



Sen. Antonio Muñoz

**Filed: 5/22/2012**

09700HB1907sam001

LRB097 08651 RLC 69981 a

1 AMENDMENT TO HOUSE BILL 1907

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1907 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by adding  
5 Article 33G as follows:

6 (720 ILCS 5/Art. 33G heading new)

7 ARTICLE 33G.

8 ILLINOIS STREET GANG AND RACKETEER INFLUENCED AND CORRUPT

9 ORGANIZATIONS LAW

10 (720 ILCS 5/33G-1 new)

11 Sec. 33G-1. Short title. This Article may be cited as the  
12 Illinois Street Gang and Racketeer Influenced and Corrupt  
13 Organizations Law (or "RICO").

14 (720 ILCS 5/33G-2 new)

1       Sec. 33G-2. Legislative declaration. The substantial harm  
2 inflicted on the people and economy of this State by pervasive  
3 violent street gangs and other forms of enterprise criminality,  
4 is legitimately a matter of grave concern to the people of this  
5 State who have a basic right to be protected from that criminal  
6 activity and to be given adequate remedies to redress its  
7 harms. Whereas the current laws of this State provide  
8 inadequate remedies, procedures and punishments, the Illinois  
9 General Assembly hereby gives the supplemental remedies of the  
10 Illinois Street Gang and Racketeer Influenced and Corrupt  
11 Organizations Law full force and effect under law for the  
12 common good of this State and its people.

13           (720 ILCS 5/33G-3 new)

14       Sec. 33G-3. Definitions. As used in this Article:

15       (a) "Another state" means any State of the United States  
16 (other than the State of Illinois), or the District of  
17 Columbia, or the Commonwealth of Puerto Rico, or any territory  
18 or possession of the United States, or any political  
19 subdivision, or any department, agency, or instrumentality  
20 thereof.

21       (b) "Enterprise" includes:

22           (1) any partnership, corporation, association,  
23 business or charitable trust, or other legal entity; and

24           (2) any group of individuals or other legal entities,  
25 or any combination thereof, associated in fact although not

1       itself a legal entity. An association in fact must be held  
2       together by a common purpose of engaging in a course of  
3       conduct, and it may be associated together for purposes  
4       that are both legal and illegal. An association in fact  
5       must:

6               (A) have an ongoing organization or structure,  
7               either formal or informal;

8               (B) the various members of the group must function  
9               as a continuing unit, even if the group changes  
10              membership by gaining or losing members over time; and

11              (C) have an ascertainable structure distinct from  
12              that inherent in the conduct of a pattern of predicate  
13              activity.

14       As used in this Article, "enterprise" includes licit and  
15       illicit enterprises.

16       (c) "Labor organization" includes any organization, labor  
17       union, craft union, or any voluntary unincorporated  
18       association designed to further the cause of the rights of  
19       union labor that is constituted for the purpose, in whole or in  
20       part, of collective bargaining or of dealing with employers  
21       concerning grievances, terms or conditions of employment, or  
22       apprenticeships or applications for apprenticeships, or of  
23       other mutual aid or protection in connection with employment,  
24       including apprenticeships or applications for apprenticeships.

25       (d) "Operation or management" means directing or carrying  
26       out the enterprise's affairs and is limited to any person who

1 knowingly serves as a leader, organizer, operator, manager,  
2 director, supervisor, financier, advisor, recruiter, supplier,  
3 or enforcer of an enterprise in violation of this Article.

4 (e) "Predicate activity" means any act that is a Class 2  
5 felony or higher and constitutes a violation or violations of  
6 any of the following provisions of the laws of the State of  
7 Illinois (as amended or revised as of the date the activity  
8 occurred or, in the instance of a continuing offense, the date  
9 that charges under this Article are filed in a particular  
10 matter in the State of Illinois) or any act under the law of  
11 another jurisdiction for an offense that could be charged as a  
12 Class 2 felony or higher in this State:

13 (1) under the Criminal Code of 1961: 8-1.2  
14 (solicitation of murder for hire), 9-1 (first degree  
15 murder), 9-3.3 (drug-induced homicide), 10-1 (kidnapping),  
16 10-2 (aggravated kidnapping), 10-3.1 (aggravated unlawful  
17 restraint), 10-4 (forcible detention), 10-5(b)(10) (child  
18 abduction), 10-9 (trafficking in persons, involuntary  
19 servitude, and related offenses), 11-1.20 (criminal sexual  
20 assault), 11-1.30 (aggravated criminal sexual assault),  
21 11-1.40 (predatory criminal sexual assault of a child),  
22 11-1.60 (aggravated criminal sexual abuse), 11-6 (indecent  
23 solicitation of a child), 11-6.5 (indecent solicitation of  
24 an adult), 11-14.3(a)(2)(A) and (a)(2)(B) (promoting  
25 prostitution), 11-14.4 (promoting juvenile prostitution),  
26 11-18.1 (patronizing a minor engaged in prostitution;

1 patronizing a juvenile prostitute), 12-3.05 (aggravated  
2 battery), 12-6.4 (criminal street gang recruitment),  
3 12-6.5 (compelling organization membership of persons),  
4 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-7.5  
5 (cyberstalking), 12-11 (home invasion), 12-11.1 (vehicular  
6 invasion), 18-1 (robbery), 18-2 (armed robbery), 18-3  
7 (vehicular hijacking), 18-4 (aggravated vehicular  
8 hijacking), 18-5 (aggravated robbery), 19-1 (burglary),  
9 19-3 (residential burglary), 20-1 (arson), 20-1.1  
10 (aggravated arson), 20-1.2 (residential arson), 20-1.3  
11 (place of worship arson), 24-1.2 (aggravated discharge of a  
12 firearm), 24-1.2-5 (aggravated discharge of a machine gun  
13 or silencer equipped firearm), 24-1.8 (unlawful possession  
14 of a firearm by a street gang member), 24-3.2 (unlawful  
15 discharge of firearm projectiles), 24-3.9 (aggravated  
16 possession of a stolen firearm), 24-3A (gunrunning), 26-5  
17 (dog-fighting), 29D-14.9 (terrorism), 29D-15 (soliciting  
18 support for terrorism), 29D-15.1 (causing a catastrophe),  
19 29D-15.2 (possession of a deadly substance), 29D-20  
20 (making a terrorist threat), 29D-25 (falsely making a  
21 terrorist threat), 29D-29.9 (material support for  
22 terrorism), 29D-35 (hindering prosecution of terrorism),  
23 31A-1.2 (unauthorized contraband in a penal institution),  
24 or 33A-3 (armed violence);

25 (2) under the Cannabis Control Act: Sections 5  
26 (manufacture or delivery of cannabis), 5.1 (cannabis

1 trafficking), or 8 (production or possession of cannabis  
2 plants), provided the offense either involves more than 500  
3 grams of any substance containing cannabis or involves more  
4 than 50 cannabis sativa plants;

5 (3) under the Illinois Controlled Substances Act:  
6 Sections 401 (manufacture or delivery of a controlled  
7 substance), 401.1 (controlled substance trafficking), 405  
8 (calculated criminal drug conspiracy), or 405.2 (street  
9 gang criminal drug conspiracy); or

10 (4) under the Methamphetamine Control and Community  
11 Protection Act: Sections 15 (methamphetamine  
12 manufacturing), or 55 (methamphetamine delivery).

13 (f) "Pattern of predicate activity" means:

14 (1) at least 3 occurrences of predicate activity that  
15 are in some way related to each other and that have  
16 continuity between them, and that are separate acts. Acts  
17 are related to each other if they are not isolated events,  
18 including if they have similar purposes, or results, or  
19 participants, or victims, or are committed a similar way,  
20 or have other similar distinguishing characteristics, or  
21 are part of the affairs of the same enterprise. There is  
22 continuity between acts if they are ongoing over a  
23 substantial period, or if they are part of the regular way  
24 some entity does business or conducts its affairs; and

25 (2) which occurs after the effective date of this  
26 Article, and the last of which falls within 3 years

1       (excluding any period of imprisonment) after the first  
2       occurrence of predicate activity.

3       (g) "Unlawful death" includes the following offenses:  
4       under the Criminal Code of 1961: Sections 9-1 (first degree  
5       murder) or 9-2 (second degree murder).

6           (720 ILCS 5/33G-4 new)

7       Sec. 33G-4. Prohibited activities.

8       (a) It is unlawful for any person, who intentionally  
9       participates in the operation or management of an enterprise,  
10       directly or indirectly, to:

11           (1) knowingly do so, directly or indirectly, through a  
12           pattern of predicate activity;

13           (2) knowingly cause another to violate this Article; or

14           (3) knowingly conspire to violate this Article.

15       Notwithstanding any other provision of law, in any  
16       prosecution for a conspiracy to violate this Article, no person  
17       may be convicted of that conspiracy unless an overt act in  
18       furtherance of the agreement is alleged and proved to have been  
19       committed by him, her, or by a coconspirator, but the  
20       commission of the overt act need not itself constitute  
21       predicate activity underlying the specific violation of this  
22       Article.

23       (b) It is unlawful for any person knowingly to acquire or  
24       maintain, directly or indirectly, through a pattern of  
25       predicate activity any interest in, or control of, to any

1 degree, of any enterprise, real property, or personal property  
2 of any character, including money.

3 (c) Nothing in this Article shall be construed as to make  
4 unlawful any activity which is arguably protected or prohibited  
5 by the National Labor Relations Act, the Illinois Educational  
6 Labor Relations Act, the Illinois Public Labor Relations Act,  
7 or the Railway Labor Act.

8 (d) The following organizations, and any officer or agent  
9 of those organizations acting in his or her official capacity  
10 as an officer or agent, may not be sued in civil actions under  
11 this Article:

12 (1) a labor organization; or

13 (2) any business defined in Division D, E, F, G, H, or  
14 I of the Standard Industrial Classification as established  
15 by the Occupational Safety and Health Administration, U.S.  
16 Department of Labor.

17 (e) Any person prosecuted under this Article may be  
18 convicted and sentenced either:

19 (1) for the offense of conspiring to violate this  
20 Article, and for any other particular offense or offenses  
21 that may be one of the objects of a conspiracy to violate  
22 this Article; or

23 (2) for the offense of violating this Article, and for  
24 any other particular offense or offenses that may  
25 constitute predicate activity underlying a violation of  
26 this Article.



1       (f) The State's Attorney, or a person designated by law to  
2 act for him or her and to perform his or her duties during his  
3 or her absence or disability, may authorize a criminal  
4 prosecution under this Article. Prior to any State's Attorney  
5 authorizing a criminal prosecution under this Article, the  
6 State's Attorney shall adopt rules and procedures governing the  
7 investigation and prosecution of any offense enumerated in this  
8 Article. These rules and procedures shall set forth guidelines  
9 which require that any potential prosecution under this Article  
10 be subject to an internal approval process in which it is  
11 determined, in a written prosecution memorandum prepared by the  
12 State's Attorney's Office, that (1) a prosecution under this  
13 Article is necessary to ensure that the indictment adequately  
14 reflects the nature and extent of the criminal conduct involved  
15 in a way that prosecution only on the underlying predicate  
16 activity would not, and (2) a prosecution under this Article  
17 would provide the basis for an appropriate sentence under all  
18 the circumstances of the case in a way that a prosecution only  
19 on the underlying predicate activity would not. No State's  
20 Attorney, or person designated by law to act for him or her and  
21 to perform his or her duties during his or her absence or  
22 disability, may authorize a criminal prosecution under this  
23 Article prior to reviewing the prepared written prosecution  
24 memorandum. However, any internal memorandum shall remain  
25 protected from disclosure under the attorney-client privilege,  
26 and this provision does not create any enforceable right on

1 behalf of any defendant or party, nor does it subject the  
2 exercise of prosecutorial discretion to judicial review.

3 (g) A labor organization and any officer or agent of that  
4 organization acting in his or her capacity as an officer or  
5 agent of the labor organization are exempt from prosecution  
6 under this Article.

7 (720 ILCS 5/33G-5 new)

8 Sec. 33G-5. Penalties. Under this Article, notwithstanding  
9 any other provision of law:

10 (a) Any violation of subsection (a) of Section 33G-4 of  
11 this Article shall be sentenced as a Class X felony with a term  
12 of imprisonment of not less than 7 years and not more than 30  
13 years, or the sentence applicable to the underlying predicate  
14 activity, whichever is higher, and the sentence imposed shall  
15 also include restitution, and or a criminal fine, jointly and  
16 severally, up to \$250,000 or twice the gross amount of any  
17 intended proceeds of the violation, if any, whichever is  
18 higher.

19 (b) Any violation of subsection (b) of Section 33G-4 of  
20 this Article shall be sentenced as a Class X felony, and the  
21 sentence imposed shall also include restitution, and or a  
22 criminal fine, jointly and severally, up to \$250,000 or twice  
23 the gross amount of any intended proceeds of the violation, if  
24 any, whichever is higher.

25 (c) Wherever the unlawful death of any person or persons

1 results as a necessary or natural consequence of any violation  
2 of this Article, the sentence imposed on the defendant shall  
3 include an enhanced term of imprisonment of at least 25 years  
4 up to natural life, in addition to any other penalty imposed by  
5 the court, provided:

6 (1) the death or deaths were reasonably foreseeable to  
7 the defendant to be sentenced; and

8 (2) the death or deaths occurred when the defendant was  
9 otherwise engaged in the violation of this Article as a  
10 whole.

11 (d) A sentence of probation, periodic imprisonment,  
12 conditional discharge, impact incarceration or county impact  
13 incarceration, court supervision, withheld adjudication, or  
14 any pretrial diversionary sentence or suspended sentence, is  
15 not authorized for a violation of this Article.

16 (720 ILCS 5/33G-6 new)

17 Sec. 33G-6. Remedial proceedings, procedures, and  
18 forfeiture. Under this Article:

19 (a) The circuit court shall have jurisdiction to prevent  
20 and restrain violations of this Article by issuing appropriate  
21 orders, including:

22 (1) ordering any person to disgorge illicit proceeds  
23 obtained by a violation of this Article or divest himself  
24 or herself of any interest, direct or indirect, in any  
25 enterprise or real or personal property of any character,

1 including money, obtained, directly or indirectly, by a  
2 violation of this Article;

3 (2) imposing reasonable restrictions on the future  
4 activities or investments of any person or enterprise,  
5 including prohibiting any person or enterprise from  
6 engaging in the same type of endeavor as the person or  
7 enterprise engaged in, that violated this Article; or

8 (3) ordering dissolution or reorganization of any  
9 enterprise, making due provision for the rights of innocent  
10 persons.

11 (b) Any violation of this Article is subject to the  
12 remedies, procedures, and forfeiture as set forth in  
13 subsections (f) through (s) of Section 29B-1 of this Code.

14 (720 ILCS 5/33G-7 new)

15 Sec. 33G-7. Construction. In interpreting the provisions  
16 of this Article, the court shall construe them in light of the  
17 applicable model jury instructions set forth in the Federal  
18 Criminal Jury Instructions for the Seventh Circuit (1999) for  
19 Title IX of Public Law , 91-452, 84 Stat. 922 (as amended in  
20 Title 18, United States Code, Sections 1961 through 1968),  
21 except to the extent that it is inconsistent with the plain  
22 language of this Article.

23 (720 ILCS 5/33G-8 new)

24 Sec. 33G-8. Limitations. Under this Article,

1 notwithstanding any other provision of law, but otherwise  
2 subject to the periods of exclusion from limitation as provided  
3 in Section 3-7 of this Code, the following limitations apply:

4 (a) Any action, proceeding, or prosecution brought under  
5 this Article must commence within 5 years of one of the  
6 following dates, whichever is latest:

7 (1) the date of the commission of the last occurrence  
8 of predicate activity in a pattern of that activity, in the  
9 form of an act underlying the alleged violation of this  
10 Article; or

11 (2) in the case of an action, proceeding, or  
12 prosecution, based upon a conspiracy to violate this  
13 Article, the date that the last objective of the alleged  
14 conspiracy was accomplished, defeated or abandoned  
15 (whichever is later); or

16 (3) the date any minor victim of the violation attains  
17 the age of 18 years or the date any victim of the violation  
18 subject to a legal disability thereafter gains legal  
19 capacity.

20 (b) Any action, proceeding, or prosecution brought under  
21 this Article may be commenced at any time against all  
22 defendants if the conduct of any defendant, or any part of the  
23 overall violation, resulted in the unlawful death of any person  
24 or persons.

1           Sec. 33G-9. Repeal. This Article is repealed 5 years after  
2           it becomes law.

3           Section 99. Effective date. This Act takes effect upon  
4           becoming law.".