

2010 APR -1 PM 4: 26

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 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

HB 4188

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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 thereto a new article, designated §61-13-1, §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.

FILED

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OFFICE OF THE CLERK
SECRETARY OF STATE

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.

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

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

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

12 (c) Establish minimum law-enforcement instructor
13 qualifications;

14 (d) Certify qualified law-enforcement instructors;

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

17 (f) Promulgate standards governing the qualification of
18 law-enforcement officers and the entry-level law-enforcement
19 training curricula. These standards shall require satisfactory

20 completion of a minimum of four hundred classroom hours,
21 shall provide for credit to be given for relevant classroom
22 hours earned pursuant to training other than training at an
23 established law-enforcement training academy if earned
24 within five years immediately preceding the date of application
25 for certification, and shall provide that the required classroom
26 hours can be accumulated on the basis of a part-time
27 curricula spanning no more than twelve months, or a full-
28 time curricula;

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

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

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

43 (j) Establish, no later than July 1, 2011, procedures for
44 implementation of a course in investigation of organized
45 criminal enterprises which includes an anti-racial training
46 module to be available on the internet or otherwise to all law-
47 enforcement officers. The procedures shall include the
48 frequency with which a law-enforcement officer shall receive
49 training in investigation of organized criminal enterprises and
50 anti-racial profiling, and a time frame for which all law-
51 enforcement officers must receive such training: *Provided,*

52 That all law-enforcement officers in this state shall receive
53 such training no later than July 1, 2012. In order to
54 implement and carry out the intent of this section, the
55 Governor's committee may promulgate emergency rules
56 pursuant to section fifteen, article three, chapter twenty-nine-
57 a of this code;

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

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

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

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

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

1 (a) The Legislature finds that the use by a law-
2 enforcement officer of race, ethnicity, or national origin in
3 deciding which persons should be subject to traffic stops,
4 stops and frisks, questioning, searches, and seizures is a
5 problematic law-enforcement tactic. The reality or public
6 perception of racial profiling alienates people from police,
7 hinders community policing efforts, and causes law-
8 enforcement officers and law-enforcement agencies to lose
9 credibility and trust among the people law-enforcement is
10 sworn to protect and serve. Therefore, the West Virginia

11 Legislature declares that racial profiling is contrary to public
12 policy and should not be used as a law-enforcement
13 investigative tactic.

14 (b) For purposes of this section:

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

20 (2) The term “municipality” means any incorporated
21 town or city whose boundaries lie within the geographic
22 boundaries of the state.

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

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

39 (c) No law-enforcement officer shall engage in racial
40 profiling.

41 (d) All state and local law-enforcement agencies shall
42 establish and maintain policies and procedures designed to
43 eliminate racial profiling. Policies and procedures shall
44 include the following:

45 (1) A prohibition on racial profiling;

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

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

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

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

ARTICLE 13. ANTI-ORGANIZED CRIMINAL ENTERPRISE ACT.

§61-13-1. Findings.

1 (a) The Legislature hereby finds that there is evidence of
2 an increasing incidence of larger scale organized criminal
3 activity in various parts of this State and that new statutes are
4 necessary to protect the lives and property of the
5 overwhelming majority of West Virginians who are law-
6 abiding citizens. The evidence presented to the Legislature
7 reflects that persons engaged in larger scale ongoing criminal

8 enterprises are of all ages, multiple racial and ethnic origin
9 and all pose a rising threat.

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

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

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

§61-13-2. Definitions.

1 As used in this article:

2 “Organized criminal enterprise” means a combination of
3 five or more persons engaging over a period of not less than
4 six months in one or more of the qualifying offenses set forth
5 in this section.

6 “Qualifying offense” means a violation of the felony
7 provisions of section eleven, article forty-one, chapter thirty-
8 three of this code; the felony provisions of chapter 60A of
9 this code; the felony provisions of article two of this chapter;
10 the provisions of sections one, two, three, four, five, eleven,
11 twelve, thirteen, fourteen, eighteen, nineteen, twenty-four,

12 twenty-four-a, twenty-four-b and twenty-four-d, article three
13 of this chapter; the felony provisions of sections article three-
14 c of this chapter; the felony provisions of article three-e of
15 this chapter; the felony provisions of article four of this
16 chapter; the provisions of section eight, article eight of this
17 chapter; the felony provisions of article eight-a of this chapter
18 and the felony provisions of article eight-c of this chapter.

§61-13-3. Offenses.

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

11 (b) Any person who knowingly solicits, invites, recruits,
12 encourages or causes another to become a member of an
13 organized criminal enterprise or to assist members of an
14 organized criminal enterprise to aid or assist in the
15 commission of a qualifying offense by one or more members
16 of an organized criminal enterprise shall be guilty of a felony
17 and, upon conviction, be confined in a state correctional
18 facility for not more than five years or fined not more than
19 \$10,000, or both.

20 (c) Any person who shall, by threats, menaces, or
21 otherwise, intimidate, or attempt to intimidate, a witness for
22 the state in any prosecution under the provisions of this
23 article, for the purpose of preventing the attendance of such
24 witness at the trial of such case or to change testimony, or

25 shall in any way or manner prevent, or attempt to prevent, the
26 attendance of any such witness at such trial, shall be guilty of
27 a felony, and, upon conviction, shall be confined not more
28 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.**

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

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

§61-13-5. Forfeiture.

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

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

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

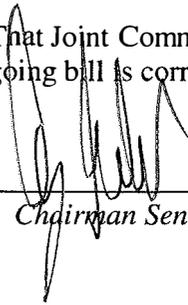
9 (b) In any action under this section, the court may enter
10 such restraining orders or take other appropriate action,
11 including acceptance of performance bonds, in connection
12 with any interest that is subject to forfeiture.

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

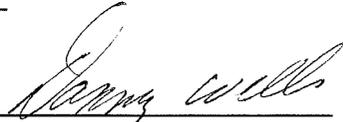
§61-13-6. Exempted activities; limitations on scope.

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

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



Chairman Senate Committee



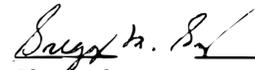
Chairman House Committee

Originating in the House.

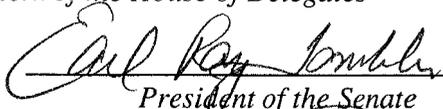
In effect ninety days from passage.



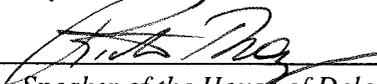
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate

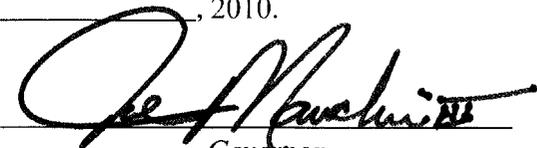


Speaker of the House of Delegates

SECRETARY OF STATE

2010 APR - 1 PM 4: 26

The within is approved this the 1st
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2010

Time 10:00hr