

The House Committee on Judiciary Non-civil offers the following substitute to HB 1302:

A BILL TO BE ENTITLED
AN ACT

1 To provide for public safety measures for and from young people; to amend Chapter 15 of
2 Title 16 of the Official Code of Georgia Annotated, the "Georgia Street Gang Terrorism and
3 Prevention Act," so as to change certain definitions; to change certain provisions relating to
4 the prohibition against participation in criminal street gang activity; to provide for enhanced
5 penalties for participation in criminal street gang activity; to provide for the admissibility of
6 certain evidence at trial; to amend Title 20 of the Official Code of Georgia Annotated,
7 relating to education, so as to change certain provisions relating to failure to leave school
8 premises after being requested to leave; to change certain provisions relating to check-in
9 requirements and exceptions; to provide for related matters; to provide for applicability; to
10 provide an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 15 of Title 16 of the Official Code of Georgia Annotated, the "Georgia Street Gang
14 Terrorism and Prevention Act," is amended by striking in its entirety Code Section 16-15-3,
15 relating to definitions, and inserting in lieu thereof the following:

16 "16-15-3.

17 As used in this chapter, the term:

18 (1) 'Criminal gang activity' means the commission, attempted commission, conspiracy
19 to commit, or solicitation, coercion, or intimidation of another person to commit any of
20 the following offenses on or after July 1, 2006:

21 (A) Any offense defined as racketeering activity by Code Section 16-14-3;

22 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

23 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,
24 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

25 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and
26 other offenses related to confinement;

1 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous
 2 instrumentalities and practices;

3 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or
 4 42-5-19, relating to the security of state or county correctional facilities;

5 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging
 6 a child to escape from custody;

7 (H) Any offense of criminal trespass or criminal damage to property resulting from any
 8 act of gang related painting on, tagging, marking on, writing on, or creating any form
 9 of graffiti on the property of another;

10 (I) Any criminal offense committed in violation of the laws of the United States or its
 11 territories, dominions, or possessions, any of the several states, or any foreign nation
 12 which, if committed in this state, would be considered criminal gang activity under this
 13 Code section; and

14 (J) Any criminal offense in the State of Georgia, any other state, or the United States
 15 that involves violence, possession of a weapon, or use of a weapon, whether designated
 16 as a felony or not, and regardless of the maximum sentence that could be imposed or
 17 actually was imposed.

18 ~~(1)~~(2) 'Criminal street gang' means any organization, association, or group of three or
 19 more persons associated in fact, whether formal or informal, which engages in a pattern
 20 of criminal gang activity as defined in paragraph ~~(2)~~(1) of this Code section. The
 21 existence of such organization, association, or group of individuals associated in fact may
 22 be established by evidence of a common name or common identifying signs, symbols,
 23 tattoos, graffiti, or attire or other distinguishing characteristics.

24 ~~(2)~~ 'Pattern of criminal gang activity' means the commission, attempted commission,
 25 conspiracy to commit, or solicitation, coercion, or intimidation of another person to
 26 commit at least two of the following offenses, provided that at least one of these offenses
 27 occurred after July 1, 1998, and the last of such offenses occurred within three years,
 28 excluding any periods of imprisonment, of prior criminal gang activity:

29 ~~(A) Any offense defined as racketeering activity by Code Section 16-14-3;~~

30 ~~(B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;~~

31 ~~(C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,~~
 32 ~~16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;~~

33 ~~(D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and~~
 34 ~~other offenses related to confinement;~~

35 ~~(E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous~~
 36 ~~instrumentalities and practices;~~

1 ~~(F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or~~
 2 ~~42-5-19, relating to the security of state or county correctional facilities; and~~
 3 ~~(G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging~~
 4 ~~a child to escape from custody."~~

5 SECTION 2.

6 Said chapter is further amended by striking in its entirety Code Section 16-15-4, relating to
 7 the prohibition against participation in criminal street gang activity, and inserting in lieu
 8 thereof the following:

9 "16-15-4.

10 (a) It shall be unlawful for any person employed by or associated with a criminal street
 11 gang to conduct or participate in ~~such~~ criminal street gang activity through a ~~pattern of~~
 12 criminal gang activity the commission of any offense enumerated in paragraph (1) of Code
 13 Section 16-15-3.

14 (b) It shall be unlawful for any person employed by or associated with a criminal street
 15 gang to commit any offense enumerated in paragraph (1) of Code Section 16-15-3 with
 16 knowledge that members of such criminal street gang have committed one or more of such
 17 offenses.

18 (c) It shall be unlawful for any person to commit any offense enumerated in paragraph (1)
 19 of Code Section 16-15-3 with the intent to maintain or increase his or her status or position
 20 in a criminal street gang.

21 (d) It shall be unlawful for any person to acquire or maintain, directly or indirectly,
 22 through a ~~pattern of~~ criminal gang activity or proceeds derived therefrom any interest in
 23 or control of any real or personal property of any nature, including money.

24 ~~(e)~~(e) It shall be unlawful for any person who occupies a position of organizer, supervisory
 25 position, or any other position of management with regard to a criminal street gang to
 26 engage in, directly or indirectly, or conspire to engage in a ~~pattern of~~ criminal gang
 27 activity.

28 ~~(d)~~(f) It shall be unlawful for any person to cause, encourage, solicit, or coerce another to
 29 participate in a criminal street gang.

30 ~~(e)~~(g) It shall be unlawful for any person to communicate, directly or indirectly, with
 31 another any threat of injury or damage to the person or property of the other person or to
 32 any associate or relative of the other person with the intent to deter such person from
 33 assisting a member or associate of a criminal street gang to withdraw from such criminal
 34 street gang.

35 ~~(f)~~(h) It shall be unlawful for any person to communicate, directly or indirectly, with
 36 another any threat of injury or damage to the person or property of the other person or to

1 any associate or relative of the other person with the intent to punish or retaliate against
2 such person for having withdrawn from a criminal street gang.

3 ~~(g)~~(i)(1) Any person who violates subsection (a), (b), (c), or ~~(b)~~ (d) of this Code section
4 shall, in addition to any other penalty imposed by law, be punished by imprisonment for
5 not less than ~~three~~ five nor more than 15 years or by a fine of not less than \$5,000.00
6 \$10,000.00 nor more than ~~\$10,000.00~~ \$15,000.00, or both.

7 (2) Any person who violates subsection ~~(e)~~(e) of this Code section may, in addition to
8 any other penalty provided by law, be punished by imprisonment for an additional ten
9 years which shall be served consecutively to any other sentence imposed on such person
10 by law.

11 (3) Any person who violates subsection ~~(d)~~, ~~(e)~~, or (f), (g), or (h) of this Code section
12 shall, in addition to any other penalty provided by law, be punished by imprisonment for
13 not less than ~~one~~ three nor more than ten years.

14 ~~(h)~~(j) Any crime committed in violation of this Code section shall be considered a separate
15 offense."

16 SECTION 3.

17 Said chapter is further amended by inserting at the end thereof the following:

18 "16-15-9.

19 The commission of any offense enumerated in paragraph (1) of Code Section 16-15-3 by
20 any member of a criminal street gang shall be admissible in any trial or proceeding for the
21 purpose of proving the existence of the criminal street gang and criminal gang activity."

22 SECTION 4.

23 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
24 striking subsections (b) and (c) of Code Section 20-2-1180 and inserting in lieu thereof new
25 subsections (b), (c), and (c.1) to read as follows:

26 "(b) Any person who ~~shall not have any~~:

27 (1) Is legitimate cause or need to be present upon the premises or within the school
28 safety zone of any public or private school in this state ~~who shall willfully fail and~~
29 willfully fails to remove himself or herself from such premises after the principal or
30 designee of such school ~~shall request~~ requests him or her to do so; or

31 (2) Fails to check in at the designated location as required by subsection (c) of this Code
32 section and willfully fails to remove himself or herself from such premises after the
33 principal or designee of such school requests him or her to do so

34 shall be guilty of a misdemeanor of a high and aggravated nature.

1 (c) Upon entering any ~~elementary or secondary~~ school building between the official
 2 starting time and the official dismissal time, any person who is not a student at such school,
 3 an employee of the school or school system, a school board member, an approved
 4 volunteer following the established guidelines of the school, or a person who has been
 5 invited to or otherwise authorized to be at the school by a principal, teacher, counselor, or
 6 other authorized employee of the school shall check in at the designated location as stated
 7 on posted signs and provide a reason for his or her presence at the school. ~~Failure to check~~
 8 ~~in at the designated location as provided in this subsection shall be prima-facie evidence~~
 9 ~~that such person is in violation of subsection (b) of this Code section.~~

10 (c.1) Subsections (b) and (c) of this Code section This subsection shall not apply to law:

11 (1) Law enforcement officers, firefighters, emergency medical technicians or
 12 paramedics, or any public safety or emergency management officials in the performance
 13 of an emergency call or to other persons making authorized deliveries to the school. ~~This~~
 14 ~~subsection shall not apply to any:~~

15 (2) Any person entering a school which serves as an official polling place for the purpose
 16 of voting on election day; or

17 (3) Any person attending or participating in an academic or athletic event while
 18 remaining in the authorized area ~~or a parent, grandparent, or guardian listed on a child's~~
 19 ~~pick-up list who fails to sign-in while delivering school supplies, food, clothing, other~~
 20 ~~legitimate business and who has not previously been sanctioned by school officials for~~
 21 ~~disrupting a school."~~

22 SECTION 5.

23 This Act shall become effective on July 1, 2006, and shall apply to all crimes committed on
 24 or after such date. Any offense committed before July 1, 2006, shall be punishable as
 25 provided by the statute in effect at the time the offense was committed.

26 SECTION 6.

27 All laws and parts of laws in conflict with this Act are repealed.