WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4188

(By Delegates Lawrence, Stowers, Skaff, Phillips, Hamilton, D. Poling, Manypenny, Marshall, T. Walker, Moore and Ellem)

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Passed March 13, 2010

In Effect Ninety Days From Passage
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COMMITTEE SUBSTITUTE

FOR

H. B. 4188

(BY DELEGATES LAWRENCE, STOWERS, SKAFF, PHILLIPS, HAMILTON, D. POLING, MANYPENNY, MARSHALL, T. WALKER, MOORE AND ELLEM)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §30-29-3 and §30-29-10 of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereeto a new article, designated §61-13, §61-13-2, §61-3-3, §61-3-4, §61-3-5 and §61-3-6, all relating to requiring an organized criminal organization investigation component with accompanying anti-racial profiling education and training for law enforcement; creating anti-organized criminal enterprise act; authorizing rulemaking, including emergency rules; creating timetable for developing procedures and rules; creating offenses of being a member of an organized criminal enterprise; criminalizing witness intimidation in organized criminal enterprise prosecutions; establish qualifying offenses; creating the offense of soliciting or inviting membership in an organized criminal enterprise; making premises used by organized criminal enterprises subject to public nuisance laws; allowing for forfeiture of property used for or obtained through organized criminal enterprises; establishing exempted activities; offenses; and penalties.
Be it enacted by the Legislature of West Virginia:

That §30-29-3 and §30-29-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be further amended by adding thereto a new article, designated article §61-13-1, §61-13-2, §61-13-3, §61-13-4, §61-13-5 and §61-13-6, all to read as follows:

§30-29-3. Duties of the Governor’s committee and the subcommittee.

Upon recommendation of the subcommittee, the Governor’s committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

(a) Provide funding for the establishment and support of law-enforcement training academies in the state;

(b) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(c) Establish minimum law-enforcement instructor qualifications;

(d) Certify qualified law-enforcement instructors;

(e) Maintain a list of approved law-enforcement instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory
completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(h) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(i) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in article thirteen, chapter sixty-one of this code, while preventing racial profiling, as defined in section ten of this article, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the Governor’s committee as required in this section;

(j) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling, and a time frame for which all law-enforcement officers must receive such training: Provided,
That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the Governor’s committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

(k) Certify law-enforcement officers, as provided in section five of this article;

(l) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(m) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(n) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account establish pursuant to section four of this article.

§30-29-10. Prohibition of racial profiling.

(a) The Legislature finds that the use by a law-enforcement officer of race, ethnicity, or national origin in deciding which persons should be subject to traffic stops, stops and frisks, questioning, searches, and seizures is a problematic law-enforcement tactic. The reality or public perception of racial profiling alienates people from police, hinders community policing efforts, and causes law-enforcement officers and law-enforcement agencies to lose credibility and trust among the people law-enforcement is sworn to protect and serve. Therefore, the West Virginia
Legislature declares that racial profiling is contrary to public policy and should not be used as a law-enforcement investigative tactic.

(b) For purposes of this section:

(1) The term "law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof.

(2) The term "municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state.

(3) The term "racial profiling" means the practice of a law-enforcement officer relying, to any degree, on race, ethnicity, or national origin in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law-enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on race, ethnicity, or national origin in combination with other identifying factors when the law-enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity, or national origin is part of the description of the suspect.

(4) The term "state and local law-enforcement agencies" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(c) No law-enforcement officer shall engage in racial profiling.
(d) All state and local law-enforcement agencies shall establish and maintain policies and procedures designed to eliminate racial profiling. Policies and procedures shall include the following:

(1) A prohibition on racial profiling;

(2) Independent procedures for receiving, investigating, and responding to complaints alleging racial profiling by law-enforcement officers;

(3) Procedures to discipline law-enforcement officers who engage in racial profiling;

(4) Procedures to insure the inclusion of training in the investigation of organized criminal enterprises and anti-racial profiling training in new officer training and to law-enforcement officers who have not received such training as certified by the Governor's committee; and

(5) Any other policies and procedures deemed necessary by state and local law-enforcement agencies to eliminate racial profiling.

ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT.

§61-13-1. Findings.

(a) The Legislature hereby finds that there is evidence of an increasing incidence of larger scale organized criminal 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
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.


As used in this article:

“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.

“Qualifying offense” means a violation of the felony provisions of section eleven, article forty-one, chapter thirty-three of this code; the felony provisions of chapter 60A of this code; the felony provisions of article two of this chapter; the provisions of sections one, two, three, four, five, eleven, twelve, thirteen, fourteen, eighteen, nineteen, twenty-four,
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twenty-four-a, twenty-four-b and twenty-four-d, article three
of this chapter; the felony provisions of sections article three-
c of this chapter; the felony provisions of article three-e of
this chapter; the felony provisions of article four of this
chapter; the provisions of section eight, article eight of this
chapter; the felony provisions of article eight-a of this chapter
and the felony provisions of article eight-c of this chapter.


(a) Any person who knowingly and willfully becomes a
member of an organized criminal enterprise and who
knowingly promotes, further or assists in the commission of
any qualifying offense himself or herself or in combination
with another member of an organized criminal enterprise
shall be guilty of a felony and, upon conviction, shall be
confined in a state correctional facility for not more than ten
years or fined not more than $25,000, or both. 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 to assist members of an
organized criminal enterprise to aid or assist in the
commission of a qualifying offense by one or more members
of an organized criminal enterprise shall be guilty of a felony
and, upon conviction, be confined in a state correctional
facility for not more than five years or fined not more than
$10,000, or both.

(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 such
witness at the trial of such case or to change testimony, or
shall in any way or manner prevent, or attempt to prevent, the attendance of any such witness at such trial, shall be guilty of a felony, and, upon conviction, shall be confined not more than ten years.

§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 an 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.


(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.

§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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 15th day of April, 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 8 5 2010

Time 10:00A