

# Criminal Gangs/Gang-Free Zones

This legislation enacts a number of provisions about gang-related offenses. For example, it creates an offense for aspiring to commit or committing certain crimes as a member of a criminal street gang and it establishes penalties for directing the activities of street gangs. It also requires children who are arrested for committing crimes as gang members to participate in gang intervention programs.

The Act enhances penalties for certain organized criminal activity committed in or around a gang-free zone and provides that a map from a municipal county engineer is admissible as evidence of a gang-free zone. It requires information about gang-free zones be included in the student handbooks or equivalent publications of public or private elementary or secondary schools and institutions of higher education and also be distributed to the parents and guardians of children who attend day-cares.

It enables the state or another governmental entity to bring an action against a member of a criminal street gang for damages when the member violates a temporary or permanent injunction. A district, county, or city attorney or the attorney general can sue to recover actual damages, civil penalties, and court costs and fees.

The legislation makes the property of a criminal street gang or its members subject to seizure under certain conditions. Money received for damages or as a civil penalty must be used to benefit of the community or harmed neighborhood.

It authorizes a court to impose electronic monitoring on a member of a criminal street gang as a condition of granting community supervision. The bill authorizes a parole panel to impose on a member of a criminal street gang who is a repeat offender electronic monitoring as a condition of release on parole or mandatory supervision.

The Act establishes criteria for including evidence of membership in a criminal street gang intelligence database and allows that information to be retained for five years.

The legislation also provides for the creation of a state anti-gang grant program to support regional, multidisciplinary approaches to combat gang violence.

Submitted as:

Texas

[HB 2086 \(Enrolled version\)](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act to Address Criminal Gang  
2 Activity.”

3  
4           Section 2. [*Offenses for Committing Certain Acts as Part of a Criminal Street Gang*.]

5           (a) A person commits an offense if, with the intent to establish, maintain, or participate in  
6 a combination or in the profits of a combination or as a member of a criminal street gang, they  
7 commit or conspires to commit one or more of the following:

8                   (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft,  
9 aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault,  
10 forgery, deadly conduct, assault punishable as a [Class A misdemeanor], burglary of a motor

11 vehicle, or unauthorized use of a motor vehicle; any gambling offense punishable as a [Class A  
12 misdemeanor];

13 (2) promotion of prostitution, aggravated promotion of prostitution, or compelling  
14 prostitution;

15 (3) unlawful manufacture, transportation, repair, or sale of firearms or prohibited  
16 weapons;

17 (4) unlawful manufacture, delivery, dispensation, or distribution of a controlled  
18 substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug  
19 through forgery, fraud, misrepresentation, or deception;

20 (5) any unlawful wholesale promotion or possession of any obscene material or  
21 obscene device with the intent to wholesale promote the same; and

22 (6) any offense under [insert citation], depicting or involving conduct by or  
23 directed toward a child younger than [18] years of age.

24 (b) An offense under [insert citation] is one category lower than the [solicited offense],  
25 except that an offense under [insert citation] is the same category as the [solicited offense] if it is  
26 shown on the trial of the offense that the actor was at the time of the offense [17] years of age or  
27 older and a member of a criminal street gang, as defined by [insert citation], and committed the  
28 offense with the intent to further the criminal activities of the criminal street gang or avoid  
29 detection as a member of a criminal street gang.

30 (c) A person commits an offense if the person knowingly initiates, organizes, plans,  
31 finances, directs, manages, or supervises a criminal street gang or members of a criminal street  
32 gang with the intent to benefit, promote, or further the interests of the criminal street gang or to  
33 increase the person's standing, position, or status in the criminal street gang.

34 (d) An offense under paragraph (c) of this section is a [felony of the first degree].

35 (e) Notwithstanding [insert citation], in this Act, "criminal street gang" means:

36 (1) an organization that:

37 (A) has more than [10] members whose names are included in an  
38 intelligence database under [insert citation];

39 (B) has a hierarchical structure that has been documented in an  
40 intelligence database under [insert citation];

41 (C) engages in profit-sharing among [two or more] members of the  
42 organization; and

43 (D) in [one or more] regions of this state served by different regional  
44 councils of government, continuously or regularly engages in conduct:

45 (i) that constitutes an offense listed in [insert citation];

46 (ii) in which it is alleged that a deadly weapon is used or exhibited  
47 during the commission of or immediate flight from the commission of any felony offense; or

48 (iii) that is punishable as a felony of the first or second degree  
49 under [insert citation]; or

50 (2) an organization that, in collaboration with an organization described by  
51 Subdivision (1), engages in conduct or commits an offense or conspires to engage in conduct or  
52 commit an offense described by Subdivision (1)(D).

53 (f) In the trial of an offense, on the motion of the attorney representing the state, the  
54 judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment  
55 in the case if the judge determines that the applicable conduct was engaged in as part of the  
56 activities of a criminal street gang as defined by [insert citation].

57

58 Section 3. [*Gang-Related Conduct by Children.*]

59 (a) In this section:

60 (1) “Criminal street gang” has the meaning assigned by [insert citation];  
61 (2) “Gang-related conduct” means conduct that violates a penal law of the grade  
62 of [Class B misdemeanor] or higher and in which a child engages with the intent to further the  
63 criminal activities of a criminal street gang of which the child is a member; gain membership in a  
64 criminal street gang; or avoid detection as a member of a criminal street gang.

65 (b) A juvenile court, in a disposition hearing under [insert citation] regarding a child who  
66 has been adjudicated to have engaged in delinquent conduct that is also gang-related conduct,  
67 shall order the child to participate in a criminal street gang intervention program that is  
68 appropriate for the child based on the child’s level of involvement in the criminal activities of a  
69 criminal street gang. The intervention program must include at least [12] hours of instruction and  
70 may include voluntary tattoo removal.

71 (c) If a child required to attend a criminal street gang intervention program is committed  
72 to the [youth commission] as a result of the gang-related conduct, the child must complete the  
73 intervention program before being discharged from the custody of or released under supervision  
74 by the [commission].

75  
76 Section 4. [*Gang-Free Zones.*]

77 (a) This section applies to an offense listed in [insert citation], other than burglary, theft,  
78 burglary of a motor vehicle, or unauthorized use of a motor vehicle.

79 (b) In this section:

80 (1) “Institution of higher education,” “playground,” “premises,” “school,” “video  
81 arcade facility,” and “youth center” have the meanings assigned by [insert citation].

82 (2) “Shopping mall” means an enclosed public walkway or hall area that connects  
83 retail, service, or professional establishments.

84 (c) Except as provided by Subsection (d), the punishment prescribed for an offense  
85 described by Subsection (a) is increased to the punishment prescribed for the next highest  
86 category of offense if the actor is [17] years of age or older and it is shown beyond a reasonable  
87 doubt on the trial of the offense that the actor committed the offense at a location that was:

88 (1) in, on, or within 1,000 feet of any:

89 (A) real property that is owned, rented, or leased by a school or school  
90 board;

91 (B) premises owned, rented, or leased by an institution of higher  
92 education;

93 (C) premises of a public or private youth center; or

94 (D) playground;

95 (2) in, on, or within 300 feet of any:

96 (A) shopping mall;

97 (B) movie theater;

98 (C) premises of a public swimming pool; or

99 (D) premises of a video arcade facility; or

100 (3) on a school bus.

101 (d) The punishment for an offense described by Subsection (a) may not be increased  
102 under this section if the offense is punishable under [insert citation] as a [felony of the first  
103 degree].

104 (e) In a prosecution of an offense for which punishment is increased under [insert  
105 citation], a map produced or reproduced by a municipal or county engineer for the purpose of  
106 showing the location and boundaries of gang-free zones is admissible in evidence and is prima  
107 facie evidence of the location or boundaries of those zones if the governing body of the

108 municipality or county adopts a resolution or ordinance approving the map as an official finding  
109 and record of the location or boundaries of those zones.

110 (f) A municipal or county engineer may, on request of the governing body of the  
111 municipality or county, revise a map that has been approved by the governing body of the  
112 municipality or county as provided by Subsection (e).

113 (g) A municipal or county engineer shall file the original or a copy of every approved or  
114 revised map approved as provided by Subsection (e) with the county clerk of each county in  
115 which the zone is located.

116 (h) This section does not prevent the prosecution from introducing or relying on any other  
117 evidence or testimony to establish any element of an offense for which punishment is increased  
118 under [insert citation] or using or introducing any other map or diagram otherwise admissible  
119 under the state [Rules of Evidence].

120 (i) The superintendent of each public school district and the administrator of each private  
121 elementary or secondary school located in the public school district shall ensure that the student  
122 handbook for each campus in the public school district includes information about gang-free  
123 zones and the consequences of engaging in organized criminal activity within those zones.

124 (j) The governing board of each institution of higher education shall ensure that any  
125 student handbook or similar publication for the institution includes information about gang-free  
126 zones and the consequences of engaging in organized criminal activity within those zones.

127 (k) Each day-care center shall, in accordance with rules adopted by the [executive  
128 commissioner], distribute to parents and guardians of children who attend the center information  
129 about gang-free zones and the consequences of engaging in organized criminal activity within  
130 those zones.

131

132 Section 5. [*Civil Action for Violation of Injunction.*]

133 (a) In this section, “governmental entity” means a political subdivision of this state,  
134 including any city, county, school district, junior college district, levee improvement district,  
135 drainage district, irrigation district, water improvement district, water control and improvement  
136 district, water control and preservation district, freshwater supply district, navigation district,  
137 conservation and reclamation district, soil conservation district, communication district, public  
138 health district, and river authority.

139 (b) A criminal street gang or a member of a criminal street gang is liable to the state or a  
140 governmental entity injured by the violation of a temporary or permanent injunctive order.

141 (c) In an action brought against a member of a criminal street gang, the plaintiff must  
142 show that the member violated the temporary or permanent injunctive order.

143 (d) A district, county, or city attorney or the attorney general may sue for money damages  
144 on behalf of the state or a governmental entity. If the state or a governmental entity prevails in a  
145 suit under this section, the state or governmental entity may recover actual damages; a civil  
146 penalty in an amount not to exceed [\$20,000] for each violation; and court costs and attorney’s  
147 fees.

148 (e) The property of the criminal street gang or a member of the criminal street gang may  
149 be seized in execution on a judgment under this section. Property may not be seized under this  
150 section if the owner or interest holder of the property proves by a preponderance of the evidence  
151 that the owner or interest holder was not a member of the criminal street gang and did not violate  
152 the temporary or permanent injunctive order. The owner or interest holder of property that is in  
153 the possession of a criminal street gang or a member of the criminal street gang and that is  
154 subject to execution under this section must show that the property was stolen from the owner or  
155 interest holder or was used or intended to be used without the effective consent of the owner or  
156 interest holder by the criminal street gang or a member of the criminal street gang.

157 (f) The [attorney general] shall deposit money received under this section for damages or  
158 as a civil penalty in the [Neighborhood and Community Recovery Fund] established under  
159 [insert citation] and held by the [attorney general] outside the [state treasury]. Money in the fund  
160 is held by the [attorney general] in trust for the benefit of the community or neighborhood  
161 harmed by the violation of a temporary or permanent injunctive order. Money in the fund may be  
162 used only for the benefit of the community or neighborhood harmed by the violation of the  
163 injunctive order. Interest earned on money in the fund shall be credited to the fund. The [attorney  
164 general] shall account for money in the fund so that money held for the benefit of a community  
165 or neighborhood, and interest earned on that money, are not commingled with money in the fund  
166 held for the benefit of a different community or neighborhood.

167 (g) A district, county, or city attorney who brings suit on behalf of a governmental entity  
168 shall deposit money received for damages or as a civil penalty in an account to be held in trust  
169 for the benefit of the community or neighborhood harmed by the violation of a temporary or  
170 permanent injunctive order. Money in the account may be used only for the benefit of the  
171 community or neighborhood harmed by the violation of the injunctive order. Interest earned on  
172 money in the account shall be credited to the account. The district, county, or city attorney shall  
173 account for money in the account so that money held for the benefit of a community or  
174 neighborhood, and interest earned on that money, are not commingled with money in the account  
175 held for the benefit of a different community or neighborhood.

176 (h) An action under this section brought by the state or a governmental entity does not  
177 waive sovereign or governmental immunity for any purpose.

178

179 Section 6. [*Electronic Monitoring of Certain Members of a Criminal Street Gang.*]

180 (a) A court granting community supervision to a defendant who is identified as a member  
181 of a criminal street gang in an intelligence database established under [insert citation] and has  
182 [two] or more times been previously convicted of, or received a grant of deferred adjudication  
183 community supervision or another functionally equivalent form of community supervision or  
184 probation for, a felony offense under the laws of this state, another state, or the United States  
185 may, on the defendant's conviction of a felony offense, require as a condition of community  
186 supervision that the defendant submit to tracking under an electronic monitoring service or other  
187 appropriate technological service designed to track a person's location.

188 (b) The judge of the court having jurisdiction of the case shall determine the conditions of  
189 community supervision and may, at any time, during the period of community supervision, alter  
190 or modify the conditions. The judge may impose any reasonable condition that is designed to  
191 protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform  
192 the defendant. Conditions of community supervision may include the conditions that the  
193 defendant shall avoid persons or places of disreputable or harmful character, including any  
194 person, other than a family member of the defendant, who is an active member of a criminal  
195 street gang.

196 (c) A parole panel may require as a condition of release on parole or to mandatory  
197 supervision that a releasee who is identified as a member of a criminal street gang in an  
198 intelligence database established under [insert citation] and has [three or more] times been  
199 convicted of, or received a grant of deferred adjudication community supervision or another  
200 functionally equivalent form of community supervision or probation for, a felony offense under  
201 the laws of this state, another state, or the United States, submit to tracking under an electronic  
202 monitoring service or other appropriate technological service designed to track a person's  
203 location.

204 (d) A court granting community supervision to a defendant convicted of an offense under  
205 [insert citation] may impose as a condition of community supervision restrictions on the

206 defendant's operation of a motor vehicle, including specifying hours during which the defendant  
207 may not operate a motor vehicle; and locations at or in which the defendant may not operate a  
208 motor vehicle.

209

210 Section 7. [*Collecting Information About Criminal Street Gangs.*]

211 (a) Criminal information collected under [insert citation] relating to a criminal street gang  
212 must be relevant to the identification of an organization that is reasonably suspected of  
213 involvement in criminal activity and consist of a judgment under any law that includes, as a  
214 finding or as an element of a criminal offense, participation in a criminal street gang; a self-  
215 admission by the individual of criminal street gang membership that is made during a judicial  
216 proceeding; or except as provided by [insert citation], any [two] of the following:

217 (1) a self-admission by the individual of criminal street gang membership that is  
218 not made during a judicial proceeding, including the use of the Internet or other electronic format  
219 or medium to post photographs or other documentation identifying the individual as a member of  
220 a criminal street gang;

221 (2) an identification of the individual as a criminal street gang member by a  
222 reliable informant or other individual;

223 (3) a corroborated identification of the individual as a criminal street gang  
224 member by an informant or other individual of unknown reliability;

225 (4) evidence that the individual frequents a documented area of a criminal street  
226 gang and associates with known criminal street gang members;

227 (5) evidence that the individual uses, in more than an incidental manner, criminal  
228 street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers,  
229 words, or marks, regardless of how or the means by which the symbols are displayed, that are  
230 associated with a criminal street gang that operates in an area frequented by the individual and  
231 described by Subparagraph (4);

232 (6) evidence that the individual has been arrested or taken into custody with  
233 known criminal street gang members for an offense or conduct consistent with criminal street  
234 gang activity;

235 (7) evidence that the individual has visited a known criminal street gang member,  
236 other than a family member of the individual, while the gang member is confined in or  
237 committed to a penal institution; or

238 (8) evidence of the individual's use of technology, including the Internet, to  
239 recruit new criminal street gang members.

240 (b) Evidence described by [insert citation] is not sufficient to create the eligibility of a  
241 person's information to be included in an intelligence database described by [insert citation]  
242 unless the evidence is combined with information described by [insert subparagraphs].

243 (c) Information collected under [insert citation] relating to a criminal street gang must be  
244 removed from an intelligence database established under [insert citation] and the intelligence  
245 database maintained by the [department] under [insert citation] after [five] years if the  
246 information relates to the investigation or prosecution of criminal activity engaged in by an  
247 individual other than a child and the individual who is the subject of the information has not been  
248 arrested for criminal activity reported to the [department] under [insert citation].

249 (d) In determining whether information is required to be removed from an intelligence  
250 database under Subparagraph (c), the [five-year] period does not include any period during  
251 which the individual who is the subject of the information is confined in a correctional facility  
252 operated by or under contract with the [department of criminal justice]; committed to a secure  
253 correctional facility operated by or under contract with the [youth commission] or confined in a  
254 county jail or confined in or committed to a facility operated by a juvenile board in lieu of being

255 confined in a correctional facility operated by or under contract with the [department of criminal  
256 justice] or being committed to a secure correctional facility operated by or under contract with  
257 the [youth commission].  
258

259 Section 8. [*Anti-Gang Grant Program.*]

260 (a) The [criminal justice division] established under [insert citation] shall administer a  
261 competitive grant program to support regional, multidisciplinary approaches to combat gang  
262 violence through the coordination of gang prevention, intervention, and suppression activities.

263 (b) The grant program administered under this section must be directed toward regions of  
264 this state that have demonstrably high levels of gang violence.

265 (c) The [criminal justice division] shall award grants to qualified applicants, as  
266 determined by the [division], that demonstrate a comprehensive approach that balances gang  
267 prevention, intervention, and suppression activities to reduce gang violence.

268 (d) The [criminal justice division] shall include in a [biennial] report required by [insert  
269 citation] detailed reporting of the results and performance of the grant program administered  
270 under this section.

271 (e) The [criminal justice division] may use any revenue available for purposes of this  
272 section.  
273

274 Section 9. [*Severability.*] [Insert severability clause.]

275 Section 10. [*Repealer.*] [Insert repealer clause.]

276 Section 11. [*Effective Date.*] [Insert effective date.]  
277  
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