

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 633
Committee Substitute Favorable 4/29/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H633-CSTT-38 [v.2]
06/24/2019 05:55:35 PM

Short Title: Strengthen Criminal Gang Laws.

(Public)

Sponsors:

Referred to:

April 10, 2019

A BILL TO BE ENTITLED
AN ACT TO STRENGTHEN THE LAWS AGAINST CRIMINAL GANG ACTIVITY.
The General Assembly of North Carolina enacts:

PART I. REVISE THE CRIMINAL GANG NUISANCE ABATEMENT ACT

SECTION 1.(a) G.S. 14-50.43 reads as rewritten:

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

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

(b) Filing Suit. – ~~Any person criminal gang, as an unincorporated association and in the name by which it is commonly known and without naming any of the individual members composing it, and any criminal gang member who regularly associates with others to engage in criminal gang activity, as defined in G.S. 14-50.16A(2), other criminal gang members, 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 gang activity. The complaint may also name, as a class of defendants, all unknown criminal gang members.~~

(b1) Service of Process. – ~~For purposes of service of process, service of process upon any leader, officer, or organizer of a criminal gang, at least three members of a criminal gang, or any person representing a criminal gang or criminal gang member, shall constitute adequate service of process upon a criminal gang.~~

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

(d) An order entered under this section shall expire 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 gang activities.



* H 6 3 3 - C S T T - 3 8 *

(e) Witness Testimony. – Criminal gang activity, membership, association, leadership, and existence may be proven through the testimony of a fact witness, an expert witness, or a combined fact expert witness pursuant to the rules of evidence. In any proceeding, pursuant to this Article, expert testimony is admissible to show particular conduct, status, and customs indicative of criminal gangs and criminal gang activity, including any of the following:

- (1) Characteristics of persons who are members of criminal gangs.
- (2) Specific rivalries between criminal gangs.
- (3) Common practices and operations of criminal gangs and members of those gangs.
- (4) Social customs and behavior of members of criminal gangs.
- (5) Terminology used by members of criminal gangs.
- (6) Codes of conduct, including criminal conduct, of particular criminal gangs.
- (7) The types of crimes that are likely to be committed by a particular criminal gang or by criminal gangs in general.

(f) Penalty. – In case of the violation of any injunction granted under the provisions of this Article, the court, or, in vacation, a judge thereof, may do either of the following:

- (1) Find the defendant guilty of contempt and punish the defendant as provided in G.S. 19-4.
- (2) Find the defendant guilty of a Class A1 misdemeanor.

(g) Definitions. – The following definitions apply in this section:

- (1) Criminal gang. – As defined in G.S. 14-50.16A.
- (2) Criminal gang activity. – As defined in G.S. 14-50.16A.
- (3) Criminal gang member. – As defined in G.S. 14-50.16A."

SECTION 1.(b) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

PART II. REVISE THE CRIMINAL GANG SUPPRESSION ACT

SECTION 2.(a) G.S. 14-50.16A reads as rewritten:

"§ 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 engages in criminal gang activity~~ 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~~ any of the following criteria:
- Exercises decision-making authority over matters regarding a criminal gang.
 - Participates in the direction, planning, ~~organizing, or commission or~~ organizing of criminal gang activity.
 - Recruits other gang members.
 - Receives a larger portion of the proceeds of criminal gang activity.
 - Exercises control and authority over other criminal gang members.

...."

SECTION 2.(b) 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 ~~16-18~~ years of age or older to participate in criminal gang activity.

...."

SECTION 2.(c) 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~~ 18 years of age to participate in criminal gang activity.

...."

SECTION 2.(d) Article 13A of Chapter 14 of the General Statutes is amended by adding two new sections to read:

"§ 14-50.31. Use of witness testimony.

Criminal gang activity, membership, association, leadership, and existence may be proven through the testimony of a fact witness, an expert witness, or a combined fact expert witness pursuant to the rules of evidence. In any proceeding, pursuant to this Article, expert testimony is admissible to show particular conduct, status, and customs indicative of criminal gangs and criminal gang activity, including any of the following:

- Characteristics of persons who are members of criminal gangs.
- Specific rivalries between criminal gangs.
- Common practices and operations of criminal gangs and members of those gangs.
- Social customs and behavior of members of criminal gangs.
- Terminology used by members of criminal gangs.
- Codes of conduct, including criminal conduct, of particular criminal gangs.
- The types of crimes that are likely to be committed by a particular criminal gang or by criminal gangs in general.

"§ 14-50.32. Venue.

In any criminal proceeding brought under this Article, the crime shall be construed to have been committed in any county in which any act was performed as part of criminal gang activity."

SECTION 2.(e) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

PART III. MISCELLANEOUS REVISIONS

SECTION 3.(a) G.S. 15A-1340.16E reads as rewritten:

"§ 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), activity,~~ then the

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

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

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

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

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

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

19 (g) The following definitions apply in this section:

20 (1) Criminal gang activity. – As defined in G.S. 14-50.16A.

21 (2) Criminal gang leader or organizer. – As defined in G.S. 14-50.16A.

22 (3) Firearm. – As defined in G.S. 14-409.39."

23 **SECTION 3.(b)** Article 35 of Chapter 14 of the General Statutes is amended by
24 adding two new sections to read:

25 **"§ 14-269.9. Possession of a firearm during criminal gang activity prohibited.**

26 (a) Offense. – It is unlawful for a person who is participating in criminal gang activity as
27 the term is defined in G.S. 14-50.16A, to purchase, own, possess, or have in the person's custody,
28 care, or control any firearm. For the purposes of this section, a firearm is (i) any weapon,
29 including a starter gun, which will or is designed to or may readily be converted to expel a
30 projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or
31 firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

32 (b) Penalty. – Unless the conduct is covered under some other provision of law providing
33 greater punishment, a person who violates this section is guilty of a Class F felony."

34 **SECTION 3.(c)** Article 4 of Chapter 8C of the General Statutes is amended by
35 adding a new section to read:

36 **"Rule 416. Evidence of criminal gang activity.**

37 (a) For purposes of this rule, the term "criminal gang activity" is as defined in
38 G.S. 14-50.16A.

39 (b) In any proceeding in which a person is accused of conducting, participating in, or
40 conspiring to commit, criminal gang activity, or in any proceeding under Article 13B of Chapter
41 14 of the General Statutes, evidence of the defendant's commission of criminal gang activity and
42 other crimes, wrongs, or acts shall be admissible and may be considered for its bearing on any
43 matter to which it is relevant.

44 (c) In any proceeding in which the prosecution intends to offer evidence under this rule,
45 the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or
46 a summary of the substance of any testimony that is expected to be offered, at least 10 days in
47 advance of trial, unless the time is shortened or lengthened or pretrial notice is excused by the
48 judge upon good cause shown.

49 (d) This rule shall not be the exclusive means to admit or consider the evidence described
50 in this rule."

1 **SECTION 3.(d)** This section becomes effective December 1, 2019, and applies to
2 offenses committed on or after that date.

3
4 **PART IV. SEVERABILITY CLAUSE**

5 **SECTION 4.** If any provision of this act or its application is held invalid, the
6 invalidity does not affect other provisions or applications of this act that can be given effect
7 without the invalid provisions or application, and to this end the provisions of this act are
8 severable.

9
10 **PART V. SAVINGS CLAUSE**

11 **SECTION 5.** Prosecutions for offenses committed before the effective date of this
12 act are not abated or affected by this act, and the statutes that would be applicable but for this act
13 remain applicable to those prosecutions.

14
15 **PART VI. EFFECTIVE DATE**

16 **SECTION 6.** Except as otherwise provided, this act becomes effective December 1,
17 2019.