

**As Engrossed: 2/19/93**

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative M. Wilson**

# **A Bill**

**ACT 1002 OF 1993**  
**HOUSE BILL 1354**

## **For An Act To Be Entitled**

8 "AN ACT TO ENACT A NEW CHAPTER TO TITLE 5 OF ARKANSAS CODE  
9 ANNOTATED RELATIVE TO CRIMINAL GANGS, ORGANIZATIONS, OR  
10 ENTERPRISES; TO PROVIDE FOR CRIMINAL PENALTIES FOR  
11 ENGAGING IN A CONTINUING CRIMINAL GANG, ORGANIZATION, OR  
12 ENTERPRISE; TO PROVIDE FOR CRIMINAL PENALTIES FOR  
13 UNAUTHORIZED USE OF ANOTHER PERSONS PROPERTY TO FACILITATE  
14 A CRIME OF VIOLENCE OR PECUNIARY GAIN; TO PROVIDE FOR  
15 CRIMINAL PENALTIES FOR SIMULTANEOUS POSSESSION OF DRUGS  
16 AND FIREARMS; TO PROVIDE FOR CRIMINAL PENALTIES FOR THE  
17 UNLAWFUL DISCHARGE OF A FIREARM FROM A VEHICLE; TO PROVIDE  
18 FOR CIVIL REMEDIES AND PENALTIES TO ABATE OR CLOSE ANY  
19 PREMISES OR PROPERTY USED BY CRIMINAL GANGS,  
20 ORGANIZATIONS, OR ENTERPRISES OR MAINTAINED BY ANYONE FOR  
21 THE PURPOSE OF COMMITTING A CONTINUING SERIES OF  
22 VIOLATIONS OF ARKANSAS LAW."

## **Subtitle**

24 "The \_Arkansas Criminal Gang, Organization or Enterprise  
25 Act\_."  
26

27  
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29  
30 SECTION 1. Title 5 of the Arkansas Code is amended by adding the  
31 following chapter:

32 "CHAPTER 74

33  
34 5-74-101. CITATION.

35 This Chapter shall be known and may be cited as the "Arkansas Criminal  
36 Gang, Organization or Enterprise Act."

**jmb114**

1           5-74-102. GENERAL LEGISLATIVE FINDINGS, DECLARATIONS AND INTENT.

2           (a) The General Assembly of the State of Arkansas hereby finds and  
3 declares that it is the right of every person, regardless of race, color,  
4 creed, religion, national origin, sex, age, or handicap, to be secure and  
5 protected from fear, intimidation, and physical harm caused by the activities  
6 of groups engaging in random crimes of violence, committing crimes for profit,  
7 and violent crimes committed to protect or control market areas or "turf". It  
8 is not the intent of this Chapter to interfere with the constitutional  
9 exercise of the protected rights and freedom of expression and association.  
10 The General Assembly of the State of Arkansas hereby recognizes the right of  
11 every citizen to harbor and constitutionally express believes on any lawful  
12 subject whatsoever, to associate lawfully with other who share similar  
13 beliefs, to petition lawfully constituted authority for a redress of perceived  
14 grievances, and to participate in the electoral process.

15           (b) The General Assembly of the State of Arkansas further finds that  
16 the State of Arkansas is experiencing an increase in crime committed by  
17 criminal gangs, organizations or enterprises. These criminal gangs,  
18 organizations or enterprises support themselves by engaging in criminal  
19 activity for profit, most commonly through the distribution of controlled  
20 substances and theft of property. These criminal gangs, organizations or  
21 enterprises are becoming increasingly sophisticated at avoiding arrest and  
22 prosecution. With increasing frequency criminals are using the property of  
23 another person which has been stolen, borrowed, leased or just maintained in  
24 another person's name to avoid detection and identification. This is  
25 particularly common among members and associates of criminal gangs,  
26 organizations and enterprises. There is strong evidence that this increased  
27 sophistication is due largely to contact with other criminal gangs,  
28 organizations or enterprises from other states.

29           (c) The General Assembly of the State of Arkansas further finds that  
30 criminal gangs, organizations and enterprises control their market areas by  
31 terrorizing the peaceful citizens in their neighborhoods with deliberate and  
32 random acts of violence. "Drive-by" shootings are becoming all too common in  
33 many Arkansas cities. One of the primary reasons for the increased homicide  
34 rates are the use of firearms by criminal gangs, organizations or enterprises  
35 to control the crack cocaine market within their geographical "turf".

1 (d) The General Assembly of the State of Arkansas further finds that in  
2 addition to the activity of street gangs, there are also other types of  
3 criminal organizations or enterprises operating in Arkansas. Some examples are  
4 garages that take parts from stolen automobiles, burglary or retail theft  
5 rings, and narcotics distribution organizations. The number of crimes  
6 committed by criminal organizations of all types are increasing. These  
7 ongoing organized criminal activities present a clear and present danger to  
8 public order and safety and are not constitutionally protected.

9 (e) It is the intent of the General Assembly of the State of Arkansas  
10 to use as a model the federal Continuing Criminal Enterprise statute. This  
11 should provide law enforcement officers, prosecutors and our courts with ample  
12 case law to guide in the interpretation of the language and the legislative  
13 intent. It is furthermore our intent to focus the state's law enforcement  
14 agencies and prosecutors on investigating and prosecuting all ongoing  
15 organized criminal activity and to provide for penalties that will punish and  
16 deter organized ongoing criminal activity.

17 5-74-103. DEFINITIONS.

18 (a) Criminal gang, organization or enterprise is defined as any group  
19 of three (3) or more individuals that commit a continuing series of two (2) or  
20 more predicate criminal offenses are undertaken in concert with each other.

21 (b) "Predicate criminal offense" means any violation of Arkansas law  
22 which is a crime of violence or pecuniary gain.

23 (c) "Crime of violence" means any violation of Arkansas law where a  
24 person purposely or knowingly causes, or threatens to cause, death or physical  
25 injury to another person or persons, specifically including rape.

26 (d) "Crime of pecuniary gain" means any violation of Arkansas law that  
27 results, or was intended to result, in the defendant receiving income,  
28 benefit, property, money, or anything of value.

29 5-74-104. ENGAGING AT A CONTINUING CRIMINAL GANG, ORGANIZATION OR  
30 ENTERPRISE.

31 (a) A person commits the offense of engaging in a continuing criminal  
32 gang, organization or enterprise in the first degree if he:

33 (1) *Commits or attempts to commit, or solicits to commit a felony*  
34 *predicate criminal offense; and*

35 (2) That offense is part of a continuing series of two (2) or more

1 predicate criminal offenses which are undertaken by that person in concert  
2 with two (2) or more other persons with respect to whom that person occupies a  
3 position of organizer, a supervisory position, or any other position of  
4 management.

5       (3) *A person who engages in a continuing criminal gang, organization or*  
6 *enterprise in the first degree is guilty of a felony two classifications*  
7 *higher than the classification of the highest underlying predicate offense*  
8 *referenced in subdivision (a)(1) of this section. A person who engages in a*  
9 *continuing criminal gang, organization or enterprise where the underlying*  
10 *predicate offense is a Class A or Y felony shall be guilty of a Class Y*  
11 *felony.*

12       (b) A person commits the offense of engaging in a continuing criminal  
13 gang, organization, or enterprise in the second degree if he:

14       (1) *Commits or attempts to commit, or solicits to commit a felony*  
15 *predicate criminal offense; and*

16       (2) That offense is a part of continuing series of two (2) or more  
17 predicate criminal offenses which are undertaken by that person in concert  
18 with two (2) or more other persons but does not occupy position of organizer,  
19 a *supervisory position, or any other position of management.*

20       (3) *A person who engages in a continuing criminal gang, organization or*  
21 *enterprise in the second degree is guilty of a felony one classification*  
22 *higher than the classification of the highest underlying offense referenced in*  
23 *subdivision (b)(1) of this section. A person who engages in a continuing*  
24 *criminal gang, organization or enterprise where the underlying predicate*  
25 *offense is a Class A or Y felony shall be guilty of a Class Y felony.*

26       (c) Any sentence of imprisonment imposed pursuant to this section shall  
27 be in addition to any sentence imposed for the violation of a predicate  
28 criminal offense.

29       5-74-105. UNAUTHORIZED USE OF ANOTHER PERSONS PROPERTY TO FACILITATE  
30 CERTAIN CRIMES.

31       (a) A person commits the offense of unauthorized use of another persons  
32 property to facilitate a crime when he knowingly uses the property of another  
33 person to facilitate in any way the violation of a predicate criminal offense  
34 without the owners knowledge. A violation of this section is a Class B  
35 felony.

1 (b) The State of Arkansas is the victim in any violation of this  
2 section.

3 5-74-106. SIMULTANEOUS POSSESSION OF DRUGS AND FIREARMS.

4 (a) No person shall unlawfully *commit a felony violation of A.C.A. §5-*  
5 *64-401, or unlawfully Attempt, Solicit or Conspire to commit a felony*  
6 *violation of A.C.A. §5-64-401 while in possession of:*

7 (1) a firearm, or

8 (2) any implement or weapon which may be used to inflict serious  
9 physical injury or death and which under the circumstances served no apparent  
10 lawful purpose.

11 (b) It is a defense to this statute that the defendant was in his home  
12 and the firearm was not readily accessible for use.

13 (c) Any person who violates this section is guilty of a Class Y felony.

14 (d) *This section shall not be applied to misdemeanor drug offenses.*

15 5-74-107. UNLAWFUL DISCHARGE FOR A FIREARM FROM A VEHICLE.

16 (a) A person commits unlawful discharge of a firearm from a vehicle in  
17 the first degree if he knowingly discharges a firearm from a vehicle and  
18 thereby causes death or serious physical injury to another person. Any person  
19 who is guilty of unlawfully discharging a firearm for a vehicle in the first  
20 degree commits a Class Y felony.

21 (b) A person commits unlawful discharge of a firearm from a vehicle in  
22 the second degree if, he recklessly discharges a firearm from a vehicle in a  
23 manner that creates a substantial risk of physical injury to another person or  
24 property damages to a home, residence, or other occupiable structure. Any  
25 person who is guilty of unlawfully discharging a firearm from a vehicle in the  
26 second degree commits a Class B felony.

27 (c) Any vehicle or property used by the owner or anyone acting with the  
28 knowledge and consent of the owner to facilitate a violation of this section  
29 *is subject to forfeiture. Property which is forfeitable based on this section*  
30 *shall be forfeited pursuant to and in accordance with the procedures for*  
31 *forfeiture in A.C.A. 5-64-505, and A.C.A. 5-64-509. This is a new and*  
32 *independent grounds for forfeiture. The reference to A.C.A. 5-64-505, and*  
33 *A.C.A. 5-64-509 is procedural only and it is not a defense to forfeiture under*  
34 *this section that the shooting did not involve controlled substance.*

35 5-74-108. ENGAGING IN VIOLENT CRIMINAL GROUP ACTIVITY.

1 (a) Any person who violates any provision of Arkansas law, which is a  
2 crime of violence, while acting in concert with two (2) or more other persons  
3 shall be subject to enhanced penalties.

4 (b) Upon convictions of a crime of violence committed while acting in  
5 concert with two (2) or more other persons the classification and penalty  
6 range shall be increased by one classification.

7 (c) The fact that the group was not a criminal gang, organization or  
8 enterprise is not a defense to prosecution under this statute.

9 5-74-109. PREMISES AND REAL PROPERTY USED BY CRIMINAL GANGS,  
10 ORGANIZATIONS OR ENTERPRISES, OR USED BY ANYONE IN COMMITTING A CONTINUING  
11 SERIES OF VIOLATION; CIVIL REMEDIES.

12 (a) The intent of the General Assembly of the State of Arkansas herein  
13 is to enact civil remedies that eliminate the availability of any premises for  
14 use in the commission of a continuing series of criminal offenses.

15 (b) Common nuisance declared:

16 (1) Any premises, building or place used to facilitate the commission  
17 of a continuing series of three (3) or more criminal violations of Arkansas  
18 law is declared to be detrimental to the law-abiding citizens of our state and  
19 may be subject to an injunction, court ordered eviction, or cause of action  
20 for damages as provided for in this Chapter.

21 (c) Action to abate - Permanent injunction: Whenever there is reason  
22 to believe such a common nuisance is kept, maintained or exists in any county,  
23 the prosecuting attorney of the county, in the name of the State, or the city  
24 attorney or any incorporated city, or any citizen of the state, resident of  
25 the county, in his or her own name, may maintain permanently the person  
26 conducting or maintaining it and the owner, lessee, or agent of the building  
27 or place, in or upon which the nuisance exists, from directly or indirectly  
28 maintaining or permitting the nuisance.

29 (d) Verification of complaint: Unless filed by the prosecuting  
30 attorney, the complaint in the action shall be verified. Where there is  
31 reasonable cause to believe that any premises is being maintained in violation  
32 of this statute any judicial officer may, upon the petition of the prosecuting  
33 attorney, issue an inspection warrant for the premises.

34 (e) Temporary injunction: If the existence of the nuisance is shown in  
35 the action to the satisfaction of the court or judge, the court or judge shall

1 allow a temporary writ of injunction to abate and prevent the continuance or  
2 recurrence of the nuisance.

3 (f) Bond required - Exceptions: On granting the temporary writ, the  
4 court or judge shall require a bond on the part of the applicant to the effect  
5 that the applicant will pay to the enjoined defendant such damages, not  
6 exceeding an amount to be specified, as the defendant sustains by reason of  
7 the injunction should the court finally decide that the applicant was not  
8 entitled to the injunction. No bond shall be required where the proceeding is  
9 instituted by the prosecuting attorney or city attorney.

10 (g) Precedence of action - Exceptions: The action shall be filed in  
11 the chancery court and have precedence over all other actions, except election  
12 contests, and hearings on injunctions.

13 (h) Dismissal for want of prosecution: If the complaint is filed by a  
14 citizen, it shall not be dismissed by him or for want of prosecution except  
15 upon a sworn statement made by him setting forth the reasons why the action  
16 shall be dismissed, and by dismissal ordered by the court.

17 (i) Costs: If the action is brought by a citizen and the court finds  
18 there was reasonable ground or cause for the action, the costs shall be  
19 assessed against him.

20 (j) Order of abatement - Lien for costs - Enforcement: If the  
21 existence of the nuisance is established in the action, an order of abatement  
22 shall be entered as a part of the judgment in the case, and plaintiff's costs  
23 in carrying out the order are a lien upon the building or place. The lien is  
24 enforceable and collectible for execution issued by order of the court.

25 (k) Order of abatement - Damages:

26 (1) If the existence of the nuisance is established in the action, an  
27 order of abatement shall be entered as a part of the judgment, which order  
28 shall direct the removal from the building or place of all fixtures and other  
29 movable property used in conducting, maintaining, aiding, or abetting the  
30 nuisance and shall direct their sale in the manner provided for the sale of  
31 chattels under execution.

32 (2) The order shall provide for any appropriate equitable relief as  
33 determined by the court to be necessary to abate the nuisance and may further  
34 provide, if determined to be the least restrictive alternative available to  
35 effectively accomplish the abatement, for the effectual closing of the

1 building or place for such period of time as determined to be necessary by the  
2 court as adequate to abate the nuisance. An alternative to closure may be  
3 considered only as provided in this section.

4 (3) (A) If the court finds that any vacancy resulting from closure of  
5 the building or place may create a nuisance or that closure is otherwise  
6 harmful to the community, in lieu of ordering the building or place closed,  
7 the court may order the person who is seeking to keep the premises open to pay  
8 damages in an amount equal to the fair market rental value of the building or  
9 place for such period of time as determined appropriate by the court to the  
10 city attorney or county prosecutor. These funds are to be used to investigate  
11 and litigate future nuisance abatement actions, or they are to be used by the  
12 city or county in whose jurisdiction the nuisance is located for the purpose  
13 of carrying out their drug prevention and education programs. If awarded to a  
14 city, eligible programs may include those developed as a result of cooperative  
15 programs among schools, community agencies, and the local enforcement agency.  
16 If awarded to a county, funds shall be used for those programs that are part  
17 of any county program in place or used by county law enforcement agency.  
18 These funds shall not be used to supplant existing city, county, state, or  
19 federal resources used for drug prevention and education programs.

20 (B) For purpose of this subsection, the actual amount of rent being  
21 received for the rent of the building or place, or the existence of any  
22 vacancy therein, may be considered, but shall not be the sole determinant of  
23 the fair market rental value. Expert testimony may be used to determine the  
24 fair market rental value.

25 (4) In addition the court may award damages, equal to the plaintiffs  
26 cost in the investigation and litigation of the abatement action, not the  
27 exceed five thousand dollars (\$5,000) against any or all of the defendants,  
28 based upon the severity of the nuisance and its duration. The damages may be  
29 collected in any manner provided for the collection of any civil judgment.

30 (1) This statute does not provide for the property to be forfeited to  
31 the State but the State may at any time amend its petition to seek forfeiture  
32 if the property is subject to forfeiture under other Arkansas law.

33 (m) Custody of building: While the order of abatement remains in  
34 effect, the building or place is in the custody of the court.

35 (n) Fees - Closing of building or place: For removing and selling the

1 movable property, the city, county, or responsible law enforcement agency is  
2 entitled to charge and receive the same fees as could be charged and received  
3 for levying upon and selling like property on execution; and for closing the  
4 premises and keeping them closed, a reasonable sum shall be allowed by the  
5 court.

6 (o) Disposition of sale proceeds: The proceeds of the sale of the  
7 movable property shall be applied as follows:

8 First - To the fees and costs of the removal and sale.

9 Second - To the allowances and costs of closing and keeping closed the  
10 building or place.

11 Third - To the payment of the plaintiff's costs in the action.

12 Fourth - The balance, if any, to the owner of the property.

13 (p) Release of the building to owner:

14 (1) If the owner of the building or place has not been guilty of any  
15 contempt of court in the proceedings, and appears and pays all costs, fees,  
16 and allowances that are a lien on the building or place and files a bond in  
17 the full value of the property conditioned that the owner will immediately  
18 abate any nuisance that may exist at the building or place and prevent it from  
19 being a nuisance within a period of one (1) year thereafter, the court or  
20 judge may, if satisfied of the owner's good faith, order the building or place  
21 to be delivered to the owner, and the order of abatement canceled so far as it  
22 may relate to the property.

23 (2) The release of property under the provisions of the this section  
24 does not release it from any judgment, lien, penalty, or liability to which it  
25 may be subject.

26 (q) Lien of fine - Enforcement:

27 (1) Whenever the owner of a building or place upon which the act or  
28 acts constituting the contempt have been committed, or the owner of any  
29 interest therein, has been guilty of a contempt of court, and fined in any  
30 proceedings under this subchapter, the fine is a lien upon the building or  
31 place to the extent of his interest in it.

32 (2) The lien is enforceable and collectible by execution issued by  
33 order of the court.

34 (r) Violations - Criminal penalties: A violation or disobedience of  
35 the injunction or order for abatement is punishable as a contempt of court by

1 a fine of not less than two hundred dollars (\$200) nor more than one thousand  
2 dollars (\$1,000), or by imprisonment in the county jail for not less than one  
3 (1) nor more than six (6) months, or by both."

4

5 SECTION 2. All provisions of this act of a general and permanent nature  
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
7 Revision Commission shall incorporate the same in the Code.

8

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

14

15 SECTION 4. REPEALER. All laws and parts of laws in conflict with this  
16 act are hereby repealed. However, there is not intent by enactment of the  
17 "Arkansas Criminal Gang, Organization or Enterprise Act" to repeal existing  
18 state law governing substantive criminal offenses, including those mentioned  
19 herein, or enhancement of penalties relating to those offenses, and this act  
20 is designed to provide alternative remedies to those which exist under current  
21 state law.

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23 /s/M. Wilson

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25 APPROVED: 4/12/93

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