



HOUSE BILL 633: Strengthen Criminal Gang Laws.

2019-2020 General Assembly

Committee:	House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 29, 2019
Introduced by:	Reps. Davis, Faircloth, McNeill, Richardson	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H633-CSSA-28		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 633 would revise the Criminal Gang Nuisance Abatement Act, revise the Criminal Gang Suppression Act, increase penalties for use of a firearm in criminal gang activity or a felony, increase the penalty for possession of a firearm by a felon in some instances, and create a new evidentiary rule regarding evidence of criminal gang activity.*

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. The changes would be effective December 1, 2019, apply to offenses committed on or after that date, and include:

- Would define "regularly" as at least two times per 12 months (was five times).
- Would amend 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.
- Would set out the process for adequate service of process for the nuisance action.
- Would amend 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.
- Would allow testimony from a fact witness, an expert witness, or a combined fact expert witness to prove criminal gang activity, membership, association, leadership and existence.
- Would allow 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 make various changes to the Criminal Gang Suppression Act. The changes would be effective December 1, 2019, apply to offenses committed on or after that date, and include:

- Would amend the definition of "criminal gang" to change the current requirement that it have as "one of its primary activities the commission of criminal or delinquent acts" to instead require that it "engages in criminal gang activity."

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- Would amend the definition of "criminal gang leader or organizer" to require that the person meet any of the five listed criteria instead of meeting two or more of the criteria.
- Would amend the offense making it unlawful to cause, encourage, solicit, or coerce a person to participate in criminal gang activity, from 16 to 18 years old, and make a conforming change to the offense making it unlawful to encourage solicit, or coerce a minor to participate in criminal gang activity.
- Would enact 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.
- Would provide 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 make various changes to criminal statutes related to criminal gang activity and the use of firearms. The changes would be effective December 1, 2019, apply to offenses committed on or after that date, and include:

- Would provide a sentencing enhancement of two class levels for possession of a firearm during the commission of a felony as part of criminal gang activity.
- Would create a new felony offense for possession of a firearm or weapon of mass death and destruction during the commission or attempted commission of a felony under Chapter 14 (criminal law) or Chapter 90 (controlled substances). A violation would be a separate offense from the underlying felony offense. Penalty would be as follows:
 - Class D felony if the firearm or weapon is discharged
 - Class F felony if the firearm or weapon is brandished
 - Class H felony for any other violation.
- Would create a new Class G felony for the sale, delivery, transfer or giving of a firearm or weapon of mass death and destruction to a person the transferor knows or reasonably should know is participating in criminal gang activity.
- Would increase the penalty for possession of a firearm by a felon from a Class G felony for all offenses to punishment as follows:
 - Class D felony if the person was participating in criminal gang activity
 - Class D felony for a second or subsequent violation
 - Class F felony for any other violation
- Would enact a Rule 416 Evidence of Criminal Gang Activity under the Rules of Evidence which would make evidence of the defendant's commission of criminal gang activity and other crimes, wrongs, or acts admissible when a person is accused of conducting, participating in, or conspiring to commit, criminal gang activity, or in any proceeding under the Criminal Gang Nuisance Abatement Act. The prosecutor would be required to disclose the evidence to the defendant at least 10 days in advance of trial.

Section 4 would provide that the invalidity of any provision of this act does not affect other provisions of this act that can be severed and given effect.

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

EFFECTIVE DATE: Except as indicated above, the provisions of this act would become effective D