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JUDICIARY

HOUSE FILE 2063
BY RANTS (P. 113) *Sponsored by*
Wainstadt
1-24-96

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to criminal activity, including the broadening of
2 the definition of criminal gang activity, the forfeiture of
3 gang property to fund enforcement of the Act, providing
4 enhanced penalties for any gang-related criminal activity, and
5 altering the definition of a dangerous weapon as it applies to
6 all criminal statutes, including gang activity.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2063

1 Section 1. Section 702.7, Code 1995, is amended to read as
2 follows:

3 702.7 DANGEROUS WEAPON.

4 A "dangerous weapon" ~~is-any~~ means either of the following:

5 a. An instrument or device designed primarily for use in
6 inflicting death or injury upon a human being or animal, and
7 which is capable of inflicting death upon a human being when
8 used in the manner for which it was designed.

9 b. ~~Additionally,~~ any An instrument or device of any sort
10 whatsoever which is actually used in such a manner as to
11 indicate that the defendant intends to inflict death or
12 serious injury upon the other, and which, when so used, is
13 capable of inflicting death or serious injury upon a human
14 being, ~~is-a-dangerous-weapon. Dangerous-weapons-include,~~ ~~but~~
15 ~~are-not-limited-to,~~ ~~any-offensive-weapon,~~ ~~pistol,~~ ~~revolver,~~ ~~or~~
16 ~~other-firearm,~~ ~~dagger,~~ ~~razor,~~ ~~stiletto,~~ ~~switchblade-knife,~~ ~~or~~
17 ~~knife-having-a-blade-exceeding-five-inches-in-length.~~

18 Sec. 2. Section 723A.1, subsection 1, Code Supplement
19 1995, is amended to read as follows:

20 1. "Criminal acts" means any of the following or any
21 combination of the following:

22 a. An offense constituting a violation of section 124.401
23 ~~involving-a-controlled-substance,~~ ~~a-counterfeit-substance,~~ ~~or~~
24 ~~a-simulated-controlled-substance.~~

25 b. An offense constituting a violation of chapter 711
26 ~~involving-a-robbery-or-extortion.~~

27 c. An offense constituting a violation of ~~section-708-6~~
28 ~~involving-an-act-of-terrorism~~ chapter 708.

29 d. An offense constituting a violation of section 708-8
30 723.1.

31 e. An offense constituting a violation of section 720.4.

32 f. ~~Any-other~~ An offense constituting a forcible felony as
33 defined in section 702.11.

34 g. An offense constituting a violation of chapter 724.

35 h. Brandishing a dangerous weapon. For purposes of this

1 section, "brandishing a dangerous weapon" means the display or
2 exhibition of a dangerous weapon, with the intent to
3 intimidate or threaten another person, or the actual use of
4 the dangerous weapon in a manner which is intended to or does
5 cause serious injury or death.

6 Sec. 3. Section 723A.2, Code 1995, is amended to read as
7 follows:

8 723A.2 CRIMINAL GANG PARTICIPATION.

9 1. a. A person who actively participates in or is a
10 member of a criminal street gang and who willfully aids and
11 abets any a criminal act committed for the benefit of, at the
12 direction of, or in association with any criminal street gang,
13 commits a class "D" felony.

14 b. Notwithstanding the provisions of chapter 902, a person
15 who is convicted of a violation of paragraph "a" shall serve
16 the full sentence imposed for the violation of paragraph "a",
17 without the opportunity for parole or work release. If more
18 than one sentence is imposed by the court, the sentence for
19 the violation of paragraph "a" shall be served first, with the
20 other sentences to be served consecutively thereafter.

21 2. A person who commits a misdemeanor contained in Title
22 XVI, subtitle 1, other than a criminal act specified in
23 section 732A.1, subsection 1, for the benefit of, at the
24 direction of, or in association with any criminal street gang,
25 shall be sentenced to a term of confinement in addition to and
26 that shall run consecutively with any sentence imposed for the
27 underlying offense, without the opportunity for parole or work
28 release, according to the following:

29 a. For a simple misdemeanor, the additional sentence shall
30 be not less than fifteen days but not more than sixty days.

31 b. For a serious misdemeanor, the additional sentence
32 shall be not less than sixty days but not more than six
33 months.

34 c. For an aggravated misdemeanor, the additional sentence
35 shall be not less than six months but not greater than one

1 year.

2 3. A person who commits a felony contained in Title XVI,
3 subtitle 1, other than a criminal act specified in section
4 732A.1, subsection 1, when the offense is performed for the
5 benefit of, at the direction of, or in association with any
6 criminal street gang, shall be sentenced to a term of
7 confinement in addition to and that runs consecutively with
8 the sentence for the underlying offense, without the
9 opportunity for parole or work release, according to the
10 following:

11 a. For a class "D" felony, the additional sentence shall
12 be not less than one year but not greater than two years.

13 b. For a class "C" felony, the additional sentence shall
14 be not less than two years but not greater than five years.

15 c. For a class "B" felony, the additional sentence shall
16 be not less than five years but not greater than ten years.

17 d. For a class "A" felony, the additional sentence shall
18 be not less than ten years but not greater than twenty-five
19 years.

20 Sec. 4. NEW SECTION. 723A.5 FORFEITURE OF GANG PROPERTY.

21 1. Any profits, proceeds, instrumentalities, or other
22 property arising from or relating to the criminal acts or
23 other criminal offenses of a criminal street gang or of any
24 person who actively participates in or is a member of a
25 criminal street gang shall be subject to the provisions of
26 chapter 809.

27 2. Notwithstanding the provisions of sections 809.17 and
28 809.21, the proceeds from the disposal of seized or forfeited
29 property pursuant to subsection 1 shall not be transferred to
30 the victim compensation fund, but shall be deposited in a
31 separate fund created in the state treasury under the control
32 of the department of justice. The amount in this fund is
33 appropriated annually to the department of justice.
34 Disbursements shall be made by the department to the political
35 subdivisions upon claims filed for the costs associated with

1 listed in section 723A.1 must be served in full and
2 consecutively with any other sentences.

3 New confinement penalties are added for any other gang-
4 related criminal activity. Additional terms of confinement
5 must be served consecutively with any sentence imposed for the
6 underlying offense. The additional terms of confinement are
7 assigned according to the misdemeanor or felony classification
8 of the underlying offense. Offenses that are already
9 specifically defined as criminal acts under the chapter are
10 excluded from this additional penalty.

11 This bill may involve a state mandate subject to the
12 provisions of chapter 25B. Section 4 of the bill provides for
13 civil forfeiture proceedings for assets relating to gang
14 activity, and section 5 of the bill provides that the profits
15 from these proceedings shall be considered the complete source
16 of funding for any state mandates imposed by this bill.

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