

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0104

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to LYMAN-RIOT AND UNLAWFUL ASSEMBLY.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-10-1 be amended to read as follows:

4 22-10-1. Any use of force or violence or any threat to use force or violence, if accompanied
5 by immediate power of execution, by three or more persons, acting together and without
6 authority of law, is riot. Riot is a Class 4 felony.

7 Section 2. That § 22-10-5 be amended to read as follows:

8 22-10-5. Any person who carries a dangerous weapon while participating in a riot is guilty
9 of aggravated riot. Aggravated riot is a Class 3 felony.

10 Section 3. That chapter 22-10 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 There is no offense of attempted riot or attempted aggravated riot.

13 Section 4. That § 22-10-6 be amended to read as follows:

14 22-10-6. Any person who ~~participated~~ participates in any riot; and who ~~directed, advised,~~
15 ~~encouraged, or solicited~~ directs, advises, encourages, or solicits other persons ~~who participated~~
16 participating in the riot to acts of force or violence; is guilty of a Class 2 felony.



1 Section 5. That § 22-10-6.1 be amended to read as follows:

2 22-10-6.1. Any person who ~~directed, advised, encouraged, or solicited~~ does not personally
3 participate in any riot but who directs, advises, encourages, or solicits other persons ~~who~~
4 ~~participated~~ participating in a the riot to acts of force or violence, ~~but who himself did not~~
5 ~~participate in such riot~~ is guilty of a Class 5 felony.

6 Section 6. That § 22-10-9 be amended to read as follows:

7 22-10-9. Any person who assembles with two or more persons for the purpose of engaging
8 in conduct constituting riot or aggravated riot or who, if being present at an assembly that either
9 has or develops such a purpose, remains there, with intent to advance that purpose, is guilty of
10 unlawful assembly. Unlawful assembly is a Class 1 misdemeanor.

11 ~~There is no offense of attempted riot or attempted aggravated riot.~~

12 Section 7. That § 22-10-11 be amended to read as follows:

13 22-10-11. Any person who, during a riot or unlawful assembly, intentionally disobeys a
14 reasonable public safety order to move, disperse, or refrain from specified activities in the
15 immediate vicinity of the riot, is guilty of a Class 1 misdemeanor. A public safety order is ~~an~~
16 any order designed, the purpose of which is to prevent or control disorder; or promote the safety
17 of persons or property, issued by a law enforcement officer or a member of the fire or military
18 forces concerned with the riot or unlawful assembly.

19 Section 8. That § 22-10-13 be amended to read as follows:

20 22-10-13. The Governor, as commander-in-chief of the armed forces of the state, may call
21 out armed forces to suppress any riot or unlawful assembly. If such armed forces are insufficient
22 to suppress the riot or unlawful assembly, the Governor may apply to the military forces of the
23 United States for a force sufficient to suppress such riot or unlawful assembly.

24 Section 9. The code counsel shall transfer § 22-10-13 to chapter 1-7 and shall renumber the

1 section accordingly and adjust all appropriate cross references.

2 Section 10. That § 22-10-14 be amended to read as follows:

3 22-10-14. Terms used in §§ 22-10-14 to 22-10-16, inclusive, mean:

4 (1) "Street gang," a any formal or informal ongoing organization, association, or group
5 of three or more persons who have a common name or common identifying signs,
6 colors, or symbols and have members or associates who, individually or collectively,
7 engage in or have engaged in a pattern of street gang activity;

8 (2) "Street gang member," a any person who engages in a pattern of street gang activity
9 and who meets two or more of the following criteria:

10 (a) Admits to gang membership;

11 (b) Is identified as a gang member by a documented reliable informant;

12 (c) Resides in or frequents a particular gang's area and adopts its style of dress, its
13 use of hand signs or its tattoos and associates with known gang members;

14 (d) Is identified as a gang member by an informant of previously untested
15 reliability if such identification is corroborated by independent information;

16 (e) Has been arrested more than once in the company of identified gang members
17 for offenses which are consistent with usual gang activity;

18 (f) Is identified as a gang member by physical evidence, such as photographs or
19 other documentation; or

20 (g) Has been stopped in the company of known gang members four or more times;
21 and

22 (3) "Pattern of street gang activity," the commission, attempted commission, or
23 solicitation by any member or members of a street gang of two or more felony or
24 violent misdemeanor offenses on separate occasions within a three-year period for

1 the purpose of furthering gang activity.

2 Section 11. That § 22-10-15 be amended to read as follows:

3 22-10-15. The penalty for conviction of any ~~felony or violent misdemeanor charge~~ offense
4 shall be reclassified ~~as follows~~ to the next highest classification in the penalty schedule if the
5 commission of such ~~felony or misdemeanor~~ offense is part of a pattern of street gang activity:

6 ~~—(1)—~~ A Class 2 misdemeanor shall be punishable as if it were a Class 1 misdemeanor;

7 ~~—(2)—~~ A Class 1 misdemeanor shall be punishable as if it were a Class 6 felony; and

8 ~~—(3)—~~ The penalty for any felony shall be enhanced by changing the class of the felony to
9 the next class which is more severe.

10 Section 12. That § 22-10-16 be amended to read as follows:

11 22-10-16. An allegation that a defendant is a street gang member ~~must~~ shall be filed as a
12 separate information at the time of, or before, his arraignment. The separate information ~~must~~
13 shall state those criteria, as ~~outlined~~ set forth in subdivision 22-10-14(2), which allegedly
14 identify the defendant as a street gang member, and ~~must~~ shall be signed by the prosecutor.

15 Section 13. The code counsel shall transfer §§ 22-10-14, 22-10-15, and 22-10-16, to a new
16 chapter entitled, Street Gang Activity, and shall renumber the sections accordingly and adjust
17 all appropriate cross references.