

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

493Z0352

## HOUSE JUDICIARY ENGROSSED NO. **HB 1111** - 2/12/2018

Introduced by: Representatives Holmes, Barthel, Beal, Clark, Duvall, Heinemann, Johns, Kaiser, Marty, McCleerey, McPherson, Peterson (Kent), Rasmussen, Reed, Ring, Rozum, Schoenfish, Steinhauer, Tulson, Turbiville, Wismer, and Zikmund and Senators Kolbeck, Bolin, Klumb, and Novstrup

1 FOR AN ACT ENTITLED, An Act to revise certain definitions regarding criminal street gang  
2 activity.

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

4 Section 1. That § 22-10A-1 be amended to read:

5 22-10A-1. Terms used in §§ 22-10A-1 to 22-10A-3, inclusive, mean:

- 6 (1) "Street gang," any formal or informal ongoing organization, association, or group of  
7 three or more persons who have a common name or common identifying signs,  
8 colors, or symbols and have members or associates who, individually or collectively,  
9 engage in or have engaged in a pattern of street gang activity;
- 10 (2) "Street gang activity," a street gang member's commission, attempted commission,  
11 conspiracy to commit, or solicitation to commit any crime of violence as defined in  
12 subdivision 22-1-2(9) or the commission, attempted commission, conspiracy to  
13 commit, or solicitation to commit any offense involving:



- 1           (a) Possession or use of a weapon;
- 2           (b) Grant theft or possession of stolen property or a vehicle;
- 3           (c) Burglary or criminal trespass;
- 4           (d) Intentional damage to property;
- 5           (e) Assault;
- 6           (f) Stalking;
- 7           (g) Pimping, promoting prostitution, or human trafficking;
- 8           (h) Manufacturing, sale, distribution, or trafficking of any illegal drug;
- 9           (i) Resisting arrest;
- 10          (j) Eluding or aggravated eluding;
- 11          (k) Threatening a law enforcement officer or the family of a law enforcement
- 12             officer; or
- 13          (l) Tampering with a witness;
- 14          (3) "Street gang member," any person who engages in ~~a pattern of~~ street gang activity
- 15             and who meets two or more of the following criteria:
- 16           (a) Admits to gang membership;
- 17           (b) Is identified as a gang member by a documented reliable informant;
- 18           (c) ~~Resides in or frequents a particular gang's area and adopts its style of dress, its~~
- 19             ~~use of hand signs or its tattoos and associates with known gang members~~
- 20             Wears certain articles of clothing, colors, or insignia commonly associated
- 21             with street gang activity, other than part of a fashion trend, that indicate
- 22             membership in a street gang;
- 23           (d) Has tattoos that indicate membership in a street gang;
- 24           (e) Uses hand signs that identify the person as a gang member;

(f) Authors any written or electronic correspondence indicating membership in a street gang;

(g) Is identified as a gang member by an informant of previously untested reliability if ~~such~~ the identification is corroborated by independent information;

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

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

~~(g)~~(j) Has been stopped or documented in the company of known gang members four or more times; and

~~(3)~~(4) "Pattern of street gang activity," ~~the commission, attempted commission, or solicitation by any member or members of a street gang of two or more felony or violent misdemeanor offenses~~ instances of street gang activity on separate occasions within a three-year period ~~for the purpose of furthering gang activity.~~

Section 2. That § 22-10A-2 be amended to read:

22-10A-2. The penalty for conviction of any offense shall be reclassified to the next highest classification in the penalty schedule if the commission of such offense is part of a ~~pattern of~~ street gang activity.

Section 3. That § 22-10A-3 be amended to read:

22-10A-3. An allegation that a defendant is a street gang member shall be filed as a separate information at the time of, or before, arraignment. The separate information shall state those criteria, as set forth in ~~subdivision 22-10A-1(2), which~~ § 22-10A-1, that allegedly identify the defendant as a street gang member, ~~and shall be signed by the prosecutor. The prosecutor shall~~

1 sign the separate information.