



HOUSE BILL 138: Revise Gang Laws.

2017-2018 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2017-194

Date:

August 16, 2017

Prepared by:

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OVERVIEW: *S.L. 2017-194 makes 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.*

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

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 act repeals 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 act 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 act to remove the word "street".

Section 4 of the act enacts 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 act enacts 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 shall be sentenced at one felony class higher than the underlying offense. If the person is also found to be a

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criminal gang leader or organizer, the person shall be sentenced at two felony classes higher than the underlying offense. No person may be sentenced higher than a Class C pursuant to this section.

Sections 6, 7, and 8 make conforming changes.

Section 9 of the act increases 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 creates 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 increases 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 make conforming changes.

Section 15 amends the statute declaring real property used by criminal gangs a public nuisance by establishing 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 amends the statute declaring criminal gangs a public nuisance to make conforming changes and to provide that a nuisance order entered due to criminal gang activity is valid for 3 years.

Sections 17, 18, and 19 makes conforming changes.

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