

COMMITTEE ON HOMELAND SECURITY,
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BILL NO. 32-0130

Thirty-Second Legislature of the Virgin Islands

July 18, 2017

An Act amending the Virgin Islands Code, title 14 adding chapter 123 to enact “The Virgin Islands Criminal Street Gang Prevention Act” and title 33, chapter 111, adding section 3100w establishing the “Crime and Gang Prevention Fund”

PROPOSED BY: Senator Sammuel Sanes
Co-sponsor: Brian A. Smith

1 **WHEREAS**, it is the right of every person to be secure in his person and protected
2 from unlawful intimidation and physical harm caused by any person or criminal street gang
3 member and associate; and

4 **WHEREAS**, gang groups have proliferated in the Territory over the years at
5 alarming and dangerous rates, and

6 **WHEREAS**, the Territory presently faces growing criminal problems arising from
7 gang-related activities; and

8 **WHEREAS**, gang members and associates continue to threaten the peace and way-
9 of-life of all citizens; and

1 **WHEREAS**, the Legislature recognizes the constitutional right of every citizen to
2 harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with
3 others who share similar beliefs, to petition lawfully constituted authority for a redress of
4 perceived grievances, and to participate in the electoral process; and

5 **WHEREAS**, the Legislature finds that the Territory has a compelling interest in
6 preventing criminal street gang activities and curbing the present and growing danger
7 posed by the proliferation of criminal street gangs; and

8 **WHEREAS**, the Legislature finds that adequately addressing the social ills arising
9 directly from criminal street gangs is a political, legal and moral responsibility of the
10 Government owed to all of its citizens, and

11 **WHEREAS**, the Legislature finds that this responsibility cannot be satisfied
12 without meaningful financial investments into public and private crime and gang
13 prevention programs; and

14 **WHEREAS**, it is the intent of the Legislature to outlaw criminal street gangs and
15 their associates; and

16 **WHEREAS**, in outlawing criminal street gangs it is the intent of the Legislature to
17 initiate a two-pronged approach by providing harsh penalties for persons who have
18 engaged in gang activities, while at the same time investing in meaningful preventive and
19 intervention programs designed to help curb criminal street gang activities; and

20 **WHEREAS**, it is not the intent of this Act to interfere with the exercise of the
21 constitutionally protected rights of freedom of expression and association of any citizen;
22 and

1 **WHEREAS**, this Act does not criminalize mere association with criminal street
2 gangs, but associations made with the intent to further criminal street gang activities; Now,
3 Therefore,

4 ***Be it enacted by the Legislature of the Virgin Islands:***

5 **SECTION 1.** Title 14 Virgin Islands Code is amended by adding chapter 123 to
6 read as follows:

7 **“Chapter 123. Criminal Street Gang Prevention Act**

8 **§3050. Short title**

9 This chapter may be cited as “The Criminal Street Gang Prevention Act”.

10 **§3051. Definitions**

11 In this chapter:

12 (a) “Act of violence” means those felony offenses described in Title 23 Virgin
13 Islands Code §451(e) as crimes of violence.

14 (b) “Contraband” means any property, including money, that is owned by, in
15 the possession of, or subject to the control of a criminal street gang member or associate
16 and which is acquired by, derived from, or traceable to criminal street gang activities, or
17 profits, proceeds or instrumentalities of criminal street gang activities, or all property used
18 or intended or attempted to be used to facilitate the criminal street gang activities of any
19 criminal street gang or criminal street gang member or associate, or all profits, proceeds,
20 or instrumentalities of criminal street gang recruitment, or all property used or intended or
21 attempted to be used to facilitate criminal street gang recruitment. Contraband does not
22 include property of any person not a criminal street gang member or associate who does
23 not knowingly or willingly permit the property to be used for the furtherance of criminal
24 activities.

(c) “Criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal:

(1) which has as one of its primary objectives or activities the commission of one or more criminal activities;

(2) which has an identifiable name or identifying sign or symbol or whose members wear identifiable and utilize distinct colors and patterns in wearing apparel; and

(3) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

(d) “Pattern of criminal gang activity” means the commission of, conspiracy to commit, or attempt to commit two or more of the following offences, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within one year after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault in the first, second, third degree and aggravated assault as defined in chapter 13 of this title;

(2) Robbery of any degree as defined in chapter 93 of this title;

(3) Murder in the first, or second degree or manslaughter, as defined in chapter 45 of this title;

(4) Possession, sale, distribution, manufacturing or trafficking of controlled substances as proscribed in Title 19 Virgin Islands Code;

1 (5) Brandishing, exhibiting, or using a deadly weapon as defined in
2 chapter 31 of this title;

3 (6) Disturbing the peace as defined in chapter 31 of this title;

4 (7) Reckless endangerment as defined in chapter 31 of this title;

5 (8) Discharging or aiming firearms as defined in Title 23, chapter 5;

6 (9) Grand larceny as defined in chapter 55 of this title;

7 (10) Burglary as defined in chapter 21 of this title;

8 (11) Arson as defined in chapter 11 of this title;

9 (12) Obstruction of justice as defined in chapter 75 of this title;

10 (13) Rape as defined in chapter 85 of this title;

11 (14) Kidnapping as defined in chapter 53 of this title;

12 (15) Mayhem as defined in chapter 67 of this title;

13 (16) Stalking as defined in chapter 104 of this title;

14 (17) Receiving and possession of stolen property as defined in chapter
15 105 of this title;

16 (18) Instigating or aiding a fight as defined in chapter 32 of this title.

17 (19) Identity theft as defined in chapter 110 of this title;

18 (20) Theft of or unauthorized destruction of a vehicle as defined in
19 chapter 69 of this title.

20 (e) “Criminal street gang member” means any person who knowingly becomes
21 a member of a criminal street gang, and who participates in the criminal street gang with
22 the specific intent of promoting, furthering or assisting the criminal interests of the criminal
23 street gang.

1 (f) “electronic communication” means any transfer of signs, signals, writing,
2 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
3 radio, electromagnetic, photoelectronic or photooptical system, including includes, video,
4 telephone communications, text messages, facsimile, electronic mail messages and instant
5 message real-time communications with other individuals through the internet or other
6 means, but does not include—

7 (1) any wire or oral communication;

8 (2) any communication made through a tone-only paging device;

9 (3) any communication from a tracking device (as defined in 18
10 U.S.C.S. §3117); or

11 (4) electronic funds transfer information stored by a financial institution
12 in a communications system used for the electronic storage and transfer of funds.

13 (g) “Graffiti” means any form of unauthorized printing, writing, spraying,
14 scratching, affixing, or inscribing on the property of another regardless of the content of
15 nature of the material used in the commission of the act.

16 (h) “Government” means the Government of the Virgin Islands, any agency,
17 autonomous or semi-autonomous agency, or instrumentality of the Government of the
18 Virgin Islands.

19 (i) “Predicate criminal act” means:

20 (1) an act of violence; or

21 (2) any violation of Title 14 Virgin Islands Code sections 252, 253,
22 622,623, 625, 479, 1081, 1083, 1382, 1383, 1501, 1507, 1508, 1510, or 1541; or

23 (3) any violation of Title 19 Virgin Islands Code sections 608, 608a,
24 608b 611, 614a, or 614b.

1 **§3052. Crime of gang criminality**

2 Any person who commits an offense under this section is guilty of the crime of
3 gang criminality and must be sentenced according to the provisions of this chapter.

4 (a) Any person who actively participates in or is a member of a criminal street
5 gang, and who knowingly and willfully participates in any predicate criminal act
6 committed for the benefit of, at the direction of, or in association with any criminal street
7 gang, is guilty of a felony and shall be sentenced to not more than ten years imprisonment
8 or a fine of not more than \$50,000, or both such imprisonment and fine;

9 (b)(1) It is unlawful for any person to knowingly and willfully initiate, organize,
10 plan, finance, direct, manage, or supervise criminal street gang-related activities or a
11 criminal street gang.

12 (2) A person who is found guilty of the conduct prohibited in paragraph (1) of
13 this subsection is guilty of a felony and, upon conviction, shall be sentenced to a term of
14 imprisonment for not more than ten years, or to payment of a fine of not more than
15 \$100,000, or both imprisoned and fined.

16 (c)(1) Any criminal street gang member or associate who uses electronic
17 communication to intimidate or harass any person for the purpose of benefiting, promoting,
18 or furthering the interests of a criminal street gang, including such activities as distributing,
19 selling, transmitting, or posting on the internet any audio, video, or still image of criminal
20 activities, is guilty of a felony and, upon conviction, shall be sentenced to a term of
21 imprisonment of not more than five years, or to payment of a fine of not more than \$50,000,
22 or to both imprisoned and fined .

23 (2) Any person who uses electronic communication to advertise his presence in
24 the community for the purpose of benefiting, promoting, or furthering the interests of a

1 criminal street gang, including such activities as distributing, selling, transmitting, or
2 posting on the internet any audio, video, or still image of criminal activities, is guilty of a
3 felony, and upon conviction, shall be sentenced to a term of imprisonment of not more than
4 two years, or to payment of a fine of not more than \$15,000, or to both imprisoned and
5 fined.

6 (d)(1) Any person who knowingly and willfully causes, encourages, coerces,
7 solicits, or recruits another person to participate in or join a criminal street gang is guilty
8 of a felony and, upon conviction, shall be sentenced to imprisonment for a maximum of
9 ten years, or to payment of a fine of not more than \$25,000, or to both imprisoned and
10 fined.

11 (2) Any person age 18 years or older who knowingly and willfully encourages,
12 coerces, solicits or recruits, or otherwise causes or attempts to cause a minor to participate
13 in or become a member of what the person knows to be a criminal street gang is guilty of
14 a felony and, upon conviction, shall be sentenced to a term of imprisonment of not more
15 than ten years, or to payment of a fine of not more than \$50,000, or to both imprisoned and
16 fined.

17 (3) Any person who knowingly and willfully coerces an individual to remain
18 as a participant in a criminal street gang, or submit to a demand made by a criminal member
19 or associate to commit a criminal act is guilty of a felony and, upon conviction, shall be
20 sentenced to a term of imprisonment of not more than ten years, or to payment of a fine of
21 not more than \$50,000, or to both imprisonment and fine.

22 (4) A criminal street gang member or associate shall be sentenced to a term of
23 imprisonment of not more than ten years, or to the payment of a fine of not more than \$100,

1 000, or both imprisonment and fine if the criminal gang member is guilty of a felony and,
2 upon conviction:

3 (A) uses force, a firearm or any other deadly weapon, or physical
4 violence against an individual or member of his household; or

5 (B) threatens force against an individual or the individual's household
6 where such threats are likely to place any reasonable person in reasonable fear or
7 apprehension of bodily harm or death.

8 (e) Any person who communicates threats of bodily injury or damage to
9 property of another as punishment or retaliation against a person for attempting to or having
10 withdrawn from a criminal street gang is guilty of a felony, upon conviction, shall be
11 sentenced to a maximum term of imprisonment for not more than ten years, or to payment
12 of a fine of not more than \$50,000, or to both imprisonment and fine.

13 (f)(1) It is unlawful for any criminal street gang member or gang associate to
14 deface by graffiti any real or personal property of the Territory, of another person,
15 organization or entity with the specific intent of furthering or promoting the criminal acts
16 or interests of a criminal street gang.

17 (2) A person convicted of the conduct prohibited in paragraph (1) of this
18 subsection is guilty of a misdemeanor and, upon conviction, shall be sentenced to
19 a term of imprisonment for not more than six months, or to payment of a fine of not
20 more than \$1,000, or to both.

21 (3) The court may order restitution to the victim in the cost of removal,
22 of the graffiti, or the repair, or replacement costs of the property defaced, whichever
23 is less.

1 (4) A person who voluntarily and at the person's own expense, removes
2 graffiti for which he is responsible may be credited for the removal costs against
3 restitution ordered by the court.

4 (g) It is unlawful for any person to communicate with or to another, whether
5 directly or indirectly, any threat of injury or damage to another person or property of
6 another person or of any associate or family of another person with the intent to punish or
7 retaliate against such person for providing statements or testimony against criminal street
8 gangs or any criminal street gang member or associate. Any violation of this subsection
9 shall constitute a felony and in addition to any other penalty provided by law is punishable
10 by imprisonment of not less than two years nor more than 10 years, without suspension of
11 sentence or probation or parole.

12 **§3053. Separate offense; matters proven during criminal trials**

13 Any offense committed in violation of this chapter is considered a separate offense.
14 Nothing in this chapter may prohibit the arrest and prosecution of a criminal street gang
15 member or criminal street gang associate for violations under other sections of the Virgin
16 Islands Code except to the extent provided by law.

17 **§3054. Enhanced sentencing; Court's discretion**

18 (a) Any person who violates this chapter in the commission of the underlying
19 criminal act commits a felony, upon conviction of the underlying felony and in addition
20 and consecutive to the punishment prescribed for the felony convicted of, shall be punished
21 by an additional term of one, two, or three years, at the discretion of the court if the
22 underlying felony included any of the following crimes under 14 V.I.C.:

23 (1) Abduction;

24 (2) Arson;

- 1 (3) Assault;
- 2 (4) Auto theft;
- 3 (5) Battery;
- 4 (6) Bribery;
- 5 (7) Burglary;
- 6 (8) Carrying or using dangerous weapons;
- 7 (9) Child Exploitation;
- 8 (10) Child Pornography;
- 9 (11) Conspiracy;
- 10 (12) Counterfeiting;
- 11 (13) Criminally Influenced and Corrupt Organizations;
- 12 (14) Embezzlement;
- 13 (15) Extortion;
- 14 (16) False Personification;
- 15 (17) Forgery;
- 16 (18) Fraud;
- 17 (19) Homicide;
- 18 (20) Kidnapping;
- 19 (21) Larceny;
- 20 (22) Mayhem;
- 21 (23) Obstruction of justice;
- 22 (24) Perjury;
- 23 (25) Prostitution;
- 24 (26) Rape;

(27) Robbery;

(28) Sabotage;

(29) Theft;

(30) Trafficking of Persons

(b) Any person who violates this chapter in the commission of a felony and who does so on the grounds of, or within 1000 feet of any public or private elementary, junior or high school, or vocational school or learning institution, playground, sports facility, daycare center, public park and recreation center, shall, upon conviction of the underlying felony and in addition and consecutive to the punishment prescribed for the felony conviction, be punished by an additional term of two to four years, at the discretion of the court.

§3055. Civil cause of action

(a) Any person, organization or entity establishing by clear and convincing evidence coercion, intimidation, threats, or any injury by reason of a violation of this chapter has a civil cause of action for treble damages, punitive damages, injunctive relief, or any other appropriate relief in law or equity. If the plaintiff prevails, the plaintiff may also recover reasonable attorney fees and costs incurred from the investigation and litigation.

(b) In addition to other remedies provided by law, the Government shall have a civil cause of action against any person, upon a showing by clear and convincing evidence that it has been injured by reason of a violation of this chapter. The Government shall have a civil cause of action for treble damages, punitive damages, an injunction, or any other appropriate relief in law or equity.

1 (c) The defendant is entitled to recover reasonable attorney's fees and court
2 costs if the court finds that the plaintiff raised a claim without factual or legal support and
3 was vexatious, frivolous, or brought in bad faith.

4 **§3056. Notification to police or law enforcement agencies of release of criminal street**
5 **gang member from prison**

6 When a criminal street gang member or associate is released from the custody of a
7 jail, prison, or corrections facility of the Virgin Islands, and the criminal street gang
8 member was in the custody for violating this chapter, a designated employee of the jail,
9 prison, or corrections facility shall transmit notice of the release to the chief of police for
10 the district where the release is likely to reside. Notice must be sent not later than ten days
11 exclusive of local and federal holidays and after the date that the criminal street gang
12 member or associate is scheduled to be released.

13 **§3057. Enhanced law enforcement efforts**

14 (a) The Virgin Islands Police Department and other law enforcement agencies
15 of the Virgin Islands shall concentrate enhanced law enforcement efforts and resources on
16 all criminal activities prohibited under this chapter.

17 (b) The efforts of the gang violence unit must include:

18 (1) Coordinating with the Department of Education to develop, adopt
19 and implement gang preventive programs;

20 (2) Apprehending violent gang members and associates;

21 (3) Identifying and documenting criminal street gang activities;

22 (4) Establishing a working relationship with local citizens, community-
23 based organizations, business representatives and other criminal agencies; and

1 (5) Assisting other criminal justice and government agencies in the
2 protection of witnesses from intimidation or retribution from gang members and
3 their associates due to their cooperation with law enforcement agencies.

4 **§3058. Forfeiture; proceedings**

5 (a) Property subject to civil forfeiture to the Government of the Virgin Islands
6 includes all property, both personal and real, of any kind or character used in substantial
7 connection with, intended for use in the course of, derived from, traceable to, or realized
8 through, including any profit or interest derived from:

9 (1) any conduct in violation of any provision of this Chapter; and

10 (2) criminal street gang member recruitment as prohibited by
11 §3052(e)(1) of this Chapter.

12 (b) The forfeiture procedures established in section 608 of this apply to all
13 forfeiture proceedings under this section. The application of one civil remedy under this
14 chapter does not preclude the application of any other remedy, civil or criminal, under this
15 chapter or any other provision of law.”

16 **SECTION 2.** Title 33 Virgin Islands Code, chapter 111, is amended by adding
17 section 3100w to read as follows:

18 **“§3100w. Crime and Gang Prevention Fund; establishment; disposition**

19 (a) There is established a separate and distinct fund within the Treasury of the
20 Virgin Islands designated and known as “The Crime and Gang Prevention Fund”.

21 (b) No funds are available for expenditure from this Fund, except as provided
22 by this chapter or other law.

23 (c) The Fund consists of:

24 (1) monies appropriated to it from time to time by the Legislature;

1 (2) all proceeds from forfeitures ordered by a court pursuant to 14
2 V.I.C., chapter 123;

3 (3) fines imposed by a court, whether by final judgment, settlement, or
4 civil penalties imposed pursuant to the provisions of 14 V.I.C., chapter 123; and

5 (4) all gifts, donations and bequests made to the Fund.

6 (d) All appropriations or monies designated for the Fund must be transmitted
7 to the Treasury of the Government of the Virgin Islands and deposited into the Fund.

8 (e) Monies in the Fund must be used exclusively for funding public and private
9 youth anti-street gang programs and for funding enforcement activities, such as policing
10 and prosecution.

11 (f) The Commissioner of finance shall administer the Fund and shall disburse
12 monies from the Fund at the direction of the Police Commissioner.

13 (g) Monies available in the Fund are non-lapsing.”

14 **BILL SUMMARY**

15 This bill amends title 14 and establishes the Virgin Islands” Criminal Street Gang
16 Prevention Act”. The focus of this bill is multi-purpose.

17 First, the bill places the Virgin Islands among the many states having anti-gang
18 statutes.

19 Second, the bill addresses the many social ills arising from gang activities, such as
20 the use and sale of illegal substances and weapons and robberies, burglaries, criminal
21 batteries and assaults and murders. The bill achieves this goal by imposing harsh penalties
22 on criminal street gang members and associates engaged in gang-related activities in order
23 to adequately punish offenders and deter future criminal acts and prevent recidivism.

1 Third, in addition, to the penalties, this bill requires the Government to make
2 meaningful investments into criminal and gang prevention and intervention programs as
3 necessary to help curb gang activities, which include gang recruitment and retention.

4 Section 1, §3051 defines the necessary terms of the bill. Under this section,
5 subsection (c) “criminal street gang” includes any group of three or more persons who or
6 whose members have as their primary objectives the commission or attempted commission
7 of criminal acts. This definition does not include a group of three or more persons merely
8 identified by a common name or common identifying signs, symbols, tattoos, graffiti or
9 attires.

10 Subsection (d) defines “criminal street gang activity” as an act committed or
11 attempted act committed by a criminal street gang member or associate with the specific
12 intent to assist, benefit, promote or further the interests of a criminal street gang. This
13 definition extends to interests identified by credible informants.

14 Subsection (e) defines “criminal street gang associate” as any person other than a
15 “criminal street gang member” who knowingly and willfully assists or participates in a
16 criminal street gang activity with the specific intent of furthering or assisting the activities
17 of the criminal street gang.

18 Lastly, subsection (f) defines “criminal street gang member” as a person who
19 knowingly becomes a member of a criminal street gang and who participates in the criminal
20 street gang with the specific intent of promoting gang-related activities.

21 Internal §3052 defines the offenses that constitute criminal gang activity. The
22 offenses include knowingly and willfully participating, becoming a member, organizing,
23 managing, financing criminal gangs.

1 The offenses also include using electronic communication to intimidate or threaten
2 persons or to announce presence in the community, use of a firearm in connection with
3 gang activity, coercing adults or minors to join gangs, and threatening bodily harm or
4 damage to property in connection with street gang activity. Section 3052 also establishes
5 felony penalties for the various offenses.

6 Internal §3053 provides that a violation of the Virgin Islands Criminal street gang
7 Prevention Act is a separate offense.

8 Internal §3054, subsection (a) gives the sentencing judge discretion to enhance an
9 offender's sentence to an additional one to three years if the underlying criminal offense is
10 a felony. Subsection (b) also enhances a sentence if the criminal act was committed within
11 1000 feet of any public or private school or learning institution.

12 Internal §3055, provides for a separate and distinct civil cause of action.

13 Internal §3056 requires "notice of release from custody" to the chief of police when
14 a criminal street gang member or associate is released from custody and the criminal street
15 gang member or associate was in the custody for violating this act.

16 Internal §3057, provides for cooperation and coordination amongst law
17 enforcement agencies in their efforts and resources on all prohibited criminal gang
18 activities.

19 Internal §3058 provides for detailed forfeiture proceedings.

20 Section 2 of the bill establishes the "Crime and Gang Prevention Fund" and
21 appropriates money into the Fund.