

The House Committee on Judiciary Non-civil offers the following substitute to HB 1015:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 15 of Title 16 and Title 17 of the Official Code of Georgia Annotated,
2 relating, respectively, to street gang terrorism and prevention and criminal procedure, so as
3 to expand and change provisions relating to criminal street gangs and criminal gang activity;
4 to clarify language in legislative findings and intent; to change provisions relating to what
5 constitutes criminal gang activity; to change provisions relating to commission of offense
6 admissible as evidence of existence of criminal street gang and criminal gang activity; to
7 provide that the Georgia Bureau of Investigation shall be authorized to establish a state-wide
8 criminal street gang data base, subject to funding availability; to require criminal gang
9 offenses to be granted bail by a superior court judge; to provide that a person sentenced for
10 violating the 'Georgia Criminal Street Gang Terrorism and Prevention Act' be supervised on
11 probation for an extended period of time; to provide for related matters; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Chapter 15 of Title 16 of the Official Code of Georgia Annotated, relating to street gang
16 terrorism and prevention, is amended by revising Code Section 16-15-2, relating to
17 legislative findings and intent, as follows:

18 "16-15-2.

19 (a) The General Assembly finds and declares that it is the right of every person to be
20 secure and protected from fear, intimidation, and physical harm caused by the activities of
21 violent groups and individuals. It is not the intent of this chapter to interfere with the
22 exercise of the constitutionally protected rights of freedom of expression and association.
23 The General Assembly recognizes the constitutional right of every citizen to harbor and
24 express beliefs on any lawful subject whatsoever, to associate lawfully with others who
25 share similar beliefs, to petition lawfully constituted authority for a redress of perceived
26 grievances, and to participate in the electoral process.

27 (b) The General Assembly, however, further finds that the State of Georgia is in a state of
 28 crisis which has been caused by violent criminal street gangs whose members threaten,
 29 terrorize, and commit a multitude of crimes against the peaceful citizens of their
 30 neighborhoods. These activities, both individually and collectively, present a clear and
 31 present danger to public order and safety and are not constitutionally protected.

32 (c) The General Assembly finds that there are criminal street gangs operating in Georgia
 33 and that the number of gang related murders is increasing. It is the intent of the General
 34 Assembly in enacting this chapter to seek the eradication of criminal activity by criminal
 35 street gangs by focusing upon ~~patterns of~~ criminal gang activity and upon the organized
 36 nature of criminal street gangs which together are the chief source of terror created by
 37 criminal street gangs.

38 (d) The General Assembly further finds that an effective means of punishing and deterring
 39 the criminal activities of criminal street gangs is through forfeiture of the profits, proceeds,
 40 and instrumentalities acquired, accumulated, or used by criminal street gangs."

41 **SECTION 2.**

42 Said chapter is further amended by revising paragraph (2) of Code Section 16-15-3, relating
 43 to definitions, as follows:

44 "(2) 'Criminal street gang' means any organization, association, or group of three or more
 45 persons associated in fact, whether formal or informal, which engages in criminal gang
 46 activity as defined in paragraph (1) of this Code section. The existence of such
 47 organization, association, or group of individuals associated in fact may be established
 48 by evidence of a common name or common identifying signs, symbols, tattoos, graffiti,
 49 or attire or other distinguishing characteristics, including, but not limited to, common
 50 activities, customs, or behaviors. Such term shall not include three or more persons,
 51 associated in fact, whether formal or informal, who are not engaged in criminal gang
 52 activity."

53 **SECTION 3.**

54 Said chapter is further amended by revising Code Section 16-15-4, relating to participation
 55 in criminal street gang activity prohibited, as follows:

56 "16-15-4.

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

60 (b) ~~It shall be unlawful for any person employed by or associated with a criminal street~~
 61 ~~gang to commit any offense enumerated in paragraph (1) of Code Section 16-15-3 with~~

62 ~~knowledge that members of such criminal street gang have committed one or more of such~~
 63 ~~offenses.~~

64 ~~(c)~~ It shall be unlawful for any person to commit any offense enumerated in paragraph (1)
 65 of Code Section 16-15-3 with the intent to obtain or earn membership or maintain or
 66 increase his or her status or position in a criminal street gang.

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

70 ~~(e)~~~~(d)~~ It shall be unlawful for any person who occupies a position of organizer, supervisory
 71 position, or any other position of management or leadership with regard to a criminal street
 72 gang to engage in, directly or indirectly, or conspire to engage in criminal gang activity.

73 ~~(f)~~~~(e)~~ It shall be unlawful for any person to cause, encourage, solicit, recruit, or coerce
 74 another to become a member or associate of a criminal street gang, to participate in a
 75 criminal street gang, or to conduct or participate in criminal gang activity.

76 ~~(g)~~~~(f)~~ It shall be unlawful for any person to communicate, directly or indirectly, with
 77 another any threat of injury or damage to the person or property of the other person or ~~to~~
 78 of any associate or relative of the other person with the intent to deter such person from
 79 assisting a member or associate of a criminal street gang to withdraw from such criminal
 80 street gang.

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

85 (h) It shall be unlawful for any person to communicate, directly or indirectly, with another
 86 any threat of injury or damage to the person or property of the other person or of any
 87 associate or relative of the other person with the intent to punish or retaliate against such
 88 person for refusing to or encouraging another to refuse to become or obtain the status of
 89 a member or associate of a criminal street gang.

90 (i) It shall be unlawful for any person to communicate, directly or indirectly, with another
 91 any threat of injury or damage to the person or property of the other person or of any
 92 associate or relative of the other person with the intent to punish or retaliate against such
 93 person for providing statements or testimony against criminal street gangs or any criminal
 94 street gang member or associate.

95 (j) In addition to the prohibitions set forth in Code Section 16-10-93, it shall be unlawful
 96 for any person to communicate, directly or indirectly, with another any threat of injury or
 97 damage to the person or property of the other person or of any associate or relative of the
 98 other person with the intent to intimidate, deter, or prevent such person from

99 communicating to any law enforcement or corrections officer, prosecuting attorney, or
 100 judge information relating to criminal street gangs, criminal street gang members or
 101 associates, or criminal gang activity.

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

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

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

113 (l) In addition to any other penalty provided by this Code section, all sentences imposed
 114 under this Code section shall require as a special condition of the sentence that the person
 115 sentenced shall not knowingly have contact of any kind or character with any other
 116 member or associate of a criminal street gang, shall not participate in any criminal gang
 117 activity, and, in cases involving a victim, shall not knowingly have contact of any kind or
 118 character with any such victim or any member of any such victim's family or household.

119 ~~(j)~~(m) Any crime committed in violation of this Code section shall be considered a
 120 separate offense."

121 **SECTION 4.**

122 Said chapter is further amended by revising subsection (d) of Code Section 16-15-7, relating
 123 to real property used by criminal street gangs declared a public nuisance, as follows:

124 "(d) The state, any political subdivision thereof, or any person aggrieved by a ~~pattern of~~
 125 criminal street gang or criminal gang activity may bring an action to enjoin violations of
 126 this chapter in the same manner as provided in Code Section 16-14-6."

127 **SECTION 5.**

128 Said chapter is further amended by revising Code Section 16-15-9, relating to commission
 129 of offense admissible as evidence of existence of criminal street gang and criminal gang
 130 activity, as follows:

131 "16-15-9.

132 The commission of any offense enumerated in paragraph (1) of Code Section 16-15-3 by
 133 any member or associate of a criminal street gang shall be admissible in any trial or

134 proceeding for the purpose of proving the existence of the criminal street gang and criminal
 135 gang activity."

136 **SECTION 6.**

137 Said chapter is further amended by revising Code Section 16-15-10, relating to the Criminal
 138 Street Gang Reward Fund, as follows:

139 "16-15-10.

140 There shall be established as part of the Prosecuting ~~Attorney's~~ Attorneys' Council of the
 141 State of Georgia the Criminal Street Gang Reward Fund. The chief of police, sheriff, or
 142 chairperson of any county governing authority may request the posting of up to a \$5,000.00
 143 reward for information leading to the arrest and conviction of any person involved in
 144 criminal ~~street~~ gang activity that leads to the death or maiming of another person or
 145 property damage in the amount of \$2,500.00 or more."

146 **SECTION 7.**

147 Said chapter is further amended by adding a new Code section to read as follows:

148 "16-15-11.

149 (a) Subject to funds as may be appropriated by the General Assembly or otherwise
 150 available for such purpose, the Georgia Bureau of Investigation shall be authorized to
 151 establish, develop, manage, and maintain a state-wide criminal street gang data base, to be
 152 known as the Georgia Criminal Street Gang Database, to facilitate the exchange of
 153 information between federal, state, county, and municipal law enforcement, prosecution
 154 and corrections agencies, offices, and departments. The Georgia Bureau of Investigation
 155 shall be authorized to solicit input from law enforcement and prosecuting attorneys in
 156 determining useful information for such data base so that information may be used by law
 157 enforcement, prosecution and corrections agencies, and other agencies, offices, and
 158 departments for investigative, prosecutorial, and corrections purposes.

159 (b) Once the Georgia Criminal Street Gang Database is created and operational, the
 160 Georgia Bureau of Investigation shall be authorized to notify all federal, state, county, and
 161 municipal law enforcement, prosecution and corrections agencies, offices, and departments
 162 located in this state that information regarding criminal street gangs and their members and
 163 associates shall be entered into the Georgia Criminal Street Gang Database.

164 (c) The Georgia Bureau of Investigation shall be authorized to create and promulgate a
 165 uniform reporting format for the entry of pertinent information received from law
 166 enforcement, prosecution and corrections agencies, offices, and departments for use in the
 167 Georgia Criminal Street Gang Database.

168 (d) All state, county, and municipal law enforcement, prosecution and corrections
 169 agencies, offices, and departments may timely furnish information acquired relating to
 170 criminal street gangs and criminal gang activity to the Georgia Bureau of Investigation to
 171 be included in the Georgia Criminal Street Gang Database according to the reporting
 172 format developed by the Georgia Bureau of Investigation.

173 (e) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, the information
 174 and related records associated with the Georgia Criminal Street Gang Database shall not
 175 be open to inspection by or made available to the public."

176 **SECTION 8.**

177 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 178 amended by revising subsection (a) of Code Section 17-6-1, relating to where offenses are
 179 bailable, by striking "and" at the end of paragraph (11), striking the period at the end of
 180 paragraph (12) and inserting "; and" in lieu thereof, and adding a new paragraph to read as
 181 follows:

182 "(13) Violations of the 'Georgia Street Gang Terrorism and Prevention Act.'"

183 **SECTION 9.**

184 Said title is further amended by revising paragraph (4) of subsection (f) of Code Section
 185 17-6-1, relating to where offenses are bailable, as follows:

186 ~~"(4) If probable cause is shown that the offense charged is in furtherance of a pattern of~~
 187 ~~criminal gang activity as defined by Code Section 16-15-3~~ For violations of Code Section
 188 16-15-4, the court shall require increased bail and shall include as a condition of bail or
 189 pretrial release that the defendant shall not have contact of any kind or character with any
 190 other member or associate of a criminal street gang and, in cases involving a victim, that
 191 the defendant shall not have contact of any kind or character with the any such victim or
 192 any member of the any such victim's family or household."

193 **SECTION 10.**

194 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section
 195 17-10-1, relating to fixing of sentence, as follows:

196 "(2) Probation supervision shall terminate in all cases no later than two years from the
 197 commencement of probation supervision unless specially extended or reinstated by the
 198 sentencing court upon notice and hearing and for good cause shown; provided, however,
 199 that in those cases involving the collection of fines, restitution, or other funds, the period
 200 of supervision shall remain in effect for so long as any such obligation is outstanding, or
 201 until termination of the sentence, whichever first occurs, and for those cases involving

202 a conviction under the 'Georgia Street Gang Terrorism and Prevention Act,' the period
203 of supervision shall remain in effect until the termination of the sentence, but shall not
204 exceed five years unless as otherwise provided in this paragraph. Probation supervision
205 shall not be required for defendants sentenced to probation while the defendant is in the
206 legal custody of the Department of Corrections or the State Board of Pardons and
207 Paroles."

208 **SECTION 11.**

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