
4 place while closed under a preliminary injunction granted under the provisions
5 of this section, or shall violate any permanent injunction under the
6 provisions of this section, he shall be subject to punishment for contempt.

7 (2) Upon conviction for the contempt, the person may be imprisoned
8 in the county jail for a period to be set by the Court and may also be fined
9 in a sum to be set by the Court.

10 (j) Buildings or places determined to be nuisances under this
11 subdivision shall be subject to closure at the discretion of the court. Said
12 closure shall be determined by the court on a case-by-case basis but in no
13 event to exceed one (1) year. The purpose of this subsection and closure is
14 to allow the court to aid in the rehabilitation of the building or place so as
15 to allow such to be utilized for the purpose it is legally intended. Should
16 such rehabilitation not occur, then the city or county wherein such buildings
17 or places are located shall institute proceedings for their condemnation.

18 (k) Nothing in this section shall preclude any aggrieved person from
19 seeking any other remedy provided by law or equity.

20 (l) No non-profit or charitable organization which is conducting its
21 affairs with ordinary care or skill, and no governmental entity, shall be
22 abated pursuant to this act.

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24 SECTION 4. Mutual Aid Activities; Labor Organizations. This act does
25 not apply to employees engaged in concerted activities for their mutual aid
26 and protection, or the activities of labor organizations or their members and
27 agents.

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29 SECTION 5. Failure to Supervise; Causing, Encouraging, or Contributing
30 to Persons Under Eighteen Years Coming Within this Act; Inducing Disobedience
31 to Court Order; Punishment.

32 (a) (1) Every parent, guardian, or person legally charged with the care
33 or custody of any person under the age of eighteen (18) years old who fails to
34 supervise any person under the age of eighteen (18) within their charge or who
35 lives as would or manifestly tend to cause any such person to become or to

1 remain a person within the provisions of subsection (b) of this section,
2 violates this section, or

3 (2) Every person who commits any act or omits the performance of
4 any duty, which failure, act, or omission causes or tends to cause or
5 encourage any person under the age of eighteen (18) years to come within the
6 provisions of subsection (b) of this section or which act or omission
7 contributes thereto, violates this section, or

8 (3) Every person who, by any act or omission, or by threats,
9 commands, or persuasion, induces or endeavors to induce any person under the
10 age of eighteen (18) years or any ward or dependent child of the juvenile
11 court to fail or refuse to conform to a lawful order of the juvenile court or
12 to who lives as would cause or manifestly tend to cause any such person to
13 become or to remain a person within subsection (b) of this section is in
14 violation of this section.

15 (b) (1) Ark. Code Ann. 5-27-203 through 5-27-222; Endangering Minor,
16 Contributing to Delinquency, Neglect;

17 (2) Ark. Code Ann. 9-27-301 et seq., the "Arkansas Juvenile Code
18 of 1989"; Definitions: Delinquent Juvenile, Dependent-Neglected Juvenile,
19 etc.;

20 (3) Ark. Code Ann. 6-18-222 (Act 473 of 1989); Civil and Criminal
21 Penalties for Nonattendance at School;

22 (4) Ark. Code Ann. 6-18-216; Penalty for Violating School
23 Attendance Provisions; or

24 (5) Any minor found guilty of any law defining a crime of this
25 State or of the United States or any ordinance of any city or county of this
26 State.

27 (c) Every person in violation of this section is guilty of a misdemeanor
28 and upon conviction thereof shall be punished by a fine not exceeding one
29 thousand dollars (\$1,000), or by imprisonment in the county jail for not more
30 than one (1) year, or by both such fine and imprisonment in the county jail,
31 or may be released on probation for a period not exceeding five (5) years.

32 (d) Jurisdiction: The Juvenile Court shall have jurisdiction to enforce
33 violations as described within this section. Violation of a Juvenile Court
34 Order is punishable as contempt of court by a fine not to exceed one thousand
35 dollars (\$1,000) or by imprisonment in the county jail for a term not to

1 exceed one (1) year or both.

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3 SECTION 6. Banding Together, Drive-Bys, Acts Prohibited.

4 (a) Penalty for Banding Together: If two (2) or more persons shall
5 unite, confederate, or band themselves together for the purpose of doing a
6 "drive-by," a criminal gang activity whereby members ride in motorized
7 vehicles and pass by members of rival gangs and others with the intent of
8 shooting those persons and death being the normal result with innocent
9 bystanders many times being included; or, for the purpose of doing any
10 unlawful act while wearing mask, gang "colors" (uniform) or otherwise
11 disguised; or, for the purpose of going forth armed, in gang colors or
12 disguised for the purpose of intimidating or alarming any person, or to do any
13 felonious act, or if any person shall knowingly meet or act clandestinely with
14 any such gang, band, or order with the purpose of furthering such gang, band,
15 or order activity, be such organization known as Bloods, Crips, or by any
16 other name, they shall each be guilty of a felony, and upon conviction shall
17 be punished by imprisonment in the penitentiary for a term not to exceed three
18 (3) years.

19 (b) Acts Prohibited - Penalty: If two (2) or more persons belonging to
20 or acting with any such gang, band, or organization as defined in subsection
21 (a) of this section shall go forth at any time and shall alarm or intimidate,
22 or seek to alarm or intimidate, any person, by assaulting any such person, or
23 by damaging or destroying property, or by seeking to assault or punish any
24 person or by seeking or attempting to damage or destroy property, or who shall
25 deliver, mail, post or leave any letter, notice or other written, printed, or
26 nonverbal communication intended to, or which by its nature, contents, or
27 superscription would, naturally alarm or intimidate any person, shall be
28 deemed guilty of a felony and upon conviction shall be punished by
29 imprisonment in the penitentiary for a term not to exceed three (3) years, nor
30 less than one (1) year, and by a fine of not more than five thousand dollars
31 (\$5,000).

32 (c) Acts to Intimidate - Penalty: If any person shall by means of any
33 writing, drawing, or printed matter, or by any sign or token, such as the
34 delivery of death notes, hand signs, or other objects, or by any other verbal
35 or nonverbal communication, seek to intimidate, threaten, or alarm any person,

1 or shall knowingly be connected either in the preparation or delivery of any
2 such communication, by saying or intimidating, either in the wording of any
3 such message or by any signature, or by the nature of the thing left or
4 delivered; or who shall deliver or repeat any verbal message or signal
5 purporting to come from any such organized gang, band, or any member or
6 members thereof, which in its substance or nature is intended to intimidate or
7 threaten any person, shall be deemed guilty of a felony and upon conviction
8 shall be confined in the penitentiary for a term of not less than one (1) year
9 nor more than three (3) years.

10 (d) Death as Result of Injury or Alarm: If any such organized gang, the
11 existence of which is made unlawful by this act, or any two (2) or more
12 members thereof acting in the name or authority of any such gang, or any two
13 (2) or more persons pretending to belong to or act for any such gang shall
14 assault or frighten any person, or while in "colors," disguise, or armed, or
15 shall while engaged in any felonious act alarm or injure any person, and such
16 person shall die as a result of such injury or alarm, they shall be deemed
17 guilty of a murder in the first degree and punished as now provided by law;
18 and any person who shall be present aiding, advising, abetting, or encouraging
19 any such unlawful act which shall result in the death of any person, as above
20 set out, shall be deemed guilty of murder in the first degree and punished as
21 provided by law.

22

23 SECTION 7. All persons sentenced under this act to a term of
24 incarceration shall be given priority in placement in a county or State
25 facility second only to persons convicted of Class C or greater felonies.

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27 SECTION 8. The Circuit Court shall have jurisdiction of the proceedings
28 under this act except as otherwise provided herein.

29

30 SECTION 9. Nothing in this act shall prevent any person from being
31 charged with any other offense as defined by the laws of the State of
32 Arkansas.

33

34 SECTION 10. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

2

3 SECTION 11. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

8

9 SECTION 12. All laws and parts of laws in conflict with this act are
10 hereby repealed.

11

12 SECTION 13. Emergency Clause: It is hereby found and determined by the
13 General Assembly that criminal gang activity exists and such presents a clear
14 and present danger to the State of Arkansas and its citizens. Therefore, an
15 emergency is hereby declared to exist and this act, being immediately
16 necessary for the preservation of the public peace, health, and welfare, shall
17 be in full force and effect from and after its passage and approval.

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