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HB 1134: Amendments to the Georgia Street Gang Terrorism and Prevention Act

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CRIMES AND OFFENSES

Street Gang Terrorism and Prevention: Amend Section 4 of Chapter 15 of Title 16 of the Official Code of Georgia Annotated, Relating to Participation in Criminal Gang Activity Prohibited, so as to Provide for the Concurrent Authority of Prosecuting Attorneys and the Attorney General to Prosecute Offenses Involving Criminal Gang Activity; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 16-15-4 (amended)
BILL NUMBER:	HB 1134
ACT NUMBER:	645
GEORGIA LAWS:	2022 Ga. Laws 99
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act amends the Georgia Street Gang Terrorism and Prevention Act to provide the attorney general with concurrent authority to prosecute criminal gang activity alongside local prosecuting attorneys in Georgia. Modeled after a similar act that created concurrent authority for the attorney general to prosecute human trafficking crimes, the Act seeks to enhance the government's investigation and prosecution of gang crimes in the state by making the effort more corroborative, coordinated, and multi-jurisdictional.

*History**Overview*

Gang-related violent crimes present unique problems for prosecutors and local district attorneys (DAs) in Georgia.¹ Gang activity often involves criminal conduct that spans multiple counties, making it difficult for any single jurisdiction to thoroughly prosecute offenders.² As a result, it is likely that many gang-related crimes go unprosecuted, and gang members face no punishment for their crimes.³ The fact that over half of all violent crime in the State of Georgia can be traced back to gang activity intensifies the effect of this “multi-jurisdictional” problem.⁴ The high volume of cases, the vast majority of which require heightened cooperation and informational exchange between local DAs, places an immeasurable strain on prosecutorial resources.⁵

The strain on resources was a main topic of discussion at a spring 2022 anti-gang network meeting in Columbus, Georgia.⁶ At the meeting, the mayor of Columbus, B. H. “Skip” Henderson, expressed his concern with local prosecutors’ “struggles” in handling gang-related prosecutions.⁷ Georgia Attorney General Chris Carr (R), who hosted the meeting, attempted to dispel such concerns by touting the anticipated benefits of House Bill (HB) 1134: “When you collaborate and you leverage the resources that local[,] state[,] and federal law enforcement have, you have better success.”⁸

1. Video Recording of House Judiciary Non-Civil Committee Meeting at 34 min., 57 sec. (Feb. 9, 2022) [hereinafter House Judiciary Non-Civil Committee Video] (remarks by Rep. Chuck Efstation (R-104th)), <https://www.youtube.com/watch?v=HpjUF-P3Zq8&t=1882s> [<https://perma.cc/5B6F-9V4X>].

2. *Id.* at 38 min., 0 sec.

3. *See id.* at 49 min., 10 sec. (discussing “issue[s]” caused by local prosecutors’ lack of multi-jurisdictional communications).

4. *Id.* at 33 min., 46 sec. (noting that “near 60% of all violent crime in Georgia is in some way gang-related”).

5. *Id.* at 38 min., 44 sec.

6. Kei’Yona Jordon, *Georgia’s Attorney General Hosted Anti-Gang Network Meeting in Columbus*, WTVM (Apr. 1, 2022, 5:56 PM), <https://www.wtvm.com/2022/04/01/georgias-attorney-general-hosted-anti-gang-network-meeting-columbus/> [<https://perma.cc/4CQ7-UTXF>].

7. *Id.*

8. *Id.*

Although perhaps less publicized, gang activity also exists between incarcerated gang members.⁹ This poses unique problems because there is less incentive to prosecute offenders who are already serving time.¹⁰ On average, gangs recruit young Georgian prisoners within mere days of beginning their sentence, yet little is done to curb the rampant gang culture in Georgia's prison system.¹¹ Prosecutors' reluctance to expend their already strained time and resources catalyzed the push to address the deluge of complex gang cases.¹²

Proponents and Benefits

The Georgia General Assembly introduced HB 1134 to combat the above-stated obstacles to the thorough prosecution of gang-related crimes.¹³ Prior to the bill's passage, local DAs were largely on their own when it came to investigating and prosecuting gang members whose conduct spanned multiple jurisdictions.¹⁴ HB 1134 allows the attorney general to ease the strain on local resources and assist in cross-jurisdictional coordination between DAs by exercising concurrent jurisdiction.¹⁵ Concurrent jurisdiction allows prosecutors to combine their specialized knowledge of local crime with the resources of the attorney general's office to achieve more efficient results in gang prosecutions.¹⁶ Lawmakers adopted a concurrent jurisdiction model after its successful use in the prosecution of human trafficking cases.¹⁷ In his remarks to the Senate Committee on the Judiciary, Representative Chuck Efstrotation (R-104th) emphasized the Office of the Attorney General's success in prosecuting human trafficking cases,

9. House Judiciary Non-Civil Committee Video, *supra* note 1, at 35 min., 35 sec.

10. *See id.* at 36 min., 6 sec.

11. Telephone Interview with Rep. Josh McLaurin (D-51st) (June 2, 2022) [hereinafter McLaurin Interview] (on file with the Georgia State University Law Review); House Judiciary Non-Civil Committee Video, *supra* note 1, at 34 min., 25 sec. (explaining that children in the juvenile justice system are solicited to join a gang by within 48 hours of being incarcerated).

12. McLaurin Interview, *supra* note 11.

13. Zoom Interview with Brock Perry, Attorney Analyst, House of Representatives Budget and Research Office (June 3, 2022) [hereinafter Perry Interview] (on file with the Georgia State University Law Review).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*; *see* O.C.G.A. § 16-5-46(h) (2022).

highlighting their “impressive track record.”¹⁸ Because of the model’s prior success, HB 1134 passed through both chambers without any significant change.¹⁹

Opponents and Concerns

Despite HB 1134 breezing through the two chambers virtually unchanged, characterizing the legislature as devoid of opposition does not capture the atmosphere encapsulating the bill. For example, some legislators believed the primary motivation underlying the bill was grounded in the Republican political agenda.²⁰ Some of the bill’s opponents suggested that, while the bill embodied some sincere desire to keep Georgia’s communities safer, it also served a greater political purpose in furthering the “tough-on-crime” agenda characteristic of Governor Brian Kemp’s (R) tenure and Republican ideals overall.²¹ Opponents suggest that Attorney General Carr being up for reelection in 2022 strengthened the push for legislation to increase prosecutions.²²

Representative Josh McLaurin (D-51st) shared concerns about the political agenda underlying the bill with Representative William Boddie (D-62nd).²³ Their primary reservation was that the bill is an attempt to mitigate Attorney General Carr’s failures to show up for local DAs in cases where they lacked sufficient resources to prosecute effectively.²⁴ Prior to HB 1134’s enactment, the Augusta Judicial Circuit was faced with a series of cases in which the local DA had conflicted out, resulting in the cases going unprosecuted.²⁵ Former

18. Video Recording of Senate Judiciary Committee Meeting at 10 min., 8 sec. (Mar. 21, 2022) [hereinafter Senate Judiciary Committee Video] (remarks by Rep. Chuck Efration (R-104th)), <https://vimeo.com/showcase/8821960/video/688820614> [<https://perma.cc/L88S-M25X>].

19. Georgia House of Representatives Voting Record, HB 1134, #511 (Feb. 14, 2022); Georgia Senate Voting Record, HB 1134, #722 (Mar. 28, 2022); Perry Interview, *supra* note 13.

20. McLaurin Interview, *supra* note 11.

21. *Id.*; Dave Williams, *Soft-on-Crime Policies ‘Unacceptable,’ Gov. Kemp Says in Approving Bill Targeting Gang Activity*, AUGUSTA CHRON. (Apr. 26, 2022, 8:00 AM), <https://www.augustachronicle.com/story/news/politics/2022/04/26/georgia-gov-brian-kemp-signs-public-safety-bills-targeting-gangs-crimes-against-children/7446224001/> [<https://perma.cc/RG7Q-Q778>].

22. McLaurin Interview, *supra* note 11.

23. *Id.*

24. *Id.*

25. *Id.*

Senator Jesse Stone (R-23rd), now a superior court judge in Augusta, wrote a letter to Attorney General Carr warning him that some gang cases would be thrown out if he did not appoint a prosecutor to handle them.²⁶ Representative McLaurin argued that the attorney general had existing statutory authority under Code section 15-18-5 to take on cases whose local prosecutors had conflicted out, yet Attorney General Carr failed to do so in the Augusta cases and in some others.²⁷

In light of the attorney general's failure to act upon the existing statutory authority, opponents believe HB 1134 is a redundant use of legislative resources.²⁸ Even so, its proposed benefits and support from fellow legislators sufficed to garner the requisite majority votes and push the bill through the Georgia General Assembly.²⁹

Bill Tracking of HB 1134

Consideration and Passage by the House

Representative Chuck Efration (R-104th) sponsored HB 1134 in the House with Representative Josh Bonner (R-72nd), Representative Jodi Lott (R-122nd), Representative Lauren McDonald (R-26th), and Representative Steven Meeks (R-178th) cosponsoring.³⁰ The bill was placed in the House hopper on February 1, 2022, and the House first read it on February 2, 2022.³¹ That same day, the Speaker of the House assigned the bill to the House Judiciary Non-Civil Committee.³²

The House read the bill for a second time on February 3, 2022, and the Judiciary Non-Civil Committee discussed the bill in a meeting held on February 9, 2022.³³ In that meeting, Representative Josh McLaurin

26. *Id.*; House Judiciary Non-Civil Committee Video, *supra* note 1 at 1 hr., 1 min., 22 sec. (remarks by Rep. Josh McLaurin (D-51st)).

27. McLaurin Interview, *supra* note 11; O.C.G.A. § 15-18-5 (2021); House Judiciary Non-Civil Committee Video, *supra* at note 1, at 1 hr., 1 min., 17 sec. (remarks by Rep. Josh McLaurin (D-51st)).

28. McLaurin Interview, *supra* note 11.

29. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022.

30. Georgia General Assembly, HB 1134, Bill Tracking [hereinafter HB 1134, Bill Tracking], <https://www.legis.ga.gov/legislation/61559> [<https://perma.cc/67QK-MBMQ>].

31. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; HB 1134, Bill Tracking, *supra* note 30.

32. HOUSE OF REPRESENTATIVES, FIRST READERS IN HOUSE REPORT, at 12 (Feb. 2, 2022).

33. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; House Judiciary Non-

(D-51st) expressed his concern over the purpose of HB 1134 and argued that the bill would not have been introduced “if it weren’t for . . . the need that the attorney general has right now to put into place new authority that looks like a solution to the Augusta problem when in reality . . . that authority was already there.”³⁴

Despite concerns that the bill was political cover for the attorney general, the Committee favorably reported the bill, as introduced, with no changes on February 10, 2022.³⁵ Then, on February 14, 2022, the House read the bill for the third time and passed it by a vote of 101 to 56 after Representative William Boddie (D-62nd) expressed the same concern raised by Representative McLaurin that the bill “is all about perception, and it’s not about protecting Georgians.”³⁶

Consideration and Passage by the Senate

Senator John Kennedy (R-18th) sponsored the bill in the Senate, and the Senate first read it on February 15, 2022.³⁷ That same day, the Senate referred the bill to the Senate Judiciary Committee.³⁸ The Committee favorably reported the bill on March 22, 2022, and the Senate read the bill for the second time on March 23, 2022.³⁹

Then, on March 28, 2022, the Senate read the bill for a third time, and after a brief discussion in which no Senator spoke in opposition of the bill, the Senate adopted it by a vote of 50 to 5.⁴⁰ The House sent

Civil Committee Video, *supra* at note 1, at 32 min., 28 sec. (remarks by Chairperson James Burchett (R-176th)).

34. House Judiciary Non-Civil Committee Video, *supra* note 1, at 1 hr., 4 min., 7 sec. (remarks by Rep. Josh McLaurin (D-51st)).

35. *Id.*; State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; Perry Interview, *supra* note 13.

36. Georgia House of Representatives Voting Record, HB 1134, #511 (Feb. 14, 2022); State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; Video Recording of House Proceedings at 1 hr., 33 min., 52 sec. (Feb. 14, 2022) [hereinafter House Proceedings Video] (remarks by Rep. William Boddie (D-62nd)), <https://www.youtube.com/watch?v=WKgK1q1FT7U&t=1545s> [<https://perma.cc/C9TE-L63F>].

37. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; HB 1134, Bill Tracking, *supra* note 30.

38. HB 1134, Bill Tracking, *supra* note 30.

39. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022.

40. Georgia Senate Voting Record, HB 1134, #722 (Mar. 28, 2022); State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022; Video Recording of Senate Proceedings at 1 hr., 6 min., 12 sec. (Mar. 28, 2022) (remarks by Sen. John Kennedy (R-18th)), <https://youtu.be/amKQ12VhNoA> [<https://perma.cc/5TTZ-94H2>].

the bill to Governor Kemp on April 6, 2022, who signed it into law as Act 645 on April 25, 2022.⁴¹ The Act's effective date is July 1, 2022.⁴²

The Act

The Act amends Code section 16-15-4 by adding a new subsection to the end of the existing statute.⁴³ Chapter 15 of Title 16, the Georgia Street Gang Terrorism and Prevention Act, describes the various acts that constitute gang crimes in Georgia and the penalties associated with them.⁴⁴ The purpose of the Act's addition is to “provide for the concurrent authority of prosecuting attorneys and the [a]ttorney [g]eneral to prosecute offenses involving criminal gang activity.”⁴⁵

The Act added only one subsection to the Georgia Street Gang Terrorism and Prevention Act, subsection (n), which consists of two sentences.⁴⁶ The first sentence gives concurrent authority to prosecutors and the attorney general “to prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.”⁴⁷ The second sentence equips the attorney general with the authority to employ peace officers “[f]or purposes of investigating offenses or criminal cases arising under the provisions of this Code section.”⁴⁸

Analysis

Immediate Effect

HB 1134 provides the attorney general with a clearer path to assist in the prosecution of gang-related crimes across the state.⁴⁹ While HB 1134 will likely have its intended effect of enabling greater cooperation between local and state prosecutors, concerns remain

41. State of Georgia Final Composite Status Sheet, HB 1134, May 19, 2022.

42. HB 1134, Bill Tracking, *supra* note 30.

43. 2022 Ga. Laws 99, § 1 at 99–100 (codified at O.C.G.A. § 16-15-4(n) (2022)).

44. §§ 16-15-1, -4.

45. 2022 Ga. Laws 99.

46. 2022 Ga. Laws 99, § 1, at 99–100 (codified at § 16-15-4(n)).

47. § 16-15-4(n).

48. *Id.*

49. Perry Interview, *supra* note 13.

about opportunity cost, legislative priorities, and political underpinnings that surfaced during HB 1134's journey through the legislature.⁵⁰

The Act as a Force Multiplier

HB 1134's proponents claim that the Act will function as an additional avenue for facilitating gang prosecutions on top of local and state prosecutors' existing powers.⁵¹ Although statutory authority that allowed the attorney general to participate in certain gang prosecutions existed prior to the bill's passage, the concurrent jurisdiction model introduced presents an additional method for collaborative prosecution.⁵² This model will allow state resources to be distributed to local prosecutors with the hope of increasing efficiency in gang prosecutions.⁵³

Some of HB 1134's opponents argued that the attorney general already possessed the requisite authority to step in for local prosecutors in gang cases under an existing statute.⁵⁴ Code section 15-18-5, however, is limited to cases where a local DA conflicts out and is thereby unable to prosecute the case.⁵⁵ While that issue should not be overlooked, HB 1134 goes further to encompass all gang cases in which local prosecutors may need state assistance, including those involving complex multi-jurisdictional patterns.⁵⁶ In this sense, HB 1134 aims to proactively prevent gang crimes rather than provide reactive assistance in cases where a local prosecutor conflicts out.⁵⁷

Political Influence and Legislative Priority

Despite HB 1134's swift passage through the legislature, it raised significant concerns among certain legislators about political

50. See McLaurin Interview, *supra* note 11.

51. Senate Judiciary Committee Video, *supra* note 18 at 2 min., 40 sec.

52. *Id.* at 4 min., 0 sec.

53. *Id.* at 1 min., 20 sec.

54. McLaurin Interview, *supra* note 11.

55. O.C.G.A. § 15-18-5 (2022).

56. Senate Judiciary Committee Video, *supra* note 18, at 1 min., 20 sec.

57. *Id.* at 9 min., 29 sec.

motivations and legislative efficiency.⁵⁸ Attorney General Carr's perceived failure to exercise his existing power to aid local prosecutors had a twofold effect in the eyes of HB 1134's opponents.⁵⁹ First, HB 1134's provisions might go largely unused if the attorney general is hesitant to exercise them—similar to his powers under Code section 15-18-5—thereby wasting the legislative resources expended by its passage.⁶⁰ Second, opponents believe that HB 1134 mainly attempts to minimize the bad optics that resulted from previous failures and only focuses on actually preventing gang crimes as an auxiliary concern.⁶¹

The first effect—waste of judicial resources—represents a broader concern about whether the legislature is prioritizing the right issues.⁶² If a bill ends up having a lesser effect than intended, it may raise the question of whether other legislation could have been passed using the same resources.⁶³ Indeed, that very question was asked by multiple opponents of HB 1134 during legislative deliberations.⁶⁴ Likewise, the potential for political motivations influencing HB 1134 created hesitance among some legislators as to HB 1134's legitimacy.⁶⁵

Conclusion

Both sides of the aisle agree that the basic impetus for HB 1134—the need to more effectively and efficiently prosecute gang crimes across the entire state—is worth addressing.⁶⁶ Opponents of HB 1134 question how effective the attorney general's new authority will be in combating gang violence and suspect that the attorney general's political motives drove the addition to the Georgia Street Gang Terrorism and Prevention Act.⁶⁷ Despite these concerns, HB 1134 was signed into law with overwhelming support, and with it, the public's

58. McLaurin Interview, *supra* note 11.

59. *Id.*

60. *Id.* *But see* Press Release, Office of the Attorney General, Carr: Statewide Gang Prosecution Unit Takes Effect, Provides Additional Resource to Keep Georgians Safe (July 1, 2022), <https://law.georgia.gov/press-releases/2022-07-01/carr-statewide-gang-prosecution-unit-takes-effect-provides-additional> [<https://perma.cc/5MP2-HGCD>].

61. McLaurin Interview, *supra* note 11.

62. *Id.*

63. *Id.*

64. *Id.*; House Proceedings Video, *supra* note 36 at 1 hr., 27 min., 0 sec.

65. McLaurin Interview, *supra* note 11.

66. *See* House Proceedings Video, *supra* note 36 at 1 hr., 27 min., 39 sec.

67. House Judiciary Non-Civil Committee Video, *supra* note 1, at 1 hr., 1 min., 23 sec.

focus shifts to the attorney general and the courts to see if this new “tool” actually helps protect Georgians from gang crimes.⁶⁸

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68. Georgia House of Representatives Voting Record, HB 1134, #511 (Feb. 14, 2022); Georgia Senate Voting Record, HB 1134, #722 (Mar. 28, 2022); House Proceedings Video, *supra* note 36, at 1 hr., 25 min., 52 sec. (remarks by Rep. David Ralston (R-7th)).