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TO: INTERESTED PARTIES

FROM: ANDY HOOVER, LEGISLATIVE ASSISTANT

DATE: APRIL 22, 2008

RE: HOUSE BILL 326

House Bill 326 would amend the Pennsylvania Consolidated Statutes to include “criminal gang activity” as an offense. This bill has significant First Amendment and Fourteenth Amendment implications, and the ACLU of PA opposes HB 326.

First Amendment protections on free assembly and free expression could be damaged by HB 326. The criteria for identifying a “criminal gang member” include where a person lives, how they dress, and their association with others. A person’s residence, wardrobe, and circle of friends are all part of everyday living for most Pennsylvanians. These broad and vague characteristics put too much power in the hands of police and district attorneys to identify “criminal gang members.”

Because of this broad criteria, the bill has the potential to be used disproportionately against young and innocent African-American and Latino men. Related to this, in December, 2007, *The Philadelphia Inquirer* ran a series of articles on tough tactics used against largely minority communities by police officers in southeastern PA. The report indicated that innocent African-Americans were harassed by police overzealously using nuisance laws like disorderly conduct and loitering.¹

The ACLU of PA believes that, if enacted, HB 326 could be abused in much the same manner. This has serious implications under the Fourteenth Amendment, which guarantees equal protection of the laws.

HB 326 also defines someone as a “criminal gang member” if the person has been identified as such by a Pennsylvania law enforcement agency. This is a self-fulfilling prophecy. Law enforcement says the person is a gang member, so law enforcement will charge the person as a gang member. This allows the authorities to identify the person as a gang member without any check on that authority.

Finally, HB 326 increases criminal penalties for someone who has been identified as a “criminal gang member” under the broad criteria contained within the bill. By 2012, the Commonwealth will build three new state prisons at a cost of \$200-\$300 million each. Now is not an appropriate time to increase incarceration for people who will be incarcerated, anyway, for the original crimes for which they were arrested. Adding years onto their sentence is piling on and places a tremendous burden on our prison system, a place where, ironically, gangs thrive.

¹ Fazlollah, Purcell, and Herbert. (2007) *Suburban cops, tough tactics*. Retrieved April 22, 2008, from <http://www.philly.com/inquirer/special/12418176.html>

The saving grace of HB 326 is in its funding to the Pennsylvania Commission on Crime and Delinquency to award grants to community-based preventive programs. When effective, these programs keep young Pennsylvanians out of gangs and out of prison, and the ACLU of PA supports these initiatives. A similar effort is happening in Congress in the form of the Youth PROMISE Act, HR 3846.

HB 326 creates too much risk of harassment and false arrest of innocent racial and ethnic minorities under the pretense of criminal gang activity. Because of the risk of violation of constitutional and civil rights protections, the ACLU of PA opposes House Bill 326.