House Bill 1302 (AS PASSED HOUSE AND SENATE)

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

To provide for public safety measures for and from young people; to amend Chapter 15 of Title 16 of the Official Code of Georgia Annotated, the "Georgia Street Gang Terrorism and Prevention Act," so as to change certain definitions; to change certain provisions relating to the prohibition against participation in criminal street gang activity; to provide for enhanced penalties for participation in criminal street gang activity; to provide for the admissibility of certain evidence at trial; to provide for the Criminal Street Gang Reward Fund administered by the Prosecuting Attorney's Council; to amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to change certain provisions relating to failure to leave school premises after being requested to leave; to change certain provisions relating to check-in requirements and exceptions; to provide for disclosure of campus policemen´s records; to provide for related matters; to amend Code Section 45-12-35 of the Official Code of Georgia Annotated, relating to rewards for the detection or apprehension of perpetrators of felonies, so as to remove certain limitations with respect to the offering of such rewards by the governing authority of a county or municipality; to provide for applicability; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-15-3.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

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

"16-15-4.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.

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

"16-15-9.

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

16-15-10.

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

SECTION 4.

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

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

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

(2) Fails to check in at the designated location as required by subsection (c) of this Code section

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

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

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

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

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

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

SECTION 5.

Said title is further amended by adding a new Code Section 20-8-7 to read as follows:

"20-8-7.

Law enforcement records created, received, or maintained by campus policemen that relate to the investigation of criminal conduct and crimes as defined under Georgia law and which are not subject to protection from disclosure by any other Georgia law shall be made available within a reasonable time after request for public inspection and copying."

SECTION 6.

Code Section 45-12-35 of the Official Code of Georgia Annotated, relating to rewards for the detection or apprehension of perpetrators of felonies, is amended by striking subsection (b) and inserting in its place a new subsection (b) to read as follows:

"(b) The Governor and any county or municipal governing authority shall, in their discretion, offer and cause to be paid rewards for the detection or apprehension of the perpetrator of any felony committed within this state, such reward not to exceed the sum of $1,000.00 in felonies not capital, including arson, and not to exceed the sum of $10,000.00 in capital felonies and arson; provided, however, that ~~the governing authority of a county or municipality may offer and pay such a reward only in cases in which the Governor has first offered a reward and, in such cases,~~ the amount offered by any local governing authority shall not exceed the aggregate amount of $25,000.00."

SECTION 7.

This section and Sections 6 and 8 of this Act shall become effective upon their approval by the Governor or upon their becoming law without such approval. The remaining sections of this Act shall become effective on July 1, 2006, and shall apply to all crimes committed on or after such date. Any offense committed before July 1, 2006, shall be punishable as provided by the statute in effect at the time the offense was committed.

SECTION 8.

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