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SENATE BILL DRS15109-MS-100 (03/14)

Short Title: Gang Nuisance Abatement Act. (Public)

Sponsors: Senators Lee and Britt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STANDARDIZE CRITERIA FOR CLASSIFICATION OF CRIMINAL GANG
3 MEMBERSHIP AND ACTIVITY AND TO AMEND THE CURRENT GANG
4 NUISANCE ABATEMENT ACT.

5 The General Assembly of North Carolina enacts:

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 G.S. 14-50.16 is repealed.

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

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

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

11 "§ 14-50.15. Short title.

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

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

16 "§ 14-50.16A. Criminal gang activity.

17 Definitions. – The following definitions apply in this Article:

18 (1) Criminal gang. – Any ongoing organization, association, or group of three or
19 more persons, whether formal or informal, that (i) has as one of its primary
20 activities the commission of criminal or delinquent acts and (ii) shares a
21 common name, identification, signs, symbols, tattoos, graffiti, attire, or other
22 distinguishing characteristics, including common activities, customs, or
23 behaviors. The term shall not include three or more persons associated in
24 fact, whether formal or informal, who are not engaged in criminal gang
25 activity.

26 (2) Criminal gang activity. – The commission of, attempted commission of, or
27 solicitation, coercion, or intimidation of another person to commit (i) any
28 offense under Article 5 of Chapter 90 of the General Statutes or (ii) any
29 offense under Chapter 14 of the General Statutes except Article 9, 22A, 40,
30 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184,
31 14-186, 14-190.9, 14-247, 14-248, or 14-313 thereof, and either of the
32 following conditions is met:

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



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- 1 b. The participants in the offense are identified as criminal gang
2 members acting individually or collectively to further any criminal
3 purpose of a criminal gang.
- 4 (3) Criminal gang leader or organizer. – Any criminal gang member who acts in
5 any position of management with regard to the criminal gang and who meets
6 two or more of the following criteria:
- 7 a. Exercises decision-making authority over matters regarding a
8 criminal gang.
- 9 b. Participates in the direction, planning, organizing, or commission of
10 criminal gang activity.
- 11 c. Recruits other gang members.
- 12 d. Receives a larger portion of the proceeds of criminal gang activity.
- 13 e. Exercises control and authority over other criminal gang members.
- 14 (4) Criminal gang member. – Any person who meets three or more of the
15 following criteria:
- 16 a. The person admits to being a member of a criminal gang.
17 b. The person is identified as a criminal gang member by a reliable
18 source, including a parent or a guardian.
- 19 c. The person has been previously involved in criminal gang activity.
20 d. The person has adopted symbols, hand signs, or graffiti associated
21 with a criminal gang.
- 22 e. The person has adopted the display of colors or the style of dress
23 associated with a criminal gang.
- 24 f. The person is in possession of or linked to a criminal gang by
25 physical evidence, including photographs, ledgers, rosters, written or
26 electronic communications, or membership documents.
- 27 g. The person has tattoos or markings associated with a criminal gang.
28 h. The person has adopted language or terminology associated with a
29 criminal gang.
- 30 i. The person appears in any form of social media to promote a
31 criminal gang."

32 **SECTION 5.** Article 13B of Chapter 14 of the General Statutes reads as rewritten:

33 "Article 13B.

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

35 **"§ 14-50.41. Short title.**

36 This Article shall be known and may be cited as the "North Carolina ~~Street~~Criminal Gang
37 Nuisance Abatement Act."

38 **"§ 14-50.42. Real property used by criminal street gangs declared a public nuisance:
39 abatement.**

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

45 Proof that criminal gang activity by a member of a criminal gang is regularly committed at
46 any real property or proof that the real property is regularly used for engaging in criminal gang
47 activity by a member of a criminal gang is prima facie evidence that the owner or person who
48 has legal possession of the real property knowingly permitted the act. For purposes of this
49 section, the term "regularly" means at least two times in a period of not more than 12 months.

50 (b) Innocent Activities. – The provisions of this section shall not apply to real property
51 used for criminal ~~street~~gang activity where the owner or person who has legal possession of

1 the real property does not have actual knowledge that the real property is being used for
2 criminal ~~street-gang~~ activity or the owner is being coerced into allowing the property to be used
3 for criminal ~~street-gang~~ activity. Evidence that the defendant knew, or by the exercise of due
4 diligence should have known, of the criminal gang activity constitutes proof of knowledge.

5 **"§ 14-50.43. Street-Criminal gangs declared a public nuisance.**

6 (a) A ~~street-criminal~~ gang, as defined in ~~G.S. 14-50.16(b)~~, G.S. 14-50.16A(1), that
7 regularly engages in criminal ~~street-gang~~ activities, as defined in ~~G.S. 14-50.16(e)~~,
8 G.S. 14-50.16A(2), constitutes a public nuisance. For the purposes of this section, the term
9 "regularly" means at least ~~five~~two times in a period of not more than 12 months.

10 (b) Any criminal gang, as an unincorporated association and in the name by which it is
11 commonly known and without naming any of the individual members composing it, any person
12 who regularly associates with others to engage in criminal ~~street-gang~~ activity, as defined in
13 G.S. 14-50.16(e), and any person who directs, participates in, assists in, conducts, furthers,
14 suggests, requests, authorizes, or causes criminal gang activity, as defined in
15 G.S. 14-50.16A(2), may be made a defendant in a suit, brought pursuant to Chapter 19 of the
16 General Statutes, to abate any public nuisance resulting from criminal ~~street-gang~~ activity. The
17 complaint may also name, as a class of defendants, all unknown gang members.

18 For purposes of service of process, service of process upon any leader, officer, or organizer
19 of a criminal gang or three members of a criminal gang, or any person representing a criminal
20 gang or criminal gang member, shall constitute adequate service upon a criminal gang.

21 Neither the identity nor the location of a confidential informant used to establish criminal
22 gang membership or criminal gang activity in any action pursuant to this Article shall be
23 discoverable.

24 Criminal gang activity, membership, association, leadership, and existence may be proven
25 through the testimony of a fact witness, an expert witness, or a combined fact-expert witness
26 pursuant to the rules of evidence.

27 (c) If the court finds that a public nuisance exists under this section, the court may enter
28 an order enjoining the criminal gang, or defendant in the suit from engaging in criminal ~~street~~
29 gang activities and impose other reasonable ~~requirements~~requirements, including, but not
30 limited to, ordering any person not to associate with other persons associated with a criminal
31 gang and to divest himself or herself of any involvement or interest, direct or indirect, in a
32 criminal gang, to prevent the defendant or a gang from engaging in future criminal ~~street-gang~~
33 activities. Any gang member who is not specifically named in an injunction may be subject to
34 the order only after personal service with a copy of the injunction.

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

40 (e) In any proceeding, pursuant to this Article, expert testimony is admissible to show
41 particular conduct, status, and customs indicative of criminal gangs and criminal gang activity,
42 including, but not limited to, any of the following:

43 (1) Characteristics of persons who are members of criminal gangs.

44 (2) Specific rivalries between criminal gangs.

45 (3) Common practices and operations of criminal gangs and members of those
46 gangs.

47 (4) Social customs and behavior of members of criminal gangs.

48 (5) Terminology used by members of criminal gangs.

49 (6) Codes of conduct, including criminal conduct, of particular criminal gangs.

50 (7) The types of crimes that are likely to be committed by a particular criminal
51 gang or by criminal gangs in general.

- 1 (f) In case of the violation of any injunction granted under the provisions of this
2 Article, the court, or, in vacation, a judge thereof, may do any of the following:
3 (1) Find the defendant guilty of contempt and punish the defendant as provided
4 in G.S. 19-4.
5 (2) Find the defendant guilty of violating orders of the court as provided in
6 G.S. 14-226.1."
7 **SECTION 6.** This act becomes effective December 1, 2017, and applies to
8 offenses committed on or after that date.