

House Bill 1302 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Casas of the 103rd, Fleming of the 117th, Everson of the 106th, Coan of the 101st, Reese of the 98th, and others

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 provide for the Criminal Street Gang Reward Fund administered
7 by the Prosecuting Attorney's Council; to amend Title 20 of the Official Code of Georgia
8 Annotated, relating to education, so as to change certain provisions relating to failure to leave
9 school premises after being requested to leave; to change certain provisions relating to
10 check-in requirements and exceptions; to provide for related matters; to provide for
11 applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

17 "16-15-3.

18 As used in this chapter, the term:

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

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

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

24 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,
25 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

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

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

5 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or
 6 42-5-19, relating to the security of state or county correctional facilities;

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

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

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

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

20 ~~(H)~~(2) 'Criminal street gang' means any organization, association, or group of three or
 21 more persons associated in fact, whether formal or informal, which engages in a pattern
 22 of criminal gang activity as defined in paragraph ~~(2)~~(1) of this Code section. The
 23 existence of such organization, association, or group of individuals associated in fact may
 24 be established by evidence of a common name or common identifying signs, symbols,
 25 tattoos, graffiti, or attire or other distinguishing characteristics. Such term shall not
 26 include three or more persons, associated in fact, whether formal or informal, who are not
 27 engaged in criminal gang activity.

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

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

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

35 ~~(C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,~~
 36 ~~16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;~~

- 1 ~~(D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and~~
 2 ~~other offenses related to confinement;~~
 3 ~~(E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous~~
 4 ~~instrumentalities and practices;~~
 5 ~~(F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or~~
 6 ~~42-5-19, relating to the security of state or county correctional facilities; and~~
 7 ~~(G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging~~
 8 ~~a child to escape from custody."~~

9 SECTION 2.

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

13 "16-15-4.

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

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

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

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

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

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

34 ~~(e)~~(g) It shall be unlawful for any person to communicate, directly or indirectly, with
 35 another any threat of injury or damage to the person or property of the other person or to
 36 any associate or relative of the other person with the intent to deter such person from

1 assisting a member or associate of a criminal street gang to withdraw from such criminal
2 street gang.

3 ~~(f)~~(h) It shall be unlawful for any person to communicate, directly or indirectly, with
4 another any threat of injury or damage to the person or property of the other person or to
5 any associate or relative of the other person with the intent to punish or retaliate against
6 such person for having withdrawn from a criminal street gang.

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

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

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

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

20 **SECTION 3.**

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

22 "16-15-9.

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

26 16-15-10.

27 There shall be established as part of the Prosecuting Attorney's Council the Criminal Street
28 Gang Reward Fund. The chief of police, sheriff, or chairperson of any county governing
29 authority may request the posting of up to \$5,000.00 reward for information leading to the
30 arrest and conviction of any person involved in criminal street gang activity that leads to
31 the death or maiming of another person or property damage in the amount of \$2,500.00 or
32 more."

