

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-194
HOUSE BILL 138

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 G.S. 14-50.16 is repealed.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 behaviors. The term shall not include three or more persons associated in fact, whether formal or informal, who are not engaged in criminal gang activity.
- (2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (i) any



offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the following conditions is met:

- a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.
 - b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.
- (3) Criminal gang leader or organizer. – Any criminal gang member who acts in any position of management with regard to the criminal gang and who meets two or more of the following criteria:
- a. Exercises decision-making authority over matters regarding a criminal gang.
 - b. Participates in the direction, planning, organizing, or commission of criminal gang activity.
 - c. Recruits other gang members.
 - d. Receives a larger portion of the proceeds of criminal gang activity.
 - e. Exercises control and authority over other criminal gang members.
- (4) Criminal gang member. – Any person who meets three or more of the following criteria:
- a. The person admits to being a member of a criminal gang.
 - b. The person is identified as a criminal gang member by a reliable source, including a parent or a guardian.
 - c. The person has been previously involved in criminal gang activity.
 - d. The person has adopted symbols, hand signs, or graffiti associated with a criminal gang.
 - e. The person has adopted the display of colors or the style of dress associated with a criminal gang.
 - f. The person is in possession of or linked to a criminal gang by physical evidence, including photographs, ledgers, rosters, written or electronic communications, or membership documents.
 - g. The person has tattoos or markings associated with a criminal gang.
 - h. The person has adopted language or terminology associated with a criminal gang.
 - i. The person appears in any form of social media to promote a criminal gang."

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

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

(a) Except as otherwise provided in subsection (b) of this section, if a person is convicted of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2), then the person shall be sentenced at a felony class level one class higher than the principal felony for which the person was convicted.

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

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

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

(e) The State shall prove the issues set out under subsection (a) or (b) of this section beyond a reasonable doubt. The issues shall be proven and found in the same manner as provided for aggravating factors in G.S. 15A-1340.16(a1), (a2), or (a3) as applicable.

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

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

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

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

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

"§ 14-50.17. Soliciting; encouraging participation.

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

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

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

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

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

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

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

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

"§ 14-50.19. ~~Threats-Intimidation~~ to deter from gang withdrawal.

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

(a1) It is unlawful for any person to injure a person with the intent to deter a person from assisting another to withdraw from membership in a criminal gang.

(b) A violation of subsection (a) of this section is a Class ~~H-felony~~-G felony. A violation of subsection (a1) of this section is a Class F felony."

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

"§ 14-50.20. ~~Threats of punishment or retaliation~~.Punishment or retaliation for gang withdrawal.

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

(a) It is unlawful for any person to injure a person as punishment or retaliation against a person for having withdrawn from a criminal gang.

(b) A violation of subsection (a) of this section is a Class ~~H~~-G felony. A violation of subsection (a1) of this section is a Class F felony."

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

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

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

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

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

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

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

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

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

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

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

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

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

rewriting those lines to read:

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

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

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

Proof that criminal gang activity by a criminal gang member is regularly committed at any real property or proof that the real property is regularly used for engaging in criminal gang activity by a criminal gang member is prima facie evidence that the owner or person who has legal possession of the real property knowingly permitted the act unless the owner or person who has legal possession of the real property is making or has made a good-faith attempt to terminate the criminal gang activity or remove criminal gang members from the property through legal means, including trespass or summary ejection. For purposes of this section, the term "regularly" means at least five times in a period of not more than 12 months.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal ~~street~~-gang activity where any of the following conditions are met:

- (1) ~~the~~The owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal ~~street-gang activity or the activity.~~
- (2) The owner or person who has legal possession of the real property is being coerced into allowing the property to be used for criminal ~~street-gang~~ activity.
- (3) The owner or person who has legal possession of the real property is making or has made a good-faith attempt to terminate the criminal gang activity or remove criminal gang members from the property through legal means, including trespass or summary ejection.

For purposes of this subsection, evidence that the defendant knew, or by the exercise of due diligence should have known, of the criminal gang activity constitutes proof of actual knowledge."

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

"§ 14-50.43. Street gangsCriminal gangs declared a public nuisance.

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

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

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in criminal ~~street-gang~~ activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future criminal ~~street-gang~~ activities.

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

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

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

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

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

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

"§ 15A-1343. Conditions of probation.

...

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

...

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

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

...."

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

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

...

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

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal ~~street~~criminal gang, as defined in ~~G.S. 14-50.16~~:G.S. 14-50.16A(1).
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another ~~offense~~; and offense.
- (3) The person (i) has been previously convicted of an offense described in ~~G.S. 14-50.16 through G.S. 14-50.20~~,G.S. 14-50.16 through G.S. 14-50.20 or (ii) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later."

SECTION 20. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 3:32 p.m. this 27th day of July, 2017