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## **An Act To Define, Prevent and Suppress Gang Activity in the State**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** criminal street gang activity is a danger to society; and

**Whereas,** prohibiting the recruitment of children into criminal street gangs will decrease the prevalence of gangs; and

**Whereas,** this legislation imposes a severe penalty for criminal street gang behavior, which will serve as a deterrent and also decrease the prevalence of criminal street gangs and gang-related behavior; and

**Whereas,** in order to protect children and society, it is necessary that this legislation take effect as soon as possible; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 17-A MRS §517** is enacted to read:

### **§ 517. Criminal street gang solicitation**

**1.** A person is guilty of criminal street gang solicitation if that person solicits, invites, recruits, encourages or otherwise causes or attempts to cause another individual to become a member of, remain in or actively participate in what the person knows to be a criminal street gang.

**2.** As used in this section, “criminal street gang” means a formal or informal ongoing organization, association or group of 3 or more individuals:

**A.** That has as one of its primary objectives or activities the commission of criminal activity;

**B.** Whose members share a common name, identifying sign, symbol, physical marking, style of dress or use of a hand sign; and

**C.** Whose members, individually or collectively, have engaged in the commission, attempted commission, solicitation to commit or conspiracy to commit any of the following offenses 2 or more times:

(1) An assault against a person, as prohibited by section 152-A; section 201; section 202; section 203, subsection 1, paragraphs A and B; section 208; section 208-B; or section 208-C;

(2) A sexual assault, as prohibited by section 253, subsection 1, or section 253, subsection 2, paragraphs A to D;

(3) Kidnapping, as prohibited by section 301;

(4) Criminal restraint, as prohibited by section 302;

(5) A theft offense, as prohibited by section 353, subsection 1, paragraph B, subparagraphs (1) and (2) or section 354, subsection 1, paragraph B, subparagraph (3);

(6) Burglary, as prohibited by section 401;

(7) Robbery, as prohibited by section 651;

(8) Arson, as prohibited by section 802;

(9) Tampering with a witness, juror, informant or victim, as prohibited by section 454; and

(10) A drug offense, as prohibited by section 1103, 1105-A, 1105-B, 1105-C, 1106, 1107-A, 1118, 1119, 1120, 1121, 1122 or 1123.

**3. Criminal street gang solicitation is a Class A crime.**

**Sec. 2. 17-A MRSA §1252, sub-§4-F** is enacted to read:

**4-F.** If the State pleads and proves that the defendant committed an offense described in paragraph B as a criminal street gang member or for the benefit of, at the direction of or in association with a criminal street gang member, the court, notwithstanding any other provision of this Code, shall impose the sentencing alternative specified in paragraph C.

**A.** As used in this subsection, the following terms have the following meanings.

(1) "Criminal street gang" has the same meaning as in section 517.

(2) "Criminal street gang member" means an individual to whom 2 or more of the following apply:

(a) The individual admits to criminal street gang membership;

(b) The individual is identified as a criminal street gang member by a law enforcement officer, a parent or guardian of that individual or a reliable informant;

(c) The individual resides in or frequents a particular criminal street gang's area, adopts the criminal street gang's style of dress or use of hand or other signs, tattoos or other physical markings and associates with known criminal street gang members; and

(d) The individual has been arrested more than once in the company of individuals who are identified as criminal street gang members by a law enforcement officer for offenses that are consistent with usual criminal street gang activity as set out in paragraph B.

B. The following crimes are offenses for which, when committed by a criminal street gang member, a sentencing alternative must be imposed pursuant to paragraph C:

(1) An assault against a person, as prohibited by section 152-A; section 201; section 202; section 203, subsection 1, paragraphs A and B; section 208; section 208-B; or section 208-C;

(2) A sexual assault, as prohibited by section 253, subsection 1, or section 253, subsection 2, paragraphs A to D;

(3) Kidnapping, as prohibited by section 301;

(4) Criminal restraint, as prohibited by section 302;

(5) A theft offense, as prohibited by section 353, subsection 1, paragraph B, subparagraphs (1) and (2) or section 354, subsection 1, paragraph B, subparagraph (3);

(6) Burglary, as prohibited by section 401;

(7) Robbery, as prohibited by section 651;

(8) Arson, as prohibited by section 802;

(9) Tampering with a witness, juror, informant or victim, as prohibited by section 454;

(10) A drug offense, as prohibited by section 1103, 1105-A, 1105-B, 1105-C, 1106, 1107-A, 1118, 1119, 1120, 1121, 1122 or 1123; and

(11) Criminal street gang solicitation, as prohibited by section 517.

C. In using a sentencing alternative involving a term of imprisonment for a person convicted of an offense specified in paragraph B, a court shall, in determining the maximum period of imprisonment as the 2nd step in the sentencing process pursuant to section 1252-C, subsection 2, treat each conviction for an offense specified in paragraph B as an aggravating sentencing factor.

(1) When the sentencing class for an offense specified in paragraph B is Class A, the court shall enhance the basic term of imprisonment by a minimum of 4 years of imprisonment.

(2) When the sentencing class for an offense specified in paragraph B is Class B, the court shall enhance the basic term of imprisonment by a minimum of 2 years of imprisonment.

(3) When the sentencing class for an offense specified in paragraph B is Class C, the court shall enhance the basic term of imprisonment by a minimum of one year of imprisonment.

In arriving at the final sentence as the 3rd step in the sentencing process pursuant to section 1252-C, paragraph C, the court may not suspend that portion of the maximum term of imprisonment based on the conviction for an offense specified in paragraph B.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

## SUMMARY

This bill provides definitions of "criminal street gang" and "criminal street gang member" and creates the crime of criminal street gang solicitation. This bill requires the court to impose an enhanced sentence for certain crimes, such as murder, gross sexual assault, robbery, kidnapping, certain theft offenses and trafficking or furnishing of scheduled or synthetic hallucinogenic drugs, when those crimes are committed by a criminal street gang member.