WEST VIRGINIA CODE CHAPTER 61 ARTICLE 13

WV Legislature

§61-13-1. Findings.

(a) The Legislature hereby finds that there is evidence of an increasing incidence of larger scale organized criminal activity and gang activity in various parts of this state and that new statutes are necessary to protect the lives and property of the overwhelming majority of West Virginians who are law-abiding citizens. The evidence presented to the Legislature reflects that persons engaged in larger scale ongoing criminal or gang enterprises are of all ages, multiple racial and ethnic origin, and all pose a rising threat.

(b) The Legislature further finds that there is a tendency among certain of these enterprises to actively recruit, sometimes coercively, people into joining such organizations as well as organized efforts to intimidate witnesses who may be in a position to offer testimony regarding the organized criminal enterprises and that such behavior cannot be tolerated.

(c) The Legislature further finds that lawful use of public nuisance and forfeiture laws can substantially aid in a reduction of larger scale organized criminal enterprises.

(d) The Legislature further finds that criminal statutes tailored to the particular problems represented by such organized criminal enterprises combined with community education and existing alternative sentencing laws can aid in reducing this new threat.

WV Legislature

§61-13-2. Definitions.

As used in this article:

(1) “Gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its activities the commission of one or more qualifying offenses, and whose members engage in or have engaged in qualifying offenses.

(2) "Organized criminal enterprise" means a combination of five or more persons engaging over a period of not less than six months in one or more of the qualifying offenses set forth in this section.

(3) "Qualifying offense" means a violation of the felony provisions of §33-41-11 of this code; the provisions of §33-44-1 *et seq*. of this code; the felony provisions of §60A-1-101 *et seq*. of this code; the felony provisions of §61-2-1 *et seq*. of this code; the provisions of §61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-11, §61-3-12, §61-3-13, §61-3-14, §61-3-18, §61-3-19, §61-3-20, §61-3-20a, §61-3-21, §61-3-22, §61-3-22a, §61-3-24, §61-3-24a, §61-3-24b, §61-3-24d, §61-3-44, §61-3-45, §61-3-45a, §61-3-49b, §61-3-54, §61-3-56, §61-3-57 of this code; the felony provisions of §61-3C-1 *et seq*. of this code; the felony provisions of §61-3E-1 *et seq*. of this code; the felony provisions of §61-4-1 *et seq*. of this code; the provisions of §61-5-1 *et seq*. of this code; the provisions of §61-6-24 of this code; the provisions §61-8-8 of this code; the felony provisions of §61-8A-1 *et seq*. of this code; the felony provisions of §61-8C-1 *et seq*. of this code; the provisions of §61-14-1 *et seq*. of this code; and the provisions of §61-15-2 of this code.

WV Legislature

§61-13-3. Offenses.

(a) Any person who knowingly and willfully becomes a member of a gang or an organized criminal enterprise, and who knowingly promotes, furthers, or assists in the commission of any qualifying offense himself or herself or in combination with another member of an organized criminal enterprise or gang, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than 10 years or fined not more than $25,000, or both imprisoned and fined. The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(b) Any person who knowingly solicits, invites, recruits, encourages, or causes another to become a member of an organized criminal enterprise or gang, or to assist members of an organized criminal enterprise or gang, to aid or assist in the commission of a qualifying offense by one or more members of an organized criminal enterprise or gang, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not more than five years or fined not more than $10,000, or both imprisoned and fined. The offense set forth in this subsection is separate and distinct from that of any qualifying offense and may be punished separately.

(c) Any person who shall, by threats, menaces, or otherwise, intimidate, or attempt to intimidate, a witness for the state in any prosecution under the provisions of this article, for the purpose of preventing the attendance of the witness at the trial of the case or to change testimony, or shall in any way or manner prevent, or attempt to prevent, the attendance of any witness at the trial, shall be guilty of a felony and, upon conviction, shall be confined not more than 10 years.

WV Legislature

§61-13-4. Premises used by organized criminal enterprises; nuisances; actions for injunction, abatement and damages; other remedies for unlawful use; exceptions.

(a) Every private building or place used by members of an organized criminal enterprise for the commission of qualifying offenses is a nuisance and may be the subject of an injunction or cause of action for damages or for abatement of the nuisance as provided for in article nine of this chapter.

(b) Any person may file a petition for injunctive relief with the appropriate court seeking eviction from or closure of any premises used for the operation of an organized criminal enterprise. Upon proof by the plaintiff that the premises are being used by members of an organized criminal enterprise for the commission of a qualifying offense or offenses, the court may order the owner of record or the lessee of the premises to remove or evict the persons from the premises and order the premises sealed, prohibit further use of the premises, or enter such order as may be necessary to prohibit the premises from being used for the commission of a pattern of criminal gang activity and to abate the nuisance.

WV Legislature

§61-13-5. Forfeiture.

(a) The following are declared to be contraband and no person shall have a property interest in them:

(1) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

(b) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(c) Forfeiture actions under this section shall use the procedures set forth in article seven, chapter sixty-a of this code.

WV Legislature

§61-13-6. Exempted activities; limitations on scope.

Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to, any labor or employment relations issue; demonstration at the seat of federal, state, county, or municipal government; or activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

WV Legislature