

2013 -- H 5785

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

Introduced By: Representatives Hull, McLaughlin, Carnevale, Chippendale, and Bennett

Date Introduced: February 28, 2013

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-19 of the General Laws entitled "Sentence and Execution" is
2 hereby amended by adding thereto the following section:

3 **12-19-39. Criminal street gang enhancement.** -- (a) "Criminal street gang" means an
4 ongoing organization, association, or group of three (3) or more persons, whether formal or
5 informal, having as one of its primary activities the commission of criminal or delinquent acts;
6 having an identifiable name or common identifiable signs, colors or symbols; and whose
7 members individually or collectively engage in or have engaged in a pattern of criminal gang
8 activity.

9 (b) Any person who is convicted of any felony or misdemeanor that is knowingly
10 committed for the benefit, at the direction of, or in association with any criminal street gang or
11 criminal street gang member, with the intent to promote, further, or assist in the affairs of a
12 criminal street gang or criminal conduct by criminal street gang members, in addition to the
13 sentence provided for the commission of the underlying offense, shall be subject to the following:

14 (1) A person who is convicted of a misdemeanor shall be imprisoned for an additional
15 term of not more than one year.

16 (2) A person who is convicted of a felony shall be imprisoned for an additional term of
17 not more than ten (10) years.

18 (c) Whenever it appears that a person may be subject to the enhanced sentence in this
19 section, the prosecuting agency, in no case later than the first pretrial conference, shall file with

1 the court a notice specifying that the defendant, upon conviction, is subject to the imposition of
2 sentencing in accordance with this section.

3 (d) For misdemeanor offenses, upon any plea of guilty or nolo contendere or verdict or
4 finding of guilty of the defendant, the district court shall conduct a sentencing hearing. At the
5 hearing, the court shall permit the prosecuting agency and the defense to present additional
6 evidence relevant to the determination of whether the defendant knowingly committed the offense
7 for the benefit, at the direction of, or in association with any criminal street gang or criminal
8 street gang member, with the intent to promote, further, or assist in the affairs of a criminal street
9 gang or criminal conduct by criminal street gang members. If the finder of fact at the hearing, or
10 in the case of a plea of guilty or nolo contendere, the district court at sentencing, determines
11 beyond a reasonable doubt that the defendant's actions were so motivated, he or she shall be
12 sentenced as provided in subsection (b).

13 (e) For felony offenses and for misdemeanor offenses in which the defendant claims a
14 jury trial either in the first instance or by appeal, upon any plea of guilty or nolo contendere or
15 verdict or finding of guilt of the defendant, the court shall conduct a sentencing hearing. At the
16 hearing, the court shall permit the prosecuting agency and the defense to present additional
17 evidence to the jury relevant to the determination of whether the defendant knowingly committed
18 the offense for the benefit, at the direction of, or in association with any criminal street gang or
19 criminal street gang member, with the intent to promote, further, or assist in the affairs of a
20 criminal street gang or criminal conduct by criminal street gang members. If the jury at the
21 hearing, or in the case of a plea of guilty or nolo contendere, the court at sentencing, determines
22 beyond a reasonable doubt that the defendant's actions were so motivated, he or she shall be
23 sentenced as provided in subsection (b).

24 (f) This section does not create a separate offense but provides an additional enhanced
25 sentence for the underlying offense.

26 (g) The enhanced sentence provided in this section shall run consecutively to the
27 sentences provided for the underlying offenses.

28 (h) The imposition or execution of the sentence provided in this section may not be
29 suspended.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

1 This act would establish a sentence enhancement for those who commit misdemeanors or
2 felonies for the benefit, at the direction of, or in association with any criminal street gang or
3 criminal street gang member, with the intent to promote, further or assist in the affairs of a
4 criminal street gang or criminal conduct by criminal street gang members.

5 This act would take effect upon passage.

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