



HOUSE BILL 633: Strengthen Criminal Gang Laws.

2019-2020 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 26, 2019
Introduced by:	Reps. Davis, Faircloth, McNeill, Richardson	Prepared by:	Jessica Sammons*
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *House Bill 633 would revise the Criminal Gang Nuisance Abatement Act and the Criminal Gang Suppression Act, increase the penalty for use of a firearm in the commission of a felony, create a Class F felony for possession of a firearm during criminal gang activity, and create a new evidentiary rule regarding evidence of criminal gang activity.*

BACKGROUND: S.L. 2017-194 made 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.

BILL ANALYSIS:

Section 1 would amend G.S. 14-50.43, which makes a criminal gang that regularly engages in criminal gang activity a public nuisance, by:

- Defining "regularly" as at least two times per 12 months (was five times).
- Amending who may be a defendant in a nuisance action to include a 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 associates with other gang members. Also would allow the naming of all unknown criminal gang members as a class.
- Setting out the process for adequate service of process for the nuisance action.
- Amending what action the court may take upon finding a public nuisance to allow the court to order any person not to associate with other persons associated with a criminal gang and to divest themselves of any involvement or interest, direct or indirect, in a criminal gang. Would provide that any gang member who is not specifically named in the injunction would be subject to the order only after personal service with a copy of the injunction.
- Allowing testimony from a fact witness, an expert witness, or a combined fact expert witness to prove criminal gang activity, membership, association, leadership and existence.
- Allowing the court to either find the defendant in criminal contempt or guilty of a Class A1 misdemeanor for any violation of an injunction.

Section 2 would change the Criminal Gang Suppression Act by:

- Amending the definitions of "criminal gang", and "criminal gang leader".
- Making changes to conform with the Raise the Age modifications.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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- Enacting a new statute allowing testimony from a fact witness, an expert witness, or a combined fact expert witness to prove criminal gang activity, membership, association, leadership, and existence of a gang.
- Providing that any criminal proceeding brought under the gang statutes shall be construed to have been committed in any county in which any act was performed as part of the criminal gang activity.

Section 3 would amend the sentencing enhancement for criminal gang activity by:

- Removing statutory citations for definitions added to the section.
- Creating a two felony class enhancement for the possession or use of a firearm during the commission of a felony.
- Adding relevant definitions.
- Creating a new Rule of Evidence that would make any relevant evidence of "the defendant's commission of criminal gang activity and other crimes, wrongs, or acts" admissible at trial.

Section 4 might protect each provision individually in the event of a court finding one invalid.

Section 5 would provide that prosecutions for offenses committed before the effective date of this act would not be abated.

EFFECTIVE DATE: Generally, the provisions of this act would become effective December 1, 2019, and apply to offenses committed on or after that date. Please see the bill for more details.

**Jennifer Bedford, committee counsel to Senate Judiciary, substantially contributed to this summary.*