



STATE RICO GANG INITIATIVE

Enforcement policy / strategy for control of gang related violence.

Proposed by:

Senator Dawson Hodgson

Candidate for Rhode Island Attorney General

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Background

The causes of gang related violence are neither new nor surprising. In the late 1990's a research project at Stanford University analyzed the causes of gang violence engendered primarily in Los Angeles.

- Gangs provide them with a sense of friendship, camaraderie, and family-things that they are not receiving at home or school.
- They experience a kind of success in gangs; whereas, they experience failure at school and in the home.

- They have not developed the skills to constructively express feelings of anger and rage.
- There is nothing else to do; they have no hope and see no alternative but to join a gang.
- They feel their survival may depend on joining a neighborhood gang. They fear for their safety and believe that being in a gang gives them protection.
- It is an avenue to gain respect and money. Gangs can provide lucrative economic opportunities, status, and prestige--especially for youths that do not believe they have employment opportunities, or who have no job skills.
- Some youths grow up in families where parents and relatives are active gang members and joining a gang is part of family tradition. In the Hispanic neighborhoods, for instance, gangs have been an integral part of the barrio for generations.

Matt Friedrichs, "Poverty & Prejudice: Gang Intervention and Rehabilitation", web.stanford.edu, 1999.

Since then, gangs and gang violence in their extreme form have inexorably migrated eastward, now creating public safety challenges in many medium sized metropolitan areas, including Providence.

As Friedrichs concluded, many of the causes of gang violence are embedded in social issues which are not within the scope of enforcement and prosecution. Yet one of the Stanford causes is addressable by adoption of a new enforcement and prosecution policy. Gang membership and violence "is an avenue to gain respect and money. Gangs can provide lucrative economic

opportunities, status, and prestige--especially for youths that do not believe they have employment opportunities, or who have no job skills.”

Thus, the policy proposed here addresses those individuals who have chosen to live a life of violence in order to obtain money and status.

Strategic Use of Rhode Island RICO

Since 1979 Rhode Island has had its own version of the famed RICO (Racketeer Influenced and Corrupt Organizations) Act. Rhode Island RICO provides both civil tools and criminal prosecution of those who use “enterprises” to commit certain offenses including sale of drugs, extortion, murder and other behavior often adopted by gangs.

The civil remedy portion of the statute was used by Attorney General Arlene Violet and has since been dormant.

This policy proposes use of both the civil and criminal portions of the statute.

The Objective

The twin objectives of this policy are:

- Eliminate gangs through civil action, and
- Prosecute gang members who use gangs to commit violence.

Use Of Existing Resources

Implementation of this policy does not require spending more money. It requires only that the Attorney General take the lead in implementing this policy.

The law does not need to be changed. No new prosecutors need to be hired. Existing gang control units in police departments are sufficient to implement this policy under the direction of the Attorney General,

Legal Theory

The legal theory underlying this policy is that each of the operating gangs is, in fact, a criminal enterprise. Federal authorities were able to prosecute Providence officials some years ago by defining the government of the City of Providence as a criminal enterprise. Similarly, motorcycle gangs have been designated as criminal enterprises in other states and their leaders prosecuted under the federal version of the RICO law.

Rhode Island police gang units have been observing gang activity for several years. This intelligence will serve as the basis for proving that local street gangs are criminal enterprises.

Criminal Prosecution

Rhode Island RICO declares various forms of conduct concerning criminal enterprises to be illegal. These violations are in addition to the underlying crimes such as drug dealing, murder, extortion, etc. Thus, a gang member who commits murder could be convicted both of the murder and of use of the criminal enterprise to commit the murder. And, a member could be convicted of a Rhode Island RICO violation by virtue of the membership without being tied to the murder directly.¹ The law also provides for forfeiture of assets to the state.

¹ § 7-15-2. Prohibited activities.

Rhode Island Statutes
Title 7. Corporations, Associations and Partnerships
Chapter 7-15. Racketeer Influenced and Corrupt Organizations
Current through Public Law 144 of the 2014 Legislative Session
§ 7-15-2. Prohibited activities

The penalty for RICO violation is ten years imprisonment per offense and \$10,000 fine in addition to any penalty for the underlying or “predicate” offense.²

While the Rhode Island state RICO statute has gone mostly unused, the value of this legal strategy is already recognized across the country, with state RICO law currently being used to prosecute street gang violence in the state of Illinois. Trying to stop the bloodshed in Chicago, Cook County State’s

Cite as R.I. Gen. Laws § 7-15-2

History. P.L. 1979, ch. 204, § 1.

- (a) It is unlawful for any person who has knowingly received any income derived directly or indirectly from a racketeering activity or through collection of an unlawful debt, to directly or indirectly use or invest any part of that income, or the proceeds of that income in the acquisition of an interest in, or the establishment or operation of any enterprise.
- (b) It is unlawful for any person through a racketeering activity or through collection of an unlawful debt to directly or indirectly acquire or maintain any interest in or control of any enterprise.
- (c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.
- (d) Provided, that a purchase of securities on the open market for purposes of investment and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, is not unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or her or their accomplices in a racketeering activity or the collection of an unlawful debt after the purchase do not amount in the aggregate to one percent (1%) of the outstanding securities of any one class, and do not, either in law or in fact, confer the power to elect one or more directors of the issuer.

² § 7-15-3. Penalties for violations - Disposition of seized property.

Rhode Island Statutes

Title 7. Corporations, Associations and Partnerships

Chapter 7-15. Racketeer Influenced and Corrupt Organizations

Current through Public Law 144 of the 2014 Legislative Session

§ 7-15-3. Penalties for violations - Disposition of seized property

Cite as R.I. Gen. Laws § 7-15-3

History. P.L. 1979, ch. 204, § 1; P.L. 1985, ch. 353, § 1.

- (a) Whoever violates this chapter shall be fined not more than ten thousand dollars (\$10,000), or imprisoned not more than ten (10) years, or both, and forfeits to the state:
- (1) Any property acquired or maintained in violation of this chapter;
- (2) Any property constituting, or derived from, any proceeds which were obtained directly or indirectly from the commission of an offense in violation of this chapter;
- (3) Any: (i) interest in; (ii) security of; (iii) claim against; or (iv) property or contractual right of any kind affording a source of influence over; any enterprise that the person has established, participated in, operated, controlled, or conducted in violation of this chapter; provided that the value of the property forfeited shall not exceed the sum of the money invested in violation of § 7-15-2(a) plus the appreciated value of the money.
- (b) Upon conviction of a person under this chapter, the superior court shall authorize the attorney general to seize all property or other interest declared forfeited under this chapter on any terms and conditions as the court deems proper. The state shall dispose of all property or other interest seized under this chapter as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the state it expires and does not revert to the convicted person.

Attorney Anita Alvarez emphasized the importance of taking a proactive approach to gang violence and investigations. She calls the Illinois state RICO statute a “critical tool” for prosecutors to combat violent crime and hold the right offenders accountable.³ The Chicago Crime Commission hails the authority granted under RICO to “dismantle criminal enterprises that are inflicting harm upon both the people and economy of their state.”⁴

In fact, most American states have some version of a state RICO statute, often just as comprehensive as the federal statute, but some with even stronger civil authority.⁵

Rhode Island has the tools now to be a leader in this innovative prosecution policy to improve quality of life in our urban communities.

The Civil Remedy

Rhode Island RICO also has a very powerful civil component that should be employed.

Essentially, each gang member or leader would be sued. Whether monetary damages could be obtained is an open question. However, whatever damages can be recovered from assets of the gang may be tripled by the court. And, attorney fees may be assessed in addition to interest.

Most innovative and potentially effective is the portion of the statute that authorizes injunctive relief. Specifically, members and the gang as a whole can be ordered to stop functioning, to abandon the use of its organization and gang colors, and to not start another gang.

³ http://www.statesattorney.org/press_RackeeteringOperationChargesAnnounced.html

⁴ http://www.chicagocrimecommission.org/content.aspx?page_id=22&club_id=783436&module_id=141853

⁵ http://www.americanbar.org/publications/gpsolo_ereport/2012/november_2012/introduction_rico_state_by_state.html

If the gang itself or its members ignore the order they may be held in contempt and prosecuted for civil contempt, criminal contempt or both. Contempt citations may result in imprisonment.

This approach allows the court to declare that a particular gang is illegal and may not lawfully exist.

Very significant is that the standard of proof for the civil component is dramatically less than for the criminal component. Here the “beyond a reasonable doubt” standard is replaced by “preponderance of the evidence” which means more likely than not or “Yes, the gang member probably did it.” Thus, the civil component may be used even where violations may not be proven to a criminal standard. ⁶

⁶ § 7-15-4. Civil remedies - Actions by attorney general and injured persons.

Rhode Island Statutes

Title 7. Corporations, Associations and Partnerships

Chapter 7-15. Racketeer Influenced and Corrupt Organizations

Current through Public Law 144 of the 2014 Legislative Session

§ 7-15-4. Civil remedies - Actions by attorney general and injured persons

(a) The superior courts of the state have jurisdiction to prevent and restrain violations of this chapter by issuing appropriate orders, including, but not limited to:

- (1) Ordering any person to divest him or herself of any interest, direct or indirect, in any enterprise;
- (2) Imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or
- (3) Ordering dissolution or reorganization of any enterprise, making due provisions for the rights of innocent persons.

(b) The attorney general may institute proceedings under this section. In any action brought by the state under this section, the court shall proceed as soon as practicable to the hearing and determination of the action. Pending final determination of the action, the court may at any time enter any restraining orders or prohibitions, or take any other actions, including the acceptance of satisfactory performance bonds, as it deems proper.

(c) Any person injured in his or her business or property by reason of a violation of this chapter may sue in any appropriate court and shall recover treble damages and the cost of the suit, including a reasonable attorney's fee. In order for an injured person to recover pursuant to this subsection, it is not necessary to show that the defendant has been convicted of a criminal violation of this chapter.

(d) A final judgment or decree rendered in favor of the state in any criminal proceeding brought by the state under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the state.

(e) In addition to or in lieu of the criminal forfeiture procedure of this act, any property described in § 7-15-3 is subject to civil forfeiture pursuant to this section.

Cite as R.I. Gen. Laws § 7-15-4

History. P.L. 1979, ch. 204, § 1; P.L. 1985, ch. 353, § 1.

Conclusion

Adoption and implementation of this policy is urgent because innocent people suffer and die from gang violence.

The first step in doing this is to call together police gang units and specially assigned prosecutors and civil division lawyers. If necessary, court orders should be obtained to allow access to grand jury materials by civil division lawyers. Existing intelligence needs to be reviewed within the context of the Rhode Island RICO law, both civil and criminal. If additional evidence is necessary it should be gathered.

Next, a special Statewide Grand Jury should be empaneled. The grand jury should begin to hear preliminary evidence and should be educated as to the provisions of Rhode Island RICO law.

Attorney General personnel should review all pertinent federal RICO court holdings as potential persuasive authority given the lack of Rhode Island RICO common law.

Once all necessary evidence has been gathered it should be presented to the grand jury or it should be used to draft detailed complaints accompanied by affidavits to secure ex parte injunctive relief.