



# SENATE BILL No. 943

December 7, 1993, Introduced by Senators Van Regenmorter, Gougeon, Cisky, Dingell, Faust, Berryman, Welborn, DiNello, Arthurhultz and O'Brien and referred to the Committee on Judiciary

A bill to prohibit certain organized gang-related activity to create the statewide organized gang data base to prescribe the powers and duties of certain state and local officials and agencies and to prescribe remedies and penalties

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1       Sec 1    This act shall be known and may be cited as the  
2 "Michigan youth and gang crime act"

3       Sec 2    As used in this act

4       (a) "Course or pattern of criminal activity" means 2 or more  
5 gang-related criminal offenses committed in whole or in part  
6 within this state if all of the following circumstances exist

7       (1) At least 1 of the offenses was committed after the  
8 effective date of this act

9       (11) At least 2 offenses were committed within 5 years of  
10 each other

1       (111) At least 1 offense involved the solicitation to  
2 commit, conspiracy to commit, attempt to commit, or commission of  
3 a felony

4       (b) "Department" means the department of state police

5       (c) "Designee" means any attorney for a public authority who  
6 has received written permission from the prosecuting attorney to  
7 file or join in a civil action authorized by this act

8       (d) "Director" means the director of the department

9       (e) "Gang-related" means any criminal activity, enterprise,  
10 pursuit, or undertaking directed by, ordered by, authorized by,  
11 consented to, agreed to, requested by, acquiesced in, or ratified  
12 by any organized gang leader, officer, or governing or  
13 policy-making person or authority, or by any agent, representa-  
14 tive, or deputy of the organized gang leader, officer, person, or  
15 policy-making person or authority under any of the following  
16 circumstances

17       (1) With the intent to increase the organized gang's size,  
18 membership, prestige, dominance, or control in any geographical  
19 area

20       (11) With the intent to provide the organized gang with any  
21 advantage in, or any control or dominance over, any criminal  
22 market sector, including, but not limited to, the manufacture,  
23 delivery, or sale of a controlled substance, arson, traffic in  
24 stolen property or stolen credit cards, traffic in prostitution  
25 or obscenity, or any other crime that involves robbery, burglary,  
26 or theft

1       (111) With the intent to obstruct justice, or intimidate or  
2 eliminate any witness against the organized gang or any member of  
3 the organized gang

4       (1v) With the intent to otherwise directly or indirectly  
5 cause any benefit, aggrandizement, gain, profit, or other advan-  
6 tage to or for the organized gang, its reputation, influence, or  
7 membership

8       (f) "Organized gang" means any combination, confederation,  
9 network, conspiracy, understanding, or other similar conjoining  
10 in law or in fact of 3 or more persons with an established hier-  
11 archy that through its membership or through the agency of any  
12 member engages in a course or pattern of criminal activity

13       (g) "Organized gang member" means a person who belongs to an  
14 organized gang, and any person who knowingly acts as an agent for  
15 or as an accessory to, or is legally accountable for, or volun-  
16 tarily associates with an organized gang-related course or pat-  
17 tern of criminal activity, whether in a preparatory, executory,  
18 or cover-up phase of that activity, or who knowingly performs,  
19 aids, or abets that activity

20       (h) "Prosecuting attorney" means the prosecuting attorney  
21 for a county, an assistant prosecuting attorney for a county, the  
22 attorney general, the deputy attorney general, an assistant  
23 attorney general, or a special prosecuting attorney

24       (i) "Public authority" means any unit of local government or  
25 school district created or established under the constitution or  
26 laws of this state

1       (j) "Public park" means property designated by this state or  
2 a local unit of government of this state as a public park

3       (k) "School property" means a building, playing field, or  
4 property used for school purposes to impart instruction to chil-  
5 dren in grades kindergarten through 12, when provided by a  
6 public, private, denominational, or parochial school, except  
7 those buildings used primarily for adult education or college  
8 extension courses

9       (l) "SWORD" means the statewide organized gang data base  
10 created pursuant to this act

11       Sec 3     (1) Except as provided in subsections (2) and (3),  
12 a person who expressly or impliedly threatens to do bodily harm  
13 or does bodily harm to an individual or to that individual's  
14 family or uses any other criminally unlawful means to solicit or  
15 cause any person to join any organization or association is  
16 guilty of a felony, punishable by imprisonment for not more than  
17 2 years or a fine of not more than \$1,000 00, or both

18       (2) Except as provided in subsection (3), a person 18 years  
19 of age or older who expressly or impliedly threatens to do bodily  
20 harm or does bodily harm to a person less than 18 years of age or  
21 uses any other criminally unlawful means to solicit or cause any  
22 person less than 18 years of age to join any organization or  
23 association is guilty of a felony, punishable by imprisonment for  
24 not more than 4 years or a fine of not more than \$2,000 00, or  
25 both

26       (3) A person who, on school property, or in a conveyance  
27 owned, leased, or contracted by a school to transport students to

1 or from school property or a school related activity, or in a  
2 public park, or on any public property within 1,000 feet of  
3 school property or a public park, expressly or impliedly threat-  
4 ens to do bodily harm or does bodily harm to an individual or to  
5 that individual's family or uses any other criminally unlawful  
6 means to solicit or cause any person to join any organization or  
7 association is guilty of a felony, punishable by imprisonment for  
8 not more than 5 years or a fine of not more than \$3,000 00, or  
9 both

10       Sec 4    The department may do 1 or more of the following

11       (a) Provide a uniform reporting format for entering relevant  
12 information regarding the report of an arrested organized gang  
13 member into SWORD

14       (b) Notify all law enforcement agencies that reports of  
15 arrested organized gang members or organized gang affiliates  
16 shall be entered into the data base as soon as the minimum level  
17 of data specified by the department is available to the reporting  
18 agency, and that no waiting period for the entry of that data  
19 exists

20       (c) Develop and implement a policy for notifying law  
21 enforcement agencies of the creation of new organized gangs, or  
22 the change of a name or other identifying sign by an existing  
23 organized gang

24       (d) Compile and retain information regarding organized  
25 gangs, organized gang members, and organized gang affiliates, in  
26 a manner that allows the information to be used by law

1 enforcement agencies and other agencies, considered appropriate  
2 by the director, for investigative purposes

3 (e) Compile and maintain a historic data repository relating  
4 to organized gangs, organized gang members, and organized gang  
5 affiliates in order to develop and improve techniques utilized by  
6 law enforcement agencies and prosecutors in investigating, appre-  
7 hending, and prosecuting organized gang members and organized  
8 gang affiliates

9 (f) Create a quality control program regarding confirmation  
10 of organized gang membership and organized gang affiliation data  
11 timeliness and accuracy of information entered into SWORD, and  
12 performance audits of all entering agencies

13 (g) Locate all law enforcement agencies that could, in the  
14 opinion of the director, benefit from access to SWORD, and notify  
15 them of its existence

16 (h) Cooperate with all law enforcement agencies wishing to  
17 gain access to SWORD and facilitate their entry into the system  
18 and their continued access to it

19 Sec 5 A local law enforcement agency that is a member of  
20 the SWORD system may do 1 or more of the following

21 (a) After arresting an individual the law enforcement agency  
22 believes is a member of an organized gang or affiliate of an  
23 organized gang, create or update that individual's electronic  
24 file within SWORD

25 (b) Notify the prosecuting attorney of the accused  
26 individual's organized gang membership or organized gang  
27 affiliate status

1       Sec 6    Information that may be placed in SWORD includes,  
2 but is not required to be limited to, all of the following

3       (a) The name, last known address, birth date, and physical  
4 description of an arrested organized gang member

5       (b) Officer safety information, organized gang affiliation,  
6 and entering agency identifier

7       Sec 7    The department may develop an automated data  
8 exchange system to compile, to maintain, and to make information  
9 in SWORD electronically available to prosecutors and to other law  
10 enforcement agencies   The information may be used by prosecutors  
11 and other law enforcement agencies to combat the operations of  
12 organized criminal gangs statewide

13       Sec 8    (1) A civil cause of action is created in favor of  
14 any public authority expending money, allocating or reallocating  
15 police, fire fighting, emergency, or other personnel or  
16 resources, or otherwise incurring any loss, deprivation, or  
17 injury, or sustaining any damage, impairment, or harm, proximately  
18 caused by any course or pattern of criminal activity

19       (2) The cause of action created under subsection (1) is  
20 against any of the following

21       (a) Any organized gang in whose name, for whose benefit, on  
22 whose behalf, or under whose direction the act was committed

23       (b) Any organized gang officer or director who causes,  
24 orders, suggests, authorizes, consents to, agrees to, requests,  
25 acquiesces in, or ratifies the act

1 (c) Any organized gang member who, in the furtherance of or  
2 in connection with any organized gang-related activity, commits  
3 the act

4 (d) Any organized gang officer, director, leader, or  
5 member

6 (3) The cause of action under subsection (1) may be brought  
7 by the prosecuting attorney or by his or her designee The cause  
8 of action shall be in addition to any other civil or criminal  
9 proceeding authorized by the laws of this state or by federal  
10 law, and does not require the prosecuting attorney or his or her  
11 designee to elect a civil rather than criminal remedy, or replace  
12 any other cause of action Liability of the organized gang, its  
13 officers, directors, leaders, and members is joint and severable  
14 subject only to the apportionment and allocation of damages

15 Sec 9 (1) An action may be commenced under this act by  
16 filing a verified complaint in the same manner as in civil  
17 cases

18 (2) A complaint filed under this act, and all other ancil-  
19 lary or collateral matters arising including matter relating to  
20 discovery, motions, trial, or perfecting or executing judgments  
21 shall be subject to the revised judicature act of 1961, Act  
22 No 236 of the Public Acts of 1961, being sections 600 101 to  
23 600 9947 of the Michigan Compiled Laws, except as otherwise pro-  
24 vided in this act, or except as the court may otherwise order  
25 upon motion of the prosecuting attorney or his or her designee in  
26 matters relating to immunity or the physical safety of a  
27 witness

1       (3) The complaint shall name each complaining prosecuting  
2 attorney or his or her designee and the public authority repre-  
3 sented by that prosecuting attorney or his or her designee

4       (4) The complaint shall name as defendants the organized  
5 gang, all known organized gang officers, and any organized gang  
6 members specifically identified or alleged in the complaint as  
7 having participated in an organized gang-related course or pat-  
8 tern of criminal activity   The complaint may also name, as a  
9 class of defendants, all unknown organized gang members

10       (5) When, at any point before trial, a specific organized  
11 gang officer or organized gang member becomes known, the com-  
12 plaint may be amended to include that person as a named  
13 defendant

14       Sec 10   (1) In an action brought under this act, venue  
15 lies in any county where an act charged in the complaint as part  
16 of a course or pattern of organized gang-related criminal activ-  
17 ity was committed

18       (2) It is not necessary for all offenses necessary to estab-  
19 lishing a course or pattern of criminal activity to have occurred  
20 in any single county if the prosecuting attorneys of several  
21 counties, or their designees, each complaining of an offense,  
22 elect to join in a complaint   It is sufficient that the com-  
23 plaint, taken as a whole, alleges a course or pattern of criminal  
24 activity by an organized gang   Each count of the joint complaint  
25 shall be considered as cumulative to other counts for purposes of  
26 alleging or demonstrating a course or pattern of criminal  
27 activity

1       (3) If a course or pattern of criminal activity is alleged  
2 to have been committed or to have occurred in more than 1 county,  
3 the prosecuting attorney of each county, or his or her designee,  
4 may join the several causes of action in a single complaint. The  
5 complaint may be filed in any county agreed to by them, but join-  
6 der shall not be had without the consent of the prosecuting  
7 attorney having jurisdiction over each offense alleged as part of  
8 the course or pattern of criminal activity.

9       Sec 11   (1) All organized gangs and organized gang members  
10 engaged in a course or pattern of criminal activity within this  
11 state impliedly consent to service of process upon them as set  
12 forth in this section, or as may be otherwise authorized by the  
13 revised judicature act of 1961, Act No 236 of the Public Acts of  
14 1961, being sections 600 101 to 600 9947 of the Michigan Compiled  
15 Laws.

16       (2) Service of process upon an organized gang may be made in  
17 the manner provided for service upon a voluntary unincorporated  
18 association in a civil action, or in the manner provided for  
19 service by publication in a civil action, or by leaving a copy of  
20 the complaint and summons directed to any officer of the orga-  
21 nized gang, commanding the organized gang to appear and answer  
22 the complaint or otherwise plead at a time and place certain with  
23 any of the following:

24       (a) Any organized gang officer

25       (b) Any member of the organized gang simultaneously named in  
26 the complaint and summons

1 (c) With any parent, legal guardian, or legal custodian of  
2 any person charged with a gang-related offense if any person sued  
3 civilly under this act is less than 18 years of age and is also  
4 charged criminally or as a delinquent minor

5 (d) With the director of any agency or department of this  
6 state who is the legal guardian, guardianship administrator, or  
7 custodian of any person sued under this act

8 (e) With the probation or parole officer of any person sued  
9 under this act

10 (f) With any other person or agent as the court upon peti-  
11 tion of a prosecuting attorney or his or her designee authorizes  
12 as appropriate and reasonable under all of the circumstances

13 (3) If after being summoned an organized gang does not  
14 appear, the court shall enter an answer for the organized gang  
15 neither affirming nor denying the allegations of the complaint  
16 but demanding strict proof of the allegations contained in the  
17 complaint, and proceed to trial and judgment without further  
18 process

19 (4) If a person is named as a defendant organized gang  
20 member in a complaint, or subsequently becomes known and is added  
21 or joined as a named defendant, service of process may be had as  
22 authorized or provided for in the revised judicature act of 1961  
23 for service of process in a civil case

24 (5) Unknown organized gang members may be sued as a class  
25 and designated as a class in the caption of any complaint filed  
26 under this act Service of process upon unknown organized gang  
27 members shall be made in the manner prescribed for providing

1 notice to members of a class in a class action, or as the court  
2 directs for providing the best service and notice practicable  
3 under the circumstances including individual, personal, or other  
4 service upon all organized gang members who can be identified and  
5 located through reasonable effort

6       Sec 12   (1) In any action brought under this act, and upon  
7 the verified application of the prosecuting attorney or his or  
8 her designee, the circuit court may at any time enter a restrain-  
9 ing order, injunction, or other prohibition, or order any other  
10 relief the court considers appropriate, including, but not  
11 limited to, ordering any person to divest himself or herself of  
12 any involvement or interest, direct or indirect, in any illegal  
13 organized gang activity and imposing other reasonable restric-  
14 tions on the future illegal activities of any defendant

15       (2) A final judgment in favor of a public authority under  
16 this act entitles the public authority to recover compensatory  
17 damages for all damages, losses, impairments, or other harm prox-  
18 imately caused, together with the costs of the suit and reason-  
19 able attorneys' fees   Damages may be assessed against any orga-  
20 nized gang or against any organized gang officer or organized  
21 gang member found responsible for participating in or being  
22 legally accountable for a course or pattern of criminal activity  
23 under this act

24       Sec 13   (1) The prosecuting attorney may apply to the  
25 court that an organized gang member who testifies on behalf of a  
26 public authority in a civil proceeding brought against an  
27 organized gang under this act be granted immunity from

1 prosecution in a criminal case as to any information directly or  
2 indirectly derived from the production of evidence by the orga-  
3 nized gang member The court shall grant the order of immunity  
4 if all of the following circumstances exist

5 (a) Production of the evidence is necessary to a fair deter-  
6 mination of a course of action under this act

7 (b) The organized gang member has refused or is likely to  
8 refuse to produce the evidence on the basis of his or her privi-  
9 lege against self-incrimination

10 (2) If an organized gang member refuses, on the basis of his  
11 or her privilege against self-incrimination, to produce evidence  
12 in an action brought under this act and the judge informs the  
13 organized gang member of an order of immunity issued under this  
14 section, the organized gang member may not refuse to comply with  
15 the order on the basis of his or her privilege against  
16 self-incrimination

17 (3) The production of evidence compelled under an order  
18 issued pursuant to subsection (1) and any information directly or  
19 indirectly derived from it shall not be used against the orga-  
20 nized gang member in a criminal case except in a prosecution for  
21 perjury, false swearing, or an offense otherwise involving a  
22 failure to comply with the order

23 (4) Upon request of the organized gang member compelled, a  
24 copy of the evidence produced under the order shall be furnished  
25 to him or her