

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH30054-TY-1 (11/07)

Short Title: Revise Gang Laws.

(Public)

Sponsors: Representatives McNeill, Faircloth, Hurley, and R. Turner (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE CRITERIA FOR CLASSIFICATION OF CRIMINAL GANG MEMBERSHIP, CREATE A SENTENCING ENHANCEMENT FOR CERTAIN CRIMES PERPETRATED BY GANG MEMBERS, AND INCREASE THE PENALTIES FOR CERTAIN GANG-RELATED OFFENSES.

Whereas, the General Assembly finds that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of criminal gangs; and

Whereas, the General Assembly also recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever and to lawfully associate with others who share similar beliefs; and

Whereas, the General Assembly finds a need for enhanced punishment of criminal gang activity to afford adequate protection of the people of North Carolina from the harms caused by criminal gangs; and

Whereas, it is the intent of the General Assembly to outlaw certain conduct associated with the existence and proliferation of criminal gangs and provide enhanced criminal penalties when crimes are committed in the course of criminal gang activity; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.16 is repealed.

SECTION 2. The title for Article 13A of Chapter 14 of the General Statutes reads as rewritten:

"North Carolina ~~Street~~Criminal Gang Suppression Act."

SECTION 3. G.S. 14-50.15 reads as rewritten:

"§ 14-50.15. **Short title.**

This Article shall be known and may be cited as the "North Carolina ~~Street~~Criminal Gang Suppression Act."

SECTION 4. Article 13A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-50.16A. **Criminal gang activity.**

Definitions. – The following definitions apply in this Article:

- (1) Criminal gang. – Any ongoing organization, association, or group of three or more persons, whether formal or informal, that (i) has as one of its primary activities the commission of criminal or delinquent acts and (ii) shares a common name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including common activities, customs, or



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1 behaviors. The term shall not include three or more persons associated in fact,
2 whether formal or informal, who are not engaged in criminal gang activity.

3 (2) Criminal gang activity. – The commission of, attempted commission of, or
4 solicitation, coercion, or intimidation of another person to commit (i) any
5 offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense
6 under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59
7 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186,
8 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the following
9 conditions is met:

10 a. The offense is committed with the intent to benefit, promote, or further
11 the interests of a criminal gang or for the purposes of increasing a
12 person's own standing or position within a criminal gang.

13 b. The participants in the offense are identified as criminal gang members
14 acting individually or collectively to further any criminal purpose of a
15 criminal gang.

16 (3) Criminal gang leader or organizer. – Any criminal gang member who acts in
17 any position of management with regard to the criminal gang and who meets
18 two or more of the following criteria:

19 a. Exercises decision-making authority over matters regarding a criminal
20 gang.

21 b. Participates in the direction, planning, organizing, or commission of
22 criminal gang activity.

23 c. Recruits other gang members.

24 d. Receives a larger portion of the proceeds of criminal gang activity.

25 e. Exercises control and authority over other criminal gang members.

26 (4) Criminal gang member. – Any person who meets three or more of the following
27 criteria:

28 a. The person admits to being a member of a criminal gang.

29 b. The person is identified as a criminal gang member by a reliable source,
30 including a parent or a guardian.

31 c. The person has been previously involved in criminal gang activity.

32 d. The person has adopted symbols, hand signs, or graffiti associated with
33 a criminal gang.

34 e. The person has adopted the display of colors or the style of dress
35 associated with a criminal gang.

36 f. The person is in possession of or linked to a criminal gang by physical
37 evidence, including photographs, ledgers, rosters, written or electronic
38 communications, or membership documents.

39 g. The person has tattoos or markings associated with a criminal gang.

40 h. The person has adopted language or terminology associated with a
41 criminal gang.

42 i. The person appears in any form of social media to promote a criminal
43 gang."

44 **SECTION 5.** Article 81B of Chapter 15A of the General Statutes is amended by
45 adding a new section to read:

46 **"§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a**
47 **part of criminal gang activity.**

48 (a) Except as otherwise provided in subsection (b) of this section, if a person is convicted
49 of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was
50 committed as part of criminal gang activity as defined in G.S. 14-50.16A(2), then the person shall

1 be sentenced at a felony class level one class higher than the principal felony for which the person
2 was convicted.

3 (b) If subsection (a) of this section applies and the person is found to be a criminal gang
4 leader or organizer as defined in G.S. 14-50.16A(3), the person shall be sentenced at a felony class
5 level two classes higher than the principal felony for which the person was convicted.

6 (c) No defendant sentenced pursuant to this section shall be sentenced at a level higher
7 than a Class C felony. Any sentence imposed under this section shall run consecutively with and
8 shall commence at the expiration of any sentence being served by the person sentenced under this
9 section.

10 (d) An indictment or information for the felony shall allege in that indictment or
11 information the facts that qualify the offense for an enhancement under this section. One pleading
12 is sufficient for all felonies that are tried at a single trial.

13 (e) The State shall prove the issues set out under subsection (a) or (b) of this section
14 beyond a reasonable doubt during the same trial in which the defendant is tried for the felony,
15 unless the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues
16 alleged, then a jury shall be impaneled to determine the issues.

17 (f) This section shall not apply to any gang offense included under Article 13A of Chapter
18 14 of the General Statutes."

19 **SECTION 6.** G.S. 14-34.9 reads as rewritten:

20 **"§ 14-34.9. Discharging a firearm from within an enclosure.**

21 Unless covered under some other provision of law providing greater punishment, any person
22 who willfully or wantonly discharges or attempts to discharge a firearm, as a part of a ~~pattern of~~
23 ~~criminal street-gang activity, criminal gang activity,~~ from within any building, structure, motor
24 vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that
25 enclosure shall be punished as a Class E felon."

26 **SECTION 7.** G.S. 14-50.17 reads as rewritten:

27 **"§ 14-50.17. Soliciting; encouraging participation.**

28 (a) It is unlawful for any person to cause, encourage, solicit, or coerce a person 16 years of
29 age or older to participate in criminal ~~street-gang activity.~~

30 (b) A violation of this section is a Class H felony."

31 **SECTION 8.** G.S. 14-50.18 reads as rewritten:

32 **"§ 14-50.18. Soliciting; encouraging participation; minor.**

33 (a) It is unlawful for any person to cause, encourage, solicit, or coerce a person under 16
34 years of age to participate in criminal ~~street-gang activity.~~

35 (b) A violation of this section is a Class F felony.

36 (c) Nothing in this section shall preclude a person who commits a violation of this section
37 from criminal culpability for the underlying offense committed by the minor under any other
38 provision of law."

39 **SECTION 9.** G.S. 14-50.19 reads as rewritten:

40 **"§ 14-50.19. Threats to deter from gang withdrawal.**

41 (a) It is unlawful for any person to communicate a threat of injury to a person, or to
42 damage the property of another, with the intent to deter a person from assisting another to
43 withdraw from membership in a criminal ~~street-gang.~~

44 (b) A violation of this section is a Class ~~H felony.~~F felony."

45 **SECTION 10.** G.S. 14-50.20 reads as rewritten:

46 **"§ 14-50.20. Threats of punishment or retaliation.**

47 (a) It is unlawful for any person to communicate a threat of injury to a person, or to
48 damage the property of another, as punishment or retaliation against a person for having
49 withdrawn from a criminal ~~street-gang.~~

50 (b) A violation of this section is a Class ~~H felony.~~F felony."

51 **SECTION 11.** G.S. 14-50.22 reads as rewritten:

1 **"§ 14-50.22. Enhanced offense for misdemeanor criminal gang activity.**

2 A person age 15 or older who is convicted of a misdemeanor offense that is committed for the
3 benefit of, at the direction of, or in association with, any criminal ~~street-gang~~ is guilty of an
4 offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be
5 enhanced to a Class I felony under this section."

6 **SECTION 12.** G.S. 14-50.23 reads as rewritten:

7 **"§ 14-50.23. Contraband, seizure, and forfeiture.**

8 (a) All property of every kind used or intended for use in the course of, derived from, or
9 realized through criminal ~~street-gang~~ activity ~~or a pattern of criminal street-gang activity~~ is subject
10 to the seizure and forfeiture provisions of G.S. 14-2.3.

11 (b) In any action under this section, the court may enter a restraining order in connection
12 with any interest that is subject to forfeiture.

13 (c) Innocent Activities. – The provisions of this section shall not apply to property used for
14 criminal ~~street-gang~~ activity where the owner or person who has legal possession of the property
15 does not have actual knowledge that the property is being used for criminal ~~street-gang~~ activity."

16 **SECTION 13.** G.S. 14-50.25 reads as rewritten:

17 **"§ 14-50.25. Reports of disposition; criminal ~~street-gang~~ activity.**

18 When a defendant is found guilty of a criminal offense, other than an offense under
19 G.S. 14-50.16 through G.S. 14-50.20, the presiding judge shall determine whether the offense
20 involved criminal ~~street-gang~~ activity. If the judge so determines, then the judge shall indicate on
21 the form reflecting the judgment that the offense involved criminal ~~street-gang~~ activity. The clerk
22 of court shall ensure that the official record of the defendant's conviction includes a notation of the
23 court's determination."

24 **SECTION 14.** The title for Article 13B of Chapter 14 of the General Statutes reads as
25 rewritten:

26 "North Carolina ~~Street~~Criminal Gang Nuisance Abatement Act."

27 **SECTION 15.** G.S. 14-50.42 reads as rewritten:

28 **"§ 14-50.42. Real property used by criminal ~~street-gangs~~ declared a public nuisance:
29 abatement.**

30 (a) Public Nuisance. – Any real property that is erected, established, maintained, owned,
31 leased, or used by any criminal ~~street-gang~~ for the purpose of conducting criminal ~~street-gang~~
32 activity, as defined in ~~G.S. 14-50.16(e)~~,G.S. 14-50.16A(2), shall constitute a public nuisance and
33 may be abated as provided by and subject to the provisions of Article 1 of Chapter 19 of the
34 General Statutes.

35 (b) Innocent Activities. – The provisions of this section shall not apply to real property
36 used for criminal ~~street-gang~~ activity where the owner or person who has legal possession of the
37 real property does not have actual knowledge that the real property is being used for criminal
38 ~~street-gang~~ activity or the owner is being coerced into allowing the property to be used for
39 criminal ~~street-gang~~ activity."

40 **SECTION 16.** G.S. 14-50.43 reads as rewritten:

41 **"§ 14-50.43. ~~Street gangs~~Criminal gangs declared a public nuisance.**

42 (a) A ~~street~~criminal gang, as defined in ~~G.S. 14-50.16(b)~~,G.S. 14-50.16A(a), that regularly
43 engages in criminal ~~street-gang~~ activities,~~—activity,~~ as defined in
44 ~~G.S. 14-50.16(e)~~,G.S. 14-50.16A(2), constitutes a public nuisance. For the purposes of this
45 section, the term "regularly" means at least five times in a period of not more than 12 months.

46 (b) Any person who regularly associates with others to engage in criminal ~~street-gang~~
47 activity, as defined in ~~G.S. 14-50.16(e)~~,G.S. 14-50.16A(2), may be made a defendant in a suit,
48 brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting
49 from criminal ~~street-gang~~ activity.

50 (c) If the court finds that a public nuisance exists under this section, the court may enter an
51 order enjoining the defendant in the suit from engaging in criminal ~~street-gang~~ activities and

1 impose other reasonable requirements to prevent the defendant or a gang from engaging in future
2 criminal ~~street-gang~~ activities.

3 (d) An order entered under this section shall expire ~~one year~~three years after entry unless
4 extended by the court for good cause established by the plaintiff after a hearing. The order may be
5 modified, rescinded, or vacated at any time prior to its expiration date upon the motion of any
6 party if it appears to the court that one or more of the defendants is no longer engaging in criminal
7 ~~street-gang~~ activities."

8 **SECTION 17.** G.S. 15A-1340.16(d) reads as rewritten:

9 **"§ 15A-1340.16. Aggravated and mitigated sentences.**

10 ...

11 (d) Aggravating Factors. – The following are aggravating factors:

12 ...

13 (2a) The offense was committed for the benefit of, or at the direction of, any
14 criminal ~~street-gang~~gang as defined by G.S. 14-50.16A(1), with the specific
15 intent to promote, further, or assist in any criminal conduct by gang members,
16 and the defendant was not charged with committing a conspiracy. ~~A "criminal
17 street-gang" means any ongoing organization, association, or group of three or
18 more persons, whether formal or informal, having as one of its primary
19 activities the commission of felony or violent misdemeanor offenses, or
20 delinquent acts that would be felonies or violent misdemeanors if committed by
21 an adult, and having a common name or common identifying sign, colors, or
22 symbols.~~

23"

24 **SECTION 18.** G.S. 15A-1343(b1) reads as rewritten:

25 **"§ 15A-1343. Conditions of probation.**

26 ...

27 (b1) Special Conditions. – In addition to the regular conditions of probation specified in
28 subsection (b), the court may, as a condition of probation, require that during the probation the
29 defendant comply with one or more of the following special conditions:

30 ...

31 (9b) Any or all of the following conditions relating to ~~street~~criminal gangs as
32 defined in ~~G.S. 14-50.16(b)~~G.S. 14-50.16A(1):

- 33 a. Not knowingly associate with any known ~~street~~criminal gang members
34 and not knowingly be present at or frequent any place or location where
35 ~~street~~criminal gangs gather or where ~~street~~criminal gang activity is
36 known to occur.
- 37 b. Not wear clothes, jewelry, signs, symbols, or any paraphernalia readily
38 identifiable as associated with or used by a ~~street~~criminal gang.
- 39 c. Not initiate or participate in any contact with any individual who was or
40 may be a witness against or victim of the defendant or the defendant's
41 ~~street~~criminal gang.

42"

43 **SECTION 19.** G.S. 15A-533(e) reads as rewritten:

44 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

45 ...

46 (e) There shall be a rebuttable presumption that no condition of release will reasonably
47 assure the appearance of the person as required and the safety of the community, if a judicial
48 official finds all of the following:

49 (1) There is reasonable cause to believe that the person committed an offense for
50 the benefit of, at the direction of, or in association with, any criminal ~~street~~
51 gang, as defined in ~~G.S. 14-50.16~~G.S. 14-50.16A(1).

- 1 (2) The offense described in subdivision (1) of this subsection was committed
- 2 while the person was on pretrial release for another ~~offense; and~~ offense.
- 3 (3) The person (i) has been previously convicted of an offense described in
- 4 ~~G.S. 14-50.16 through G.S. 14-50.20;~~ G.S. 14-50.16 through G.S. 14-50.20 or
- 5 (ii) has been convicted of a criminal offense and received an enhanced sentence
- 6 for that offense pursuant to G.S. 15A-1340.16E, and not more than five years
- 7 has elapsed since the date of conviction or the person's release for the offense,
- 8 whichever is later."
- 9 **SECTION 20.** This act becomes effective December 1, 2017, and applies to offenses
- 10 committed on or after that date.