



HOUSE BILL 138: Revise Gang Laws.

2017-2018 General Assembly

Committee:		Date:	June 28, 2017
Introduced by:	Reps. McNeill, Faircloth, Hurley, R. Turner	Prepared by:	Augustus D. Willis
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *House Bill 138 would make changes to the laws governing criminal gang activity to create criteria for classification of criminal gang membership, create a sentencing enhancement for certain crimes committed by gang members, and increase the penalties for certain gang-related offenses.*

CURRENT LAW: Article 13A of Chapter 14 of the General Statutes, the North Carolina Street Gang Suppression Act, defines a criminal street gang and criminal street gang activity, and creates criminal offenses for participating in a pattern of criminal street gang activity and other related offenses.

BILL ANALYSIS:

Section 1 of the bill would repeal G.S. 14-50.16, which contains the current definitions for the criminal street gang statutes, and provides two felony offenses for criminal street gang activity.

Sections 2 and 3 of the bill would amend the title of Article 13A of Chapter 14 and the short title of the North Carolina Street Gang Suppression Act to be the "North Carolina Criminal Gang Suppression Act". The same change is made throughout the bill to remove the word "street".

Section 4 of the bill would enact a new G.S. 14-50.16A, which includes definitions for the following terms:

- **Criminal gang** – An ongoing organization, association, or group of 3 or more that (i) has the commission of criminal or delinquent acts as one of its primary activities and (ii) shares a common name, identifiers, signs, tattoos, etc. "Criminal gang" does not include 3 or more persons associated, that do not engage in "criminal gang activity".
- **Criminal gang activity** – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit any drug offense or any criminal offense (with a few exceptions) and either (i) the offense is committed to benefit, promote, or further the interests of a criminal gang or for the purpose of increasing a person's own standing in a criminal gang, or (ii) the participants in the offense are identified as criminal gang members acting to further a criminal purpose of a criminal gang.
- **Criminal gang leader or organizer** – A criminal gang member in a position of management and who meets 2 or more of the listed criteria.
- **Criminal gang member** – A person who meets 3 or more of the listed criteria.

Section 5 of the bill would enact G.S. 15A-1340.16E to create a sentencing enhancement for any person convicted of a Class C through Class I felony when it is found that the offense was committed as part of criminal gang activity. If the offense was committed as part of criminal gang activity, the person would

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be sentenced at one felony class higher than the underlying offense. If the person is also found to be a criminal gang leader or organizer, the person would be sentenced at two felony classes higher than the underlying offense. No person could be sentenced higher than a Class C pursuant to this section.

Sections 6, 7, and 8 would make conforming changes.

Section 9 would increase the penalty for threatening injury to person or damaging the property of a person with the intent to deter a person from assisting another person in withdrawal from a criminal gang to a Class G felony from a Class H felony, and create a Class F felony for actually injuring a person with the intent to deter a person from assisting another to withdraw from membership in a criminal gang.

Section 10 would increase the penalty for threatening injury to person or damaging the property of a person as punishment or retaliation against a person for withdrawal from a criminal gang to a Class G felony from a Class H felony, and create a Class F felony for actually injuring a person as punishment or retaliation against a person for having withdrawn from a criminal gang.

Sections 11 through 14 would make conforming changes.

Section 15 would amend the statute declaring real property used by criminal gangs a public nuisance by establishing that that regular use of real property 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 property knowingly permitted the act and that evidence that a defendant knew, or should have known, of the criminal gang activity constitutes proof of actual knowledge unless the owner has made a good faith attempt at terminating the nuisance through legal means.

Section 16 would amend the statute declaring criminal gangs a public nuisance to make conforming changes and to provide that a nuisance order entered because of criminal gang activity is valid for 3 years.

Sections 17, 18, and 19 would make conforming changes.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

Staff Attorney Susan Sitze contributed substantially to the preparation of this bill summary.