House Bill 1015 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 34th, Hatfield of the 177th, Levitas of the 82nd, Ramsey of the 72nd, Setzler of the 35th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 15 of Title 16 and Title 17 of the Official Code of Georgia Annotated, relating, respectively, to street gang terrorism and prevention and criminal procedure, so as to expand and change provisions relating to criminal street gangs and criminal gang activity; to clarify language in legislative findings and intent; to change provisions relating to what constitutes criminal gang activity; to change provisions relating to commission of offense admissible as evidence of existence of criminal street gang and criminal gang activity; to provide that the Georgia Bureau of Investigation shall be authorized to establish a state-wide criminal street gang data base, subject to funding availability; to require criminal gang offenses to be granted bail by a superior court judge; to provide that a person sentenced for violating the 'Georgia Criminal Street Gang Terrorism and Prevention Act' be supervised on probation for an extended period of time; to provide for related matters; 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, relating to street gang terrorism and prevention, is amended by revising Code Section 16-15-2, relating to legislative findings and intent, as follows:

"16-15-2.

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

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

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

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

SECTION 2.

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

"(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 criminal gang activity as defined in paragraph (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, including, but not limited to, common activities, customs, or behaviors. Such term shall not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity."

SECTION 3.

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

"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 criminal ~~street~~ gang activity through 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 obtain or earn membership or maintain or increase his or her status or position in a criminal street gang.

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

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

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

~~(g)~~(f) 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~~ of 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.

~~(h)~~(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~~ of 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.

(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 of any associate or relative of the other person with the intent to punish or retaliate against such person for refusing to or encouraging another to refuse to become or obtain the status of a member or associate of a criminal street gang.

(i) 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 of any associate or relative of the other person with the intent to punish or retaliate against such person for providing statements or testimony against criminal street gangs or any criminal street gang member or associate.

(j) In addition to the prohibitions set forth in Code Section 16-10-93, 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 of any associate or relative of the other person with the intent to intimidate, deter, or prevent such person from

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

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

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

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

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

SECTION 4.

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

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

SECTION 5.

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

"16-15-9.

The commission of any offense enumerated in paragraph (1) of Code Section 16-15-3 by any member or associate 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."

SECTION 6.

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

"16-15-10.

There shall be established as part of the Prosecuting ~~Attorney's~~ Attorneys' Council of the State of Georgia 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 a $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 7.

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

"16-15-11.

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

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

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

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

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

SECTION 8.

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

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

SECTION 9.

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

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

SECTION 10.

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

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

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

SECTION 11.

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