

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**SENATE** BILL NO. **383**  
*[Signature]*

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES USED BY CRIMINAL STREET GANGS; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the Legislature finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals; and

WHEREAS, it is not the intent of the Legislature to interfere with the exercise of the constitutionally protected rights of freedom of expression and association; and

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

WHEREAS, the Legislature further finds that the State of Montana is in a situation of rising crisis caused by the entry into the state of criminal street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods; and

WHEREAS, these activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected; and

WHEREAS, the Legislature finds that several out-of-state criminal street gangs have established a presence in Montana's larger cities, that these criminal street gangs are attracting and recruiting members in Montana, and that identifiable criminal street gang-related crimes are beginning to appear and increase in Montana communities that have recognizable criminal street gang-related presences; and

WHEREAS, the Legislature finds that when these criminal street gangs establish a presence in

1 Montana cities, the quality of Montana citizens' safety, welfare, and enjoyment of life begins to decline;  
2 and

3 WHEREAS, the Legislature wishes to deter the growing influx of violent criminal street gangs and  
4 criminal street gang-related activity in its communities and to protect Montana citizens from the terror  
5 associated with violent criminal street gangs; and

6 WHEREAS, it is the intent of the Legislature in enacting [sections 1 through 10] to seek the  
7 eradication of activity of criminal street gangs by focusing on the patterns of criminal street gang activity  
8 and on the organized nature of criminal street gangs; and

9 WHEREAS, the Legislature further finds that an effective means of punishing and deterring the  
10 activities of criminal street gangs is through forfeiture of the instrumentalities used by criminal street gangs.

11 THEREFORE, the Legislature finds it appropriate to enact [sections 1 through 10].

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 **NEW SECTION. Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana  
16 Street Terrorism Enforcement and Prevention Act".

17

18 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 9], the following definitions  
19 apply:

20 (1) "Criminal street gang" means any ongoing organization, association, or group of three or more  
21 persons, whether formal or informal, having as one of its primary activities the commission of one or more  
22 of the criminal acts enumerated in [section 5], having a common name or common identifying sign or  
23 symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal  
24 gang activity.

25 (2) "Pattern of criminal street gang activity" has the meaning provided in [section 5].

26

27 **NEW SECTION. Section 3. Use of threat to coerce gang membership -- use of violence to coerce**  
28 **gang membership.** (1) A person commits the offense of use of threat to coerce criminal street gang  
29 membership if the person purposely or knowingly threatens a person under 18 years of age with physical  
30 violence on two or more separate occasions with the intent to coerce, induce, or solicit the minor to

1 actively participate in any criminal street gang whose members engage in a pattern of criminal street gang  
2 activity.

3 (2) A person commits the offense of use of violence to coerce criminal street gang membership  
4 if the person purposely or knowingly uses physical violence to coerce, induce, or solicit a person under 18  
5 years of age to actively participate in any criminal street gang whose members engage in a pattern of  
6 criminal street gang activity.

7 (3) (a) A person convicted of the offense of use of threat to coerce criminal street gang  
8 membership shall be imprisoned in the county jail for a term not to exceed 1 year.

9 (b) A person convicted of the offense of use of violence to coerce criminal street gang membership  
10 shall be imprisoned in a state prison for a term not to exceed 3 years.

11 (4) A person who is 16 years of age or older and less than 18 years of age who is named in a  
12 petition filed in youth court alleging delinquency for the alleged commission of the offense of use of threat  
13 to coerce criminal street gang membership or the offense of use of violence to coerce criminal street gang  
14 membership is subject to transfer of the case to district court under 41-5-206 or, if the case is not  
15 transferred to district court under 41-5-206, to the provisions of Title 41, chapter 5.

16 (5) This section may not be construed to limit prosecution under any other provision of law.

17 (6) A person may not be convicted of violating this section based on speech alone, except on a  
18 showing that the speech itself threatened violence against a specific person, that the defendant had the  
19 apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

20

21 **NEW SECTION. Section 4. Additional sentence for criminal street gang-related felony.** (1) (a)  
22 A person who is convicted of a felony that the person committed for the benefit of, at the direction of, or  
23 in association with any criminal street gang for the purpose of promoting, furthering, or assisting any  
24 criminal conduct by criminal street gang members shall, in addition to the punishment provided for the  
25 commission of the underlying offense, be sentenced to a term of imprisonment in a state prison of not less  
26 than 1 year or more than 3 years, except as provided in 46-18-222.

27 (b) If the underlying felony described in subsection (1)(a) is committed on the grounds of, or within  
28 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes  
29 or school-related programs or when minors are using the facility, the additional term provided for in  
30 subsection (1) is 2 to 4 years.

1 (2) The imposition or execution of the minimum sentences prescribed by this section may not be  
2 deferred or suspended, except as provided in 46-18-222.

3 (3) An additional sentence prescribed by this section shall run consecutively to the sentence  
4 provided for the underlying offense.

5  
6 **NEW SECTION. Section 5. Pattern of criminal street gang activity.** (1) For purposes of [sections  
7 1 through 9], "pattern of criminal street gang activity" means the commission, solicitation, conspiracy,  
8 attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of  
9 two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were  
10 committed on separate occasions.

11 (2) The offenses that form a pattern of criminal gang activity include:

- 12 (a) deliberate homicide, as defined in 45-5-102;
- 13 (b) felony assault, as defined in 45-5-202;
- 14 (c) intimidation, as defined in 45-5-203;
- 15 (d) kidnapping, as defined in 45-5-302;
- 16 (e) aggravated kidnapping, as defined in 45-5-303;
- 17 (f) robbery, as defined in 45-5-401;
- 18 (g) sexual intercourse without consent, as defined in 45-5-503;
- 19 (h) aggravated promotion of prostitution, as defined in 45-5-603;
- 20 (i) criminal mischief, as defined in 45-6-101;
- 21 (j) arson, as defined in 45-6-103;
- 22 (k) burglary, as defined in 45-6-204;
- 23 (l) theft, as defined in 45-6-301;
- 24 (m) forgery, as defined in 45-6-325;
- 25 (n) tampering with witnesses and informants, as defined in 45-7-206;
- 26 (o) bringing armed men into the state, as defined in 45-8-106;
- 27 (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;
- 28 (q) carrying a concealed weapon, as defined in 45-8-316;
- 29 (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;
- 30 (s) possession of a destructive device, as defined in 45-8-334;

- 1 (t) possession of explosives, as defined in 45-8-335;
- 2 (u) possession of a sawed-off firearm, as defined in 45-8-340;
- 3 (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,  
4 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;
- 5 (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
6 street gang membership provided in [section 3].

7

8 **NEW SECTION. Section 6. Confiscation of instrumentalities of criminal activity.** (1) Any firearm,  
9 ammunition that may be used with the firearm, or dangerous weapon that is owned or possessed by a  
10 member of a criminal street gang for the purpose of the commission of any of the offenses listed in [section  
11 5] or the commission of any burglary or sexual intercourse without consent may be confiscated by any law  
12 enforcement agency or peace officer.

13 (2) If a law enforcement agency believes that the return of a firearm, ammunition, or a dangerous  
14 weapon confiscated under subsection (1) is or will be used in criminal street gang activity or that the return  
15 of the item would be likely to result in endangering the safety of others, the agency shall request the county  
16 attorney to initiate a petition in district court to determine if the confiscated item should be returned or  
17 declared a nuisance.

18 (3) (a) A firearm, ammunition, or a dangerous weapon may not be sold or destroyed unless  
19 reasonable notice is given to its lawful owner if the lawful owner's identity can be reasonably ascertained.  
20 The law enforcement agency shall inform the lawful owner, at that person's last-known address by  
21 registered mail, that the owner has 30 days from the date of receipt of the notice to respond to the clerk  
22 of court to confirm the owner's desire for a hearing and that the failure to respond must result in a default  
23 order forfeiting the confiscated firearm, ammunition, or dangerous weapon as a nuisance.

24 (b) If the person requests a hearing, the clerk of court shall set a hearing no later than 30 days from  
25 receipt of that request. The clerk of court shall notify the person, the law enforcement agency involved,  
26 and the county attorney of the date, time, and place of the hearing.

27 (c) At the hearing, the burden of proof is on the state to show by a preponderance of the evidence  
28 that the seized item was used or is likely to be used in criminal street gang activity or that return of the item  
29 will likely result in endangering the safety of others.

30 (d) If the owner does not request a hearing within 30 days of the notice or the lawful owner cannot

1 be ascertained, the law enforcement agency shall request that the county attorney file a petition that the  
2 confiscated item be declared a nuisance. If the item is declared a nuisance, the law enforcement agency  
3 shall dispose of the item as provided by law.

4  
5 **NEW SECTION. Section 7. Supplying of firearms to criminal street gang.** (1) A person commits  
6 the offense of supplying firearms to a criminal street gang if:

7 (a) the person purposely or knowingly supplies, sells, or gives possession or control of any firearm  
8 to another, and the person has actual knowledge that the other person will use the firearm to commit an  
9 offense enumerated in [section 5] while actively participating in any criminal street gang whose members  
10 engage in a pattern of criminal street gang activity;

11 (b) the firearm is used to commit one of the offenses enumerated in [section 5]; and

12 (c) a conviction for the offense enumerated in [section 5] has first been obtained of the person to  
13 whom the firearm was supplied, sold, or given.

14 (2) Subsection (1) does not apply to a person who is convicted as a principal to the offense  
15 committed by the person to whom the firearm was supplied, sold, or given.

16 (3) A person convicted of the offense of supplying firearms to a criminal street gang shall be  
17 imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000,  
18 or both.

19  
20 **NEW SECTION. Section 8. Exceptions.** [Sections 1 through 9] do not apply to employees engaged  
21 in lawful concerted activities for their mutual aid and protection or to the lawful activities of labor  
22 organizations or their members or agents.

23  
24 **NEW SECTION. Section 9. Adoption of local regulations.** [Sections 1 through 9] do not prevent  
25 a local government from adopting and enforcing ordinances or resolutions consistent with [sections 1  
26 through 9] relating to criminal street gangs and criminal street gang violence.

27  
28 **Section 10.** Section 41-5-206, MCA, is amended to read:

29 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed  
30 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its

1 merits, transfer the matter of prosecution to the district court if:

2 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to  
3 be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in  
4 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in  
5 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if  
6 the act had been committed by an adult; or

7 (ii) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to be  
8 unlawful and the unlawful act is one or more of the following:

9 (A) negligent homicide as defined in 45-5-104;

10 (B) arson as defined in 45-6-103;

11 (C) aggravated or felony assault as defined in 45-5-202;

12 (D) robbery as defined in 45-5-401;

13 (E) burglary or aggravated burglary as defined in 45-6-204;

14 (F) aggravated kidnapping as defined in 45-5-303;

15 (G) possession of explosives as defined in 45-8-335;

16 (H) criminal sale of dangerous drugs as defined in 45-9-101;

17 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

18 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
19 through (1)(a)(ii)(I);

20 (K) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
21 street gang membership, as defined in [section 3];

22 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a  
23 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court  
24 without a jury;

25 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the  
26 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

27 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe  
28 that:

29 (i) the youth committed the delinquent act alleged;

30 (ii) the seriousness of the offense and the protection of the community require treatment of the

1 youth beyond that afforded by juvenile facilities; and

2 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

3 (2) In transferring the matter of prosecution to the district court, the court may also consider the  
4 following factors:

5 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,  
6 environmental situation, and emotional attitude and pattern of living;

7 (b) the record and previous history of the youth, including previous contacts with the youth court,  
8 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior  
9 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of  
10 itself grounds for denying the transfer.

11 (3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ of age or older at the  
12 time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as  
13 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in  
14 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

15 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the  
16 jurisdiction of the youth court was waived and the case transferred to district court.

17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
20 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or  
21 41-5-1105.

22 (6) Upon order of the youth court transferring the case to the district court under subsection (5),  
23 the county attorney shall file the information against the youth without unreasonable delay.

24 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime  
25 enumerated in subsection (1) may be:

26 (a) tried in youth court;

27 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the  
28 county attorney and order of the youth court judge.

29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
30 and is sentenced to the state prison, the commitment must be to the department of corrections. The



1 department shall confine the youth in whatever institution that it considers proper, including a state youth  
2 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not  
3 be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
5 in a jail or other adult detention facility before final disposition of the youth's case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
8 adults accused or convicted of criminal offenses."

9

10 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 9] are intended to be  
11 codified as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through 9].

12

13 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are  
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
15 applications, the part remains in effect in all valid applications that are severable from the invalid  
16 applications.

17

18 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

19

20 **NEW SECTION. Section 14. Retroactive applicability.** For purposes of determining a pattern of  
21 criminal gang activity, the provisions of [section 5] apply retroactively, within the meaning of 1-2-109, to  
22 an offense that occurred before [the effective date of this act] if the second or subsequent offense occurred  
23 after [the effective date of this act].

24

-END-

## 1 SENATE BILL NO. 383

2 INTRODUCED BY CRIPPEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT  
5 AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET  
6 GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL  
7 STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL  
8 STREET GANG-RELATED OFFENSES; ~~PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES  
9 USED BY CRIMINAL STREET GANGS~~; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."  
11

12 WHEREAS, the Legislature finds and declares that it is the right of every person to be secure and  
13 protected from fear, intimidation, and physical harm caused by the activities of violent groups and  
14 individuals; and

15 WHEREAS, it is not the intent of the Legislature to interfere with the exercise of the constitutionally  
16 protected rights of freedom of expression and association; and

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

21 WHEREAS, the Legislature further finds that the State of Montana is in a situation of rising crisis  
22 caused by the entry into the state of criminal street gangs whose members threaten, terrorize, and commit  
23 a multitude of crimes against the peaceful citizens of their neighborhoods; and

24 WHEREAS, these activities, both individually and collectively, present a clear and present danger  
25 to public order and safety and are not constitutionally protected; and

26 WHEREAS, the Legislature finds that several out-of-state criminal street gangs have established a  
27 presence in Montana's larger cities, that these criminal street gangs are attracting and recruiting members  
28 in Montana, and that identifiable criminal street gang-related crimes are beginning to appear and increase  
29 in Montana communities that have recognizable criminal street gang-related presences; and

30 WHEREAS, the Legislature finds that when these criminal street gangs establish a presence in

1 Montana cities, the quality of Montana citizens' safety, welfare, and enjoyment of life begins to decline;  
2 and

3 WHEREAS, the Legislature wishes to deter the growing influx of violent criminal street gangs and  
4 criminal street gang-related activity in its communities and to protect Montana citizens from the terror  
5 associated with violent criminal street gangs; and

6 WHEREAS, it is the intent of the Legislature in enacting [sections 1 through ~~40~~ 8] to seek the  
7 eradication of activity of criminal street gangs by focusing on the patterns of criminal street gang activity  
8 and on the organized nature of criminal street gangs; ~~and~~

9 ~~WHEREAS, the Legislature further finds that an effective means of punishing and deterring the~~  
10 ~~activities of criminal street gangs is through forfeiture of the instrumentalities used by criminal street gangs.~~

11 THEREFORE, the Legislature finds it appropriate to enact [sections 1 through ~~40~~ 8].

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~9~~ 8] may be cited as the "Montana  
16 Street Terrorism Enforcement and Prevention Act".

17

18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through ~~9~~ 8], the following  
19 definitions apply:

20 (1) "Criminal street gang" means any ongoing organization, association, or group of three or more  
21 persons, whether formal or informal, having as one of its primary activities the commission of one or more  
22 of the criminal acts enumerated in [section 5], having a common name or common identifying sign or  
23 symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal  
24 gang activity.

25 (2) "Pattern of criminal street gang activity" has the meaning provided in [section 5].

26

27 NEW SECTION. **Section 3. Use of threat to coerce gang membership -- use of violence to coerce**  
28 **gang membership.** (1) A person commits the offense of use of threat to coerce criminal street gang  
29 membership if the person purposely or knowingly threatens a person under 18 years of age with physical  
30 violence on two or more separate occasions with the intent to coerce, induce, or solicit the minor to

1 actively participate in any criminal street gang whose members engage in a pattern of criminal street gang  
2 activity.

3 (2) A person commits the offense of use of violence to coerce criminal street gang membership  
4 if the person purposely or knowingly uses physical violence to coerce, induce, or solicit a person under 18  
5 years of age to actively participate in any criminal street gang whose members engage in a pattern of  
6 criminal street gang activity.

7 (3) (a) A person convicted of the offense of use of threat to coerce criminal street gang  
8 membership shall be imprisoned in the county jail for a term not to exceed 1 year.

9 (b) A person convicted of the offense of use of violence to coerce criminal street gang membership  
10 shall be imprisoned in a state prison for a term not to exceed 3 years.

11 (4) A person who is 16 years of age or older and less than 18 years of age who is named in a  
12 petition filed in youth court alleging delinquency for the alleged commission of the offense of use of threat  
13 to coerce criminal street gang membership or the offense of use of violence to coerce criminal street gang  
14 membership is subject to transfer of the case to district court under 41-5-206 or, if the case is not  
15 transferred to district court under 41-5-206, to the provisions of Title 41, chapter 5.

16 (5) This section may not be construed to limit prosecution under any other provision of law.

17 (6) A person may not be convicted of violating this section based on speech alone, except on a  
18 showing that the speech itself threatened violence against a specific person, that the defendant had the  
19 apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

20

21 **NEW SECTION. Section 4. Additional sentence for criminal street gang-related felony.** (1) (a)  
22 A person who is convicted of a felony that the person committed for the benefit of, at the direction of, or  
23 in association with any criminal street gang for the purpose of promoting, furthering, or assisting any  
24 criminal conduct by criminal street gang members shall, in addition to the punishment provided for the  
25 commission of the underlying offense, be sentenced to a term of imprisonment in a state prison of not less  
26 than 1 year or more than 3 years, except as provided in 46-18-222.

27 (b) If the underlying felony described in subsection (1)(a) is committed on the grounds of, or within  
28 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes  
29 or school-related programs or when minors are using the facility, the additional term provided for in  
30 subsection (1) is 2 to 4 years.

1 (2) The imposition or execution of the minimum sentences prescribed by this section may not be  
2 deferred or suspended, except as provided in 46-18-222.

3 (3) An additional sentence prescribed by this section shall run consecutively to the sentence  
4 provided for the underlying offense.

5

6 **NEW SECTION. Section 5. Pattern of criminal street gang activity.** (1) For purposes of [sections  
7 1 through ~~9~~ 8], "pattern of criminal street gang activity" means the commission, solicitation, conspiracy,  
8 attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of  
9 two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were  
10 committed on separate occasions.

11 (2) The offenses that form a pattern of criminal gang activity include:

12 (a) deliberate homicide, as defined in 45-5-102;

13 (b) felony assault, as defined in 45-5-202;

14 (c) intimidation, as defined in 45-5-203;

15 (d) kidnapping, as defined in 45-5-302;

16 (e) aggravated kidnapping, as defined in 45-5-303;

17 (f) robbery, as defined in 45-5-401;

18 (g) sexual intercourse without consent, as defined in 45-5-503;

19 (h) aggravated promotion of prostitution, as defined in 45-5-603;

20 (i) criminal mischief, as defined in 45-6-101;

21 (j) arson, as defined in 45-6-103;

22 (k) burglary, as defined in 45-6-204;

23 (l) theft, as defined in 45-6-301;

24 (m) forgery, as defined in 45-6-325;

25 (n) tampering with witnesses and informants, as defined in 45-7-206;

26 (o) bringing armed men into the state, as defined in 45-8-106;

27 (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

28 (q) carrying a concealed weapon, as defined in 45-8-316;

29 (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

30 (s) possession of a destructive device, as defined in 45-8-334;

1 (t) possession of explosives, as defined in 45-8-335;

2 (u) possession of a sawed-off firearm, as defined in 45-8-340;

3 (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,  
4 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

5 (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
6 street gang membership provided in [section 3].

7  
8 ~~**NEW SECTION. Section 6. Confiscation of instrumentalities of criminal activity.** (1) Any firearm,~~  
9 ~~ammunition that may be used with the firearm, or dangerous weapon that is owned or possessed by a~~  
10 ~~member of a criminal street gang for the purpose of the commission of any of the offenses listed in [section~~  
11 ~~5] or the commission of any burglary or sexual intercourse without consent may be confiscated by any law~~  
12 ~~enforcement agency or peace officer.~~

13 ~~(2) If a law enforcement agency believes that the return of a firearm, ammunition, or a dangerous~~  
14 ~~weapon confiscated under subsection (1) is or will be used in criminal street gang activity or that the return~~  
15 ~~of the item would be likely to result in endangering the safety of others, the agency shall request the county~~  
16 ~~attorney to initiate a petition in district court to determine if the confiscated item should be returned or~~  
17 ~~declared a nuisance.~~

18 ~~(3) (a) A firearm, ammunition, or a dangerous weapon may not be sold or destroyed unless~~  
19 ~~reasonable notice is given to its lawful owner if the lawful owner's identity can be reasonably ascertained.~~  
20 ~~The law enforcement agency shall inform the lawful owner, at that person's last known address by~~  
21 ~~registered mail, that the owner has 30 days from the date of receipt of the notice to respond to the clerk~~  
22 ~~of court to confirm the owner's desire for a hearing and that the failure to respond must result in a default~~  
23 ~~order forfeiting the confiscated firearm, ammunition, or dangerous weapon as a nuisance.~~

24 ~~(b) If the person requests a hearing, the clerk of court shall set a hearing no later than 30 days from~~  
25 ~~receipt of that request. The clerk of court shall notify the person, the law enforcement agency involved,~~  
26 ~~and the county attorney of the date, time, and place of the hearing.~~

27 ~~(c) At the hearing, the burden of proof is on the state to show by a preponderance of the evidence~~  
28 ~~that the seized item was used or is likely to be used in criminal street gang activity or that return of the item~~  
29 ~~will likely result in endangering the safety of others.~~

30 ~~(d) If the owner does not request a hearing within 30 days of the notice or the lawful owner cannot~~

1 ~~be ascertained, the law enforcement agency shall request that the county attorney file a petition that the~~  
 2 ~~confiscated item be declared a nuisance. If the item is declared a nuisance, the law enforcement agency~~  
 3 ~~shall dispose of the item as provided by law.~~

4  
 5 **NEW SECTION. Section 6. Supplying of firearms to criminal street gang.** (1) A person commits  
 6 the offense of supplying firearms to a criminal street gang if:

7 ~~(a) the person purposely or knowingly supplies, sells, or gives possession or control of any firearm~~  
 8 ~~to another, and the person has actual knowledge that the other person will use the firearm to commit an~~  
 9 ~~offense enumerated in [section 5] while actively participating in any criminal street gang whose members~~  
 10 ~~engage in a pattern of criminal street gang activity;~~

11 ~~(b) the firearm is used to commit one of the offenses enumerated in [section 5]; and~~

12 ~~(c) a conviction for the offense enumerated in [section 5] has first been obtained of the person to~~  
 13 ~~whom the firearm was supplied, sold, or given.~~

14 (2) Subsection (1) does not apply to a person who is convicted as a principal to the offense  
 15 committed by the person to whom the firearm was supplied, sold, or given.

16 (3) A person convicted of the offense of supplying firearms to a criminal street gang shall be  
 17 imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000,  
 18 or both.

19  
 20 **NEW SECTION. Section 7. Exceptions.** [Sections 1 through ~~9~~ 8] do not apply to employees  
 21 engaged in lawful concerted activities for their mutual aid and protection or to the lawful activities of labor  
 22 organizations or their members or agents.

23  
 24 **NEW SECTION. Section 8. Adoption of local regulations.** [Sections 1 through ~~9~~ 8] do not prevent  
 25 a local government from adopting and enforcing ordinances or resolutions consistent with [sections 1  
 26 through ~~9~~ 8] relating to criminal street gangs and criminal street gang violence.

27  
 28 **Section 9.** Section 41-5-206, MCA, is amended to read:

29 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed  
 30 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its

1 merits, transfer the matter of prosecution to the district court if:

2 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to  
3 be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in  
4 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in  
5 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if  
6 the act had been committed by an adult; or

7 (ii) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to be  
8 unlawful and the unlawful act is one or more of the following:

9 (A) negligent homicide as defined in 45-5-104;

10 (B) arson as defined in 45-6-103;

11 (C) aggravated or felony assault as defined in 45-5-202;

12 (D) robbery as defined in 45-5-401;

13 (E) burglary or aggravated burglary as defined in 45-6-204;

14 (F) aggravated kidnapping as defined in 45-5-303;

15 (G) possession of explosives as defined in 45-8-335;

16 (H) criminal sale of dangerous drugs as defined in 45-9-101;

17 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

18 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
19 through (1)(a)(ii)(I);

20 (K) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
21 street gang membership, as defined in [section 3];

22 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a  
23 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court  
24 without a jury;

25 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the  
26 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

27 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe  
28 that:

29 (i) the youth committed the delinquent act alleged;

30 (ii) the seriousness of the offense and the protection of the community require treatment of the



1 youth beyond that afforded by juvenile facilities; and

2 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

3 (2) In transferring the matter of prosecution to the district court, the court may also consider the  
4 following factors:

5 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,  
6 environmental situation, and emotional attitude and pattern of living;

7 (b) the record and previous history of the youth, including previous contacts with the youth court,  
8 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior  
9 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of  
10 itself grounds for denying the transfer.

11 (3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ of age or older at the  
12 time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as  
13 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in  
14 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

15 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the  
16 jurisdiction of the youth court was waived and the case transferred to district court.

17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
20 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or  
21 41-5-1105.

22 (6) Upon order of the youth court transferring the case to the district court under subsection (5),  
23 the county attorney shall file the information against the youth without unreasonable delay.

24 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime  
25 enumerated in subsection (1) may be:

26 (a) tried in youth court;

27 (b) transferred to district court with an offense enumerated in subsection (1); upon motion of the  
28 county attorney and order of the youth court judge.

29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
30 and is sentenced to the state prison, the commitment must be to the department of corrections. The

1 department shall confine the youth in whatever institution that it considers proper, including a state youth  
2 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not  
3 be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
5 in a jail or other adult detention facility before final disposition of the youth's case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
8 adults accused or convicted of criminal offenses."

9

10 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through ~~9~~ 8] are intended to be  
11 codified as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through ~~9~~ 8].

12

13 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
15 applications, the part remains in effect in all valid applications that are severable from the invalid  
16 applications.

17

18 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

19

20 **NEW SECTION. Section 13. Retroactive applicability.** For purposes of determining a pattern of  
21 criminal gang activity, the provisions of [section 5] apply retroactively, within the meaning of 1-2-109, to  
22 an offense that occurred before [the effective date of this act] if the second or subsequent offense occurred  
23 after [the effective date of this act].

24

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0383, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the Montana Street Terrorism Enforcement and Prevention Act; defining "criminal street gang" and "pattern of criminal street gang activity"; providing for the enhancement of criminal penalties for criminal street gang-related activity; providing for the deterrence and punishment of criminal street gang-related offenses.

ASSUMPTIONS:

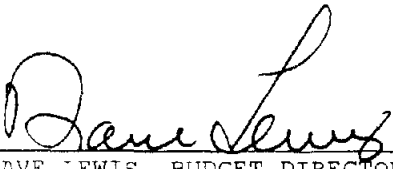
1. The legislation will impact both juvenile and adult correctional facilities.
2. The underlying offenses listed in the bill already are forecasted in the Department of Corrections population management plan.
3. The definition of "criminal street gang" could widen the net of offenders charged under this statute and, if convicted, would impact the length of sentence for both juveniles at secure facilities or juveniles transferred to district court, as well as adults.
4. The fiscal impact of this legislation could be significant due to the longer sentences imposed.
5. There is no fiscal impact to the Department of Justice.


FISCAL IMPACT:

The DOC is unable to calculate a definitive fiscal impact of this bill because no historical data is available.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Longer sentences may cause an increase in institutional population projections for both the adult and juvenile systems.

 3-21-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 3/22/97  
BRUCE CRIPPEN, PRIMARY SPONSOR      DATE

Fiscal Note for SB0383, second reading

SB 383

## 1 SENATE BILL NO. 383

2 INTRODUCED BY CRIPPEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT  
5 AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET  
6 GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL  
7 STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL  
8 STREET GANG-RELATED OFFENSES; ~~PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES  
9 USED BY CRIMINAL STREET GANGS;~~ AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

SENATE BILL NO. 383  
INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; ~~PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES USED BY CRIMINAL STREET GANGS;~~ AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

SENATE BILL NO. 383

INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; ~~PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES USED BY CRIMINAL STREET GANGS;~~ AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the Legislature finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals; and

WHEREAS, it is not the intent of the Legislature to interfere with the exercise of the constitutionally protected rights of freedom of expression and association; and

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

WHEREAS, the Legislature further finds that the State of Montana is in a situation of rising crisis caused by the entry into the state of criminal street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods; and

WHEREAS, these activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected; and

WHEREAS, the Legislature finds that several out-of-state criminal street gangs have established a presence in Montana's larger cities, that these criminal street gangs are attracting and recruiting members in Montana, and that identifiable criminal street gang-related crimes are beginning to appear and increase in Montana communities that have recognizable criminal street gang-related presences; and

WHEREAS, the Legislature finds that when these criminal street gangs establish a presence in

1 Montana cities, the quality of Montana citizens' safety, welfare, and enjoyment of life begins to decline;  
2 and

3 WHEREAS, the Legislature wishes to deter the growing influx of violent criminal street gangs and  
4 criminal street gang-related activity in its communities and to protect Montana citizens from the terror  
5 associated with violent criminal street gangs; and

6 WHEREAS, it is the intent of the Legislature in enacting [sections 1 through ~~4~~ 8] to seek the  
7 eradication of activity of criminal street gangs by focusing on the patterns of criminal street gang activity  
8 and on the organized nature of criminal street gangs; and,

9 ~~WHEREAS, the Legislature further finds that an effective means of punishing and deterring the~~  
10 ~~activities of criminal street gangs is through forfeiture of the instrumentalities used by criminal street gangs.~~

11 THEREFORE, the Legislature finds it appropriate to enact [sections 1 through ~~4~~ 8].

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 NEW SECTION. Section 1. Short title. [Sections 1 through ~~4~~ 8] may be cited as the "Montana  
16 Street Terrorism Enforcement and Prevention Act".

17

18 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~4~~ 8], the following  
19 definitions apply:

20 (1) "Criminal street gang" means any ongoing organization, association, or group of three or more  
21 persons, whether formal or informal, having as one of its primary activities the commission of one or more  
22 of the criminal acts enumerated in [section 5], having a common name or common identifying sign or  
23 symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal  
24 gang activity.

25 (2) "Pattern of criminal street gang activity" has the meaning provided in [section 5].

26

27 NEW SECTION. Section 3. Use of threat to coerce gang membership -- use of violence to coerce  
28 gang membership. (1) A person commits the offense of use of threat to coerce criminal street gang  
29 membership if the person purposely or knowingly threatens a person under 18 years of age with physical  
30 violence on two or more separate occasions with the intent to coerce, induce, or solicit the minor to

1 actively participate in any criminal street gang whose members engage in a pattern of criminal street gang  
2 activity.

3 (2) A person commits the offense of use of violence to coerce criminal street gang membership  
4 if the person purposely or knowingly uses physical violence to coerce, induce, or solicit a person under 18  
5 years of age to actively participate in any criminal street gang whose members engage in a pattern of  
6 criminal street gang activity.

7 (3) (a) A person convicted of the offense of use of threat to coerce criminal street gang  
8 membership shall be imprisoned in the county jail for a term not to exceed 1 year.

9 (b) A person convicted of the offense of use of violence to coerce criminal street gang membership  
10 shall be imprisoned in a state prison for a term not to exceed 3 years.

11 (4) A person who is 16 years of age or older and less than 18 years of age who is named in a  
12 petition filed in youth court alleging delinquency for the alleged commission of the offense of use of threat  
13 to coerce criminal street gang membership or the offense of use of violence to coerce criminal street gang  
14 membership is subject to transfer of the case to district court under 41-5-206 or, if the case is not  
15 transferred to district court under 41-5-206, to the provisions of Title 41, chapter 5.

16 (5) This section may not be construed to limit prosecution under any other provision of law.

17 (6) A person may not be convicted of violating this section based on speech alone, except on a  
18 showing that the speech itself threatened violence against a specific person, that the defendant had the  
19 apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

20  
21 **NEW SECTION. Section 4. Additional sentence for criminal street gang-related felony.** (1) (a)  
22 A person who is convicted of a felony that the person committed for the benefit of, at the direction of, or  
23 in association with any criminal street gang for the purpose of promoting, furthering, or assisting any  
24 criminal conduct by criminal street gang members shall, in addition to the punishment provided for the  
25 commission of the underlying offense, be sentenced to a term of imprisonment in a state prison of not less  
26 than 1 year or more than 3 years, except as provided in 46-18-222.

27 (b) If the underlying felony described in subsection (1)(a) is committed on the grounds of, or within  
28 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes  
29 or school-related programs or when minors are using the facility, the additional term provided for in  
30 subsection (1) is 2 to 4 years.



1 (2) The imposition or execution of the minimum sentences prescribed by this section may not be  
2 deferred or suspended, except as provided in 46-18-222.

3 (3) An additional sentence prescribed by this section shall run consecutively to the sentence  
4 provided for the underlying offense.

5  
6 **NEW SECTION. Section 5. Pattern of criminal street gang activity.** (1) For purposes of [sections  
7 1 through ~~9~~ 8], "pattern of criminal street gang activity" means the commission, solicitation, conspiracy,  
8 attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of  
9 two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were  
10 committed on separate occasions.

11 (2) The offenses that form a pattern of criminal gang activity include:

12 (a) deliberate homicide, as defined in 45-5-102;

13 (b) felony assault, as defined in 45-5-202;

14 (c) intimidation, as defined in 45-5-203;

15 (d) kidnapping, as defined in 45-5-302;

16 (e) aggravated kidnapping, as defined in 45-5-303;

17 (f) robbery, as defined in 45-5-401;

18 (g) sexual intercourse without consent, as defined in 45-5-503;

19 (h) aggravated promotion of prostitution, as defined in 45-5-603;

20 (i) criminal mischief, as defined in 45-6-101;

21 (j) arson, as defined in 45-6-103;

22 (k) burglary, as defined in 45-6-204;

23 (l) theft, as defined in 45-6-301;

24 (m) forgery, as defined in 45-6-325;

25 (n) tampering with witnesses and informants, as defined in 45-7-206;

26 (o) bringing armed men into the state, as defined in 45-8-106;

27 (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

28 (q) carrying a concealed weapon, as defined in 45-8-316;

29 (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

30 (s) possession of a destructive device, as defined in 45-8-334;

1 (t) possession of explosives, as defined in 45-8-335;

2 (u) possession of a sawed-off firearm, as defined in 45-8-340;

3 (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,  
4 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

5 (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
6 street gang membership provided in [section 3].

7  
8 ~~**NEW SECTION. Section 6. Confiscation of instrumentalities of criminal activity.** (1) Any firearm,~~  
9 ~~ammunition that may be used with the firearm, or dangerous weapon that is owned or possessed by a~~  
10 ~~member of a criminal street gang for the purpose of the commission of any of the offenses listed in [section~~  
11 ~~5] or the commission of any burglary or sexual intercourse without consent may be confiscated by any law~~  
12 ~~enforcement agency or peace officer.~~

13 ~~(2) If a law enforcement agency believes that the return of a firearm, ammunition, or a dangerous~~  
14 ~~weapon confiscated under subsection (1) is or will be used in criminal street gang activity or that the return~~  
15 ~~of the item would be likely to result in endangering the safety of others, the agency shall request the county~~  
16 ~~attorney to initiate a petition in district court to determine if the confiscated item should be returned or~~  
17 ~~declared a nuisance.~~

18 ~~(3) (a) A firearm, ammunition, or a dangerous weapon may not be sold or destroyed unless~~  
19 ~~reasonable notice is given to its lawful owner if the lawful owner's identity can be reasonably ascertained.~~  
20 ~~The law enforcement agency shall inform the lawful owner, at that person's last known address by~~  
21 ~~registered mail, that the owner has 30 days from the date of receipt of the notice to respond to the clerk~~  
22 ~~of court to confirm the owner's desire for a hearing and that the failure to respond must result in a default~~  
23 ~~order forfeiting the confiscated firearm, ammunition, or dangerous weapon as a nuisance.~~

24 ~~(b) If the person requests a hearing, the clerk of court shall set a hearing no later than 30 days from~~  
25 ~~receipt of that request. The clerk of court shall notify the person, the law enforcement agency involved,~~  
26 ~~and the county attorney of the date, time, and place of the hearing.~~

27 ~~(c) At the hearing, the burden of proof is on the state to show by a preponderance of the evidence~~  
28 ~~that the seized item was used or is likely to be used in criminal street gang activity or that return of the item~~  
29 ~~will likely result in endangering the safety of others.~~

30 ~~(d) If the owner does not request a hearing within 30 days of the notice or the lawful owner cannot~~

1 ~~be ascertained, the law enforcement agency shall request that the county attorney file a petition that the~~  
2 ~~confiscated item be declared a nuisance. If the item is declared a nuisance, the law enforcement agency~~  
3 ~~shall dispose of the item as provided by law.~~

4  
5 **NEW SECTION. Section 6. Supplying of firearms to criminal street gang.** (1) A person commits  
6 the offense of supplying firearms to a criminal street gang if:

7 (a) the person purposely or knowingly supplies, sells, or gives possession or control of any firearm  
8 to another, and the person has actual knowledge that the other person will use the firearm to commit an  
9 offense enumerated in [section 5] while actively participating in any criminal street gang whose members  
10 engage in a pattern of criminal street gang activity;

11 (b) ~~the firearm is used to commit one of the offenses enumerated in [section 5]; and~~

12 (c) ~~a conviction for the offense enumerated in [section 5] has first been obtained of the person to~~  
13 ~~whom the firearm was supplied, sold, or given.~~

14 (2) Subsection (1) does not apply to a person who is convicted as a principal to the offense  
15 committed by the person to whom the firearm was supplied, sold, or given.

16 (3) A person convicted of the offense of supplying firearms to a criminal street gang shall be  
17 imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000,  
18 or both.

19  
20 **NEW SECTION. Section 7. Exceptions.** [Sections 1 through ~~9~~ 8] do not apply to employees  
21 engaged in lawful concerted activities for their mutual aid and protection or to the lawful activities of labor  
22 organizations or their members or agents.

23  
24 **NEW SECTION. Section 8. Adoption of local regulations.** [Sections 1 through ~~9~~ 8] do not prevent  
25 a local government from adopting and enforcing ordinances or resolutions consistent with [sections 1  
26 through ~~9~~ 8] relating to criminal street gangs and criminal street gang violence.

27  
28 **Section 9.** Section 41-5-206, MCA, is amended to read:

29 "41-5-206. **Transfer to criminal court prior to prosecution.** (1) After a petition has been filed  
30 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its

1 merits, transfer the matter of prosecution to the district court if:

2 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to  
3 be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in  
4 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in  
5 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if  
6 the act had been committed by an adult; or

7 (ii) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to be  
8 unlawful and the unlawful act is one or more of the following:

9 (A) negligent homicide as defined in 45-5-104;

10 (B) arson as defined in 45-6-103;

11 (C) aggravated or felony assault as defined in 45-5-202;

12 (D) robbery as defined in 45-5-401;

13 (E) burglary or aggravated burglary as defined in 45-6-204;

14 (F) aggravated kidnapping as defined in 45-5-303;

15 (G) possession of explosives as defined in 45-8-335;

16 (H) criminal sale of dangerous drugs as defined in 45-9-101;

17 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

18 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
19 through (1)(a)(ii)(I);

20 (K) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
21 street gang membership, as defined in [section 3];

22 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a  
23 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court  
24 without a jury;

25 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the  
26 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

27 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe  
28 that:

29 (i) the youth committed the delinquent act alleged;

30 (ii) the seriousness of the offense and the protection of the community require treatment of the

1 youth beyond that afforded by juvenile facilities; and

2 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

3 (2) In transferring the matter of prosecution to the district court, the court may also consider the  
4 following factors:

5 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,  
6 environmental situation, and emotional attitude and pattern of living;

7 (b) the record and previous history of the youth, including previous contacts with the youth court,  
8 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior  
9 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of  
10 itself grounds for denying the transfer.

11 (3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ of age or older at the  
12 time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as  
13 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in  
14 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

15 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the  
16 jurisdiction of the youth court was waived and the case transferred to district court.

17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the  
18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense  
19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in  
20 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or  
21 41-5-1105.

22 (6) Upon order of the youth court transferring the case to the district court under subsection (5),  
23 the county attorney shall file the information against the youth without unreasonable delay.

24 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime  
25 enumerated in subsection (1) may be:

26 (a) tried in youth court;

27 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the  
28 county attorney and order of the youth court judge.

29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court  
30 and is sentenced to the state prison, the commitment must be to the department of corrections. The

1 department shall confine the youth in whatever institution that it considers proper, including a state youth  
2 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not  
3 be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
5 in a jail or other adult detention facility before final disposition of the youth's case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
8 adults accused or convicted of criminal offenses."

9  
10 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through ~~9~~ 8] are intended to be  
11 codified as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through ~~9~~ 8].  
12

13 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
15 applications, the part remains in effect in all valid applications that are severable from the invalid  
16 applications.  
17

18 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.  
19

20 **NEW SECTION. Section 13. Retroactive applicability.** For purposes of determining a pattern of  
21 criminal gang activity, the provisions of [section 5] apply retroactively, within the meaning of 1-2-109, to  
22 an offense that occurred before [the effective date of this act] if the second or subsequent offense occurred  
23 after [the effective date of this act].  
24

-END-

## 1 SENATE BILL NO. 383

2 INTRODUCED BY CRIPPEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT  
5 AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET  
6 GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL  
7 STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL  
8 STREET GANG-RELATED OFFENSES; ~~PROVIDING FOR THE FORFEITURE OF THE INSTRUMENTALITIES  
9 USED BY CRIMINAL STREET GANGS~~; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."  
11

12 WHEREAS, the Legislature finds and declares that it is the right of every person to be secure and  
13 protected from fear, intimidation, and physical harm caused by the activities of violent groups and  
14 individuals; and

15 WHEREAS, it is not the intent of the Legislature to interfere with the exercise of the constitutionally  
16 protected rights of freedom of expression and association; and

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

21 WHEREAS, the Legislature further finds that the State of Montana is in a situation of rising crisis  
22 caused by the entry into the state of criminal street gangs whose members threaten, terrorize, and commit  
23 a multitude of crimes against the peaceful citizens of their neighborhoods; and

24 WHEREAS, these activities, both individually and collectively, present a clear and present danger  
25 to public order and safety and are not constitutionally protected; and

26 WHEREAS, the Legislature finds that several out-of-state criminal street gangs have established a  
27 presence in Montana's larger cities, that these criminal street gangs are attracting and recruiting members  
28 in Montana, and that identifiable criminal street gang-related crimes are beginning to appear and increase  
29 in Montana communities that have recognizable criminal street gang-related presences; and

30 WHEREAS, the Legislature finds that when these criminal street gangs establish a presence in

1 Montana cities, the quality of Montana citizens' safety, welfare, and enjoyment of life begins to decline;  
2 and

3 WHEREAS, the Legislature wishes to deter the growing influx of violent criminal street gangs and  
4 criminal street gang-related activity in its communities and to protect Montana citizens from the terror  
5 associated with violent criminal street gangs; and

6 WHEREAS, it is the intent of the Legislature in enacting [sections 1 through ~~40~~ 8] to seek the  
7 eradication of activity of criminal street gangs by focusing on the patterns of criminal street gang activity  
8 and on the organized nature of criminal street gangs; ~~and,~~

9 ~~WHEREAS, the Legislature further finds that an effective means of punishing and deterring the~~  
10 ~~activities of criminal street gangs is through forfeiture of the instrumentalities used by criminal street gangs.~~

11 THEREFORE, the Legislature finds it appropriate to enact [sections 1 through ~~40~~ 8].

12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14

15 NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~9~~ 8] may be cited as the "Montana  
16 Street Terrorism Enforcement and Prevention Act".

17

18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through ~~9~~ 8], the following  
19 definitions apply:

20 (1) "Criminal street gang" means any ongoing organization, association, or group of three or more  
21 persons, whether formal or informal, having as one of its primary activities the commission of one or more  
22 of the criminal acts enumerated in [section 5], having a common name or common identifying sign or  
23 symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal  
24 STREET gang activity.

25 (2) "Pattern of criminal street gang activity" has the meaning provided in [section 5].

26

27 NEW SECTION. **Section 3. Use of threat to coerce gang membership -- use of violence to coerce**  
28 **gang membership.** (1) A person commits the offense of use of threat to coerce criminal street gang  
29 membership if the person purposely or knowingly threatens a person under 18 years of age with physical  
30 violence on two or more separate occasions with the intent to coerce, induce, or solicit the minor to



1 actively participate in any criminal street gang whose members engage in a pattern of criminal street gang  
2 activity.

3 (2) A person commits the offense of use of violence to coerce criminal street gang membership  
4 if the person purposely or knowingly uses physical violence to coerce, induce, or solicit a person under 18  
5 years of age to actively participate in any criminal street gang whose members engage in a pattern of  
6 criminal street gang activity.

7 (3) (a) A person convicted of the offense of use of threat to coerce criminal street gang  
8 membership shall be imprisoned in the county jail for a term not to exceed 1 year.

9 (b) A person convicted of the offense of use of violence to coerce criminal street gang membership  
10 shall be imprisoned in a state prison for a term not to exceed 3 years.

11 (4) A person who is 16 years of age or older and less than 18 years of age who is named in a  
12 petition filed in youth court alleging delinquency for the alleged commission of the offense of use of threat  
13 to coerce criminal street gang membership or the offense of use of violence to coerce criminal street gang  
14 membership is subject to transfer of the case to district court under 41-5-206 or, if the case is not  
15 transferred to district court under 41-5-206, to the provisions of Title 41, chapter 5.

16 (5) This section may not be construed to limit prosecution under any other provision of law.

17 (6) A person may not be convicted of violating this section based on speech alone, except on a  
18 showing that the speech itself threatened violence against a specific person, that the defendant had the  
19 apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

20

21 **NEW SECTION. Section 4. Additional sentence for criminal street gang-related felony.** (1) (a)  
22 A person who is convicted of a felony that the person committed for the benefit of, at the direction of, or  
23 in association with any criminal street gang for the purpose of promoting, furthering, or assisting any  
24 criminal conduct by criminal street gang members shall, in addition to the punishment provided for the  
25 commission of the underlying offense, be sentenced to a term of imprisonment in a state prison of not less  
26 than 1 year or more than 3 years, except as provided in 46-18-222.

27 (b) If the underlying felony described in subsection (1)(a) is committed on the grounds of, or within  
28 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes  
29 or school-related programs or when minors are using the facility, the additional term provided for in  
30 subsection (1) is 2 to 4 years.

1 (2) The imposition or execution of the minimum sentences prescribed by this section may not be  
2 deferred or suspended, except as provided in 46-18-222.

3 (3) An additional sentence prescribed by this section shall run consecutively to the sentence  
4 provided for the underlying offense.

5

6 **NEW SECTION. Section 5. Pattern of criminal street gang activity.** (1) For purposes of [sections  
7 1 through ~~9~~ 8], "pattern of criminal street gang activity" means the commission, solicitation, conspiracy,  
8 attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of  
9 two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were  
10 committed on separate occasions.

11 (2) The offenses that form a pattern of criminal STREET gang activity include:

12 (a) deliberate homicide, as defined in 45-5-102;

13 (b) felony assault, as defined in 45-5-202;

14 (c) intimidation, as defined in 45-5-203;

15 (d) kidnapping, as defined in 45-5-302;

16 (e) aggravated kidnapping, as defined in 45-5-303;

17 (f) robbery, as defined in 45-5-401;

18 (g) sexual intercourse without consent, as defined in 45-5-503;

19 (h) aggravated promotion of prostitution, as defined in 45-5-603;

20 (i) criminal mischief, as defined in 45-6-101;

21 (j) arson, as defined in 45-6-103;

22 (k) burglary, as defined in 45-6-204;

23 (l) theft, as defined in 45-6-301;

24 (m) forgery, as defined in 45-6-325;

25 (n) tampering with witnesses and informants, as defined in 45-7-206;

26 (o) bringing armed men into the state, as defined in 45-8-106;

27 (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

28 (q) carrying a concealed weapon, as defined in 45-8-316;

29 (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

30 (s) possession of a destructive device, as defined in 45-8-334;

1 (t) possession of explosives, as defined in 45-8-335;

2 (u) possession of a sawed-off firearm, as defined in 45-8-340;

3 (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture,  
4 or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

5 (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
6 street gang membership provided in [section 3].

7  
8 ~~NEW SECTION. Section 6. Confiscation of instrumentalities of criminal activity. (1) Any firearm,~~  
9 ~~ammunition that may be used with the firearm, or dangerous weapon that is owned or possessed by a~~  
10 ~~member of a criminal street gang for the purpose of the commission of any of the offenses listed in [section~~  
11 ~~5] or the commission of any burglary or sexual intercourse without consent may be confiscated by any law~~  
12 ~~enforcement agency or peace officer.~~

13 ~~(2) If a law enforcement agency believes that the return of a firearm, ammunition, or a dangerous~~  
14 ~~weapon confiscated under subsection (1) is or will be used in criminal street gang activity or that the return~~  
15 ~~of the item would be likely to result in endangering the safety of others, the agency shall request the county~~  
16 ~~attorney to initiate a petition in district court to determine if the confiscated item should be returned or~~  
17 ~~declared a nuisance.~~

18 ~~(3) (a) A firearm, ammunition, or a dangerous weapon may not be sold or destroyed unless~~  
19 ~~reasonable notice is given to its lawful owner if the lawful owner's identity can be reasonably ascertained.~~  
20 ~~The law enforcement agency shall inform the lawful owner, at that person's last known address by~~  
21 ~~registered mail, that the owner has 30 days from the date of receipt of the notice to respond to the clerk~~  
22 ~~of court to confirm the owner's desire for a hearing and that the failure to respond must result in a default~~  
23 ~~order forfeiting the confiscated firearm, ammunition, or dangerous weapon as a nuisance.~~

24 ~~(b) If the person requests a hearing, the clerk of court shall set a hearing no later than 30 days from~~  
25 ~~receipt of that request. The clerk of court shall notify the person, the law enforcement agency involved,~~  
26 ~~and the county attorney of the date, time, and place of the hearing.~~

27 ~~(c) At the hearing, the burden of proof is on the state to show by a preponderance of the evidence~~  
28 ~~that the seized item was used or is likely to be used in criminal street gang activity or that return of the item~~  
29 ~~will likely result in endangering the safety of others.~~

30 ~~(d) If the owner does not request a hearing within 30 days of the notice or the lawful owner cannot~~

1 ~~be ascertained, the law enforcement agency shall request that the county attorney file a petition that the~~  
 2 ~~confiscated item be declared a nuisance. If the item is declared a nuisance, the law enforcement agency~~  
 3 ~~shall dispose of the item as provided by law.~~

4  
 5 **NEW SECTION. Section 6. Supplying of firearms to criminal street gang.** (1) A person commits  
 6 the offense of supplying firearms to a criminal street gang if:

7 ~~(a) the person purposely or knowingly supplies, sells, or gives possession or control of any firearm~~  
 8 ~~to another, and the person has actual knowledge that the other person will use the firearm to commit an~~  
 9 ~~offense enumerated in [section 5] while actively participating in any criminal street gang whose members~~  
 10 ~~engage in a pattern of criminal street gang activity;~~

11 ~~(b) the firearm is used to commit one of the offenses enumerated in [section 5]; and~~

12 ~~(c) a conviction for the offense enumerated in [section 5] has first been obtained of the person to~~  
 13 ~~whom the firearm was supplied, sold, or given.~~

14 (2) Subsection (1) does not apply to a person who is convicted as a principal to the offense  
 15 committed by the person to whom the firearm was supplied, sold, or given.

16 (3) A person convicted of the offense of supplying firearms to a criminal street gang shall be  
 17 imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000,  
 18 or both.

19  
 20 **NEW SECTION. Section 7. Exceptions.** [Sections 1 through ~~9 8~~] do not apply to employees  
 21 engaged in lawful concerted activities for their mutual aid and protection or to the lawful activities of labor  
 22 organizations or their members or agents.

23  
 24 **NEW SECTION. Section 8. Adoption of local regulations.** [Sections 1 through ~~9 8~~] do not prevent  
 25 a local government from adopting and enforcing ordinances or resolutions consistent with [sections 1  
 26 through ~~9 8~~] relating to criminal street gangs and criminal street gang violence.

27  
 28 **Section 9.** Section 41-5-206, MCA, is amended to read:

29 **"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed  
 30 alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its

1 merits, transfer the matter of prosecution to the district court if:

2 (a) (i) the youth charged was 12 years of age or ~~more~~ older at the time of the conduct alleged to  
3 be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in  
4 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in  
5 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if  
6 the act had been committed by an adult; or

7 (ii) the youth charged was 16 years of age or ~~more~~ older at the time of the conduct alleged to be  
8 unlawful and the unlawful act is one or more of the following:

9 (A) negligent homicide as defined in 45-5-104;

10 (B) arson as defined in 45-6-103;

11 (C) aggravated or felony assault as defined in 45-5-202;

12 (D) robbery as defined in 45-5-401;

13 (E) burglary or aggravated burglary as defined in 45-6-204;

14 (F) aggravated kidnapping as defined in 45-5-303;

15 (G) possession of explosives as defined in 45-8-335;

16 (H) criminal sale of dangerous drugs as defined in 45-9-101;

17 (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

18 (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)  
19 through (1)(a)(ii)(I);

20 ~~(K) use of threat to coerce criminal street gang membership or use of violence to coerce criminal~~  
21 ~~street gang membership, as defined in [section 3];~~

22 (b) a hearing on whether the transfer should be made is held in conformity with the rules on a  
23 hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court  
24 without a jury;

25 (c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the  
26 youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

27 (d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe  
28 that:

29 (i) the youth committed the delinquent act alleged;

30 (ii) the seriousness of the offense and the protection of the community require treatment of the

- 1 youth beyond that afforded by juvenile facilities; and
- 2 (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.
- 3 (2) In transferring the matter of prosecution to the district court, the court may also consider the
- 4 following factors:
- 5 (a) the sophistication and maturity of the youth, determined by consideration of the youth's home,
- 6 environmental situation, and emotional attitude and pattern of living;
- 7 (b) the record and previous history of the youth, including previous contacts with the youth court,
- 8 law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior
- 9 commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of
- 10 itself grounds for denying the transfer.
- 11 (3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ of age or older at the
- 12 time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as
- 13 defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in
- 14 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.
- 15 (4) Upon transfer to district court, the judge shall make written findings of the reasons why the
- 16 jurisdiction of the youth court was waived and the case transferred to district court.
- 17 (5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the
- 18 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
- 19 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
- 20 this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or
- 21 41-5-1105.
- 22 (6) Upon order of the youth court transferring the case to the district court under subsection (5),
- 23 the county attorney shall file the information against the youth without unreasonable delay.
- 24 (7) Any offense not enumerated in subsection (1) that arises during the commission of a crime
- 25 enumerated in subsection (1) may be:
- 26 (a) tried in youth court;
- 27 (b) transferred to district court with an offense enumerated in subsection (1), upon motion of the
- 28 county attorney and order of the youth court judge.
- 29 (8) If a youth is found guilty in district court of any of the offenses transferred by the youth court
- 30 and is sentenced to the state prison, the commitment must be to the department of corrections. The

1 department shall confine the youth in whatever institution that it considers proper, including a state youth  
2 correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not  
3 be confined in the state prison.

4 (9) A youth whose case is transferred to district court may not be detained or otherwise placed  
5 in a jail or other adult detention facility before final disposition of the youth's case unless:

6 (a) alternative facilities do not provide adequate security; and

7 (b) the youth is kept in an area that provides physical, as well as sight and sound, separation from  
8 adults accused or convicted of criminal offenses."

9

10 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 9 8] are intended to be  
11 codified as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through 9 8].

12

13 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are  
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
15 applications, the part remains in effect in all valid applications that are severable from the invalid  
16 applications.

17

18 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

19

20 **NEW SECTION. Section 13. Retroactive applicability.** For purposes of determining a pattern of  
21 criminal STREET gang activity, the provisions of [section 5] apply retroactively, within the meaning of  
22 1-2-109, to an offense that occurred before [the effective date of this act] if the second or subsequent  
23 offense occurred after [the effective date of this act].

24

-END-