CRIMES AND OFFENSES Street Gang Terrorism and Prevention: Enact the Georgia Street Gangs Act of 1998; Change Provisions Relating to Designated Felonies in Juvenile Court; Provide Procedures to Appoint Additional Assistant District Attorneys; Make Acts Designed to Prevent Information About Criminal Activities from Being Reported to Law Enforcement Unlawful; Make Certain Conduct Intended to Obstruct Justice Unlawful; Provide Enhanced Penalties for Terroristic Acts and Threats Done in Retaliation for Persons Having Cooperated with Law Enforcement;

Follow this and additional works at: http://readingroom.law.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Available at: http://readingroom.law.gsu.edu/gsulr/vol15/iss1/1

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact jgermann@gsu.edu.
CRIMES AND OFFENSES

Street Gang Terrorism and Prevention: Enact the Georgia Street Gangs Act of 1998; Change Provisions Relating to Designated Felonies in Juvenile Court; Provide Procedures to Appoint Additional Assistant District Attorneys; Make Acts Designed to Prevent Information About Criminal Activities from Being Reported to Law Enforcement Unlawful; Make Certain Conduct Intended to Obstruct Justice Unlawful; Provide Enhanced Penalties for Terroristic Acts and Threats Done in Retaliation for Persons Having Cooperated with Law Enforcement; Change Definition for “Racketeering Activity” Under the Georgia RICO Act; Revise Comprehensively the Georgia Street Gang Terrorism and Prevention Act; Make Certain Activities Relating to Criminal Street Gangs Unlawful; Provide for Abatement of Certain Nuisances; Provide for Injunctions and Damages Through Civil Actions; Provide Additional Conditions of Bail Under Certain Circumstances; Provide for Restraining Orders and Protective Orders; Provide Procedures Related to Temporary Restraining Orders; Require Certain Educational Facilities to Report Criminal Gang Activities; Expand Required Peace Officer Training; Request and Encourage State and Local Officials to Develop Policies and Procedures Relating to Incarceration of Criminal Street Gangs Members

CODE SECTIONS: O.C.G.A. §§ 15-11-37, 15-18-14 (amended), 16-10-32 (new), -93, 16-11-37, 16-14-3, 16-15-1 to -8, 17-6-1, 17-17-16 (amended), 20-8-6 (new), 35-8-7 (amended)

BILL NUMBER: HB 1391
ACT NUMBER: 696
SUMMARY: The Act is intended to provide law enforcement and prosecutors with new tools to combat criminal gang activity. The Act approaches the problem of gang activity from multiple fronts. The anchor of the Act is section 8, which revises the “Georgia Street Gang Terrorism and Prevention Act.” The new Act focuses on gang activity, rather than gang

80
LEGISLATIVE REVIEW

membership. This new approach is intended to produce a more effective statute, while raising fewer constitutional concerns. Other sections of the Act deal with juveniles who violate the Street Gangs Act, bail for gang-related offenses, witness intimidation laws, and victims’ rights laws.

Effective Date:
April 1, 1998

History

In 1992, the Georgia General Assembly enacted the Georgia Street Gang Terrorism and Prevention Act. The 1992 Act was modeled after a California statute, and was intended to prevent the increase of gang activity in Georgia. At that time, law enforcement officials did not view gang activity in Georgia as a crisis, and the legislation was intended to prevent a “worsening” of the gang situation.

Despite the 1992 Act, criminal gang activity in Georgia has increased, “spreading to every corner of Georgia.” A 1995 Georgia Bureau of Investigation report showed increased gang activity in the

1. Pursuant to section 14, the Act took effect on the first day of the month following its approval by the Governor. See 1998 Ga. Laws 270, § 14, at 282. Governor Zell Miller signed the bill on March 27, 1998. See id. However, prosecutions could not be brought under sections 2 or 8 until after July 1, 1998, because Code section 16-15-3(2) defines a “pattern of criminal activity” to involve at least two offenses, one of which must be committed after July 1, 1998. See PROSECUTING ATTORNEY’S COUNCIL OF GEORGIA, THE GEORGIA STREET GANGS ACT OF 1998, at 19 n.21 [hereinafter PAC PAMPHLET] (pamphlet available in Georgia State University College of Law Library). The bill, as originally written, did not designate an effective date, so the Legislative Council inserted the language “July 1, 1998.” See id.


4. See Selected 1992 Legislation, supra note 3, at 219 n.4 (citing telephone interview with former Atlanta Police Chief Eldrin Bell (Apr. 9, 1992)).

5. Id.; see also Telephone Interview with Rep. Ronald Crews, House District No. 78 (May 28, 1998) [hereinafter Crews Interview] (noting that prior law was more of a prophylactic measure intended to prevent a crisis, while the Act is a response to a crisis).

Meanwhile, Georgia law enforcement and prosecutors found the 1992 Act problematic. Specifically, they found that the law actually reduced penalties for gang activity and was likely unconstitutional. Furthermore, the law was never used successfully in any prosecution.

As a result of the increasing gang problems in Georgia, combined with the ineffectiveness of the 1992 Act, a Metropolitan Atlanta organization, Bridging the Gap Project, Inc., led a multicultural task force (the Task Force) to help with the gang problem. After a fourteen-month effort, the Task Force prepared a draft bill, and Representative Ronald Crews of the 78th District agreed to sponsor the legislation. Representative Crews oversaw the “fine-tuning” of the draft version to ensure its passage and introduced it as HB 1391 to the General Assembly on January 26, 1998.

HB 1391

HB 1391 was the product of “law enforcement, prosecutors, juvenile authorities, social services organizations and community leaders” working together. After HB 1391 was drafted, but before it was introduced to the General Assembly, the bill’s sponsors met with representatives of groups, including the Georgia Bureau of Investigation (GBI), the American Civil Liberties Union (ACLU), and the Defense Attorneys’ Council, to examine the bill “line by line.”

---

7. See id. (noting that GBI survey showed that gang activity was occurring in all parts of Georgia, and that gang members from Los Angeles, Miami, and Chicago were coming to Georgia to form gangs).
8. See id.
9. See id.
11. Bridging the Gap Project, Inc. works with young people, particularly southeast-Asian youths. See Telephone Interview with Gail Hoffman, Bridging the Gap Project, Inc. (June 5, 1988) [hereinafter Hoffman Interview]. The Project includes a truancy program and a homework and English language program. See id.
12. See id.; PAC PAMPHLET, supra note 1, at 2; Crews Interview, supra note 5.
14. PAC PAMPHLET, supra note 1, at 1-2.
15. Crews Interview, supra note 5.
The negotiations led to certain amendments, such as reducing penalties for violations of the Act.\textsuperscript{16} 

HB 1391 was introduced in the House on January 26, 1998, and was then referred to the House Special Judiciary Committee.\textsuperscript{17} On January 29, 1998, the Committee made several amendments to the bill.\textsuperscript{18} One important amendment was the addition of the language "or associate" to Code section 16-10-93(a) found in section 5 of the Act.\textsuperscript{19} This subsection, which deals with witness intimidation, was altered in response to problems with gang members intimidating potential witnesses' significant others.\textsuperscript{20}

Other amendments involved language found in Code section 16-15-2(a), which is in section 8 of the Act. As introduced, this section read: "[t]he General Assembly finds and declares that it is the right of every person regardless of race, color, creed, religion, national origin, ethnicity, gender, sexual orientation, age, or disability to be secure and protected . . . ."\textsuperscript{21} On the House floor, Representative Brian Joyce objected to the inclusion of the term "sexual orientation" because it recognized homosexuals as a distinct group.\textsuperscript{22} Consequently, a floor amendment deleted all classifications contained in the Code section so that the Act reads: "The General Assembly finds and declares that it is the right of every person to be secure and protected . . . ."\textsuperscript{23}

On February 10, 1998, the bill passed the House and was sent to the Senate, where it was subsequently referred to the Senate Special Judiciary Committee.\textsuperscript{24} The Committee made one minor amendment,
which deleted the words “Code section” from one line of the bill and replaced them with “subsection.” On February 19, 1998, the bill was amended for the last time, on the Senate floor. Governor Zell Miller signed the bill on March 27, 1998.

The resulting Act is a comprehensive approach to stopping criminal gang activity in Georgia. The Act is comprised of fifteen separate sections. However, this Peach Sheet will only discuss sections 2, and 4 through 13.

The Act

Section 2

Section 2 of the Act expands the scope of designated felony acts under the juvenile code. Added to the list of designated felonies is “any violation of Code section 16-15-4 relating to criminal street gangs.” Sponsors of the Act believe this section is necessary because gangs are recruiting increasing numbers of juveniles who receive less serious penalties in juvenile courts. While the Act increases the penalties juveniles face, it is intended to grant prosecutors and juvenile court judges discretion in exercising rehabilitative measures in appropriate cases.

---

28. See Crews Interview, supra note 5.
30. Section 1 gives the Act its name; section 3 allows the Prosecuting Attorney's Council of Georgia to appoint additional assistant district attorneys, subject to funds being apportioned by the General Assembly; section 14 gives the Act its effective date; and section 15 repeals all laws, or parts of laws, in conflict with the Act. See 1998 Ga. Laws 270.
33. See Crews Interview, supra note 5. "Bottom line[ ] . . . street gangs are getting more violent and younger. They're getting younger because they know the juvenile system treats criminals more leniently." Id. Sponsors of the Act wanted to send a message to young offenders that getting involved in street gangs is serious business and that the “cost is going up.” Id.; see PAC PAMPHLET, supra note 1, at 5 n.2.
34. See PAC PAMPHLET, supra note 1, at 5 n.2.
Sections 4, 5, and 6

The Bureau of Justice Assistance stated that “in gang cases, the likelihood of witness intimidation is always a factor.” Therefore, Section 4 of the Act creates a new Code section to prohibit the obstruction of public administration. This Code section makes it illegal to attempt to prevent persons from cooperating with law enforcement or any aspect of official proceedings. Any crime committed in violation of this section is considered a felony and a separate offense.

Section 5 amends the Code’s treatment of the offense of influencing witnesses. This section deals specifically with attempts to influence testimony at an official proceeding. Violations of this section are considered a felony and a separate offense.

Section 6 adds a new subsection to the Code relating to the offense of terroristic threats and acts. This section makes it a felony to commit, or attempt to commit, a terroristic threat or act with the intent to retaliate against a person who cooperated with law enforcement.

Direct testimony from victims of gang activity led to the inclusion of sections 4, 5, and 6 in the Act. The language used in the revisions was derived from the federal law, which prohibits tampering with a witness, victim, or an informant. The revisions were deemed necessary because pre-existing Georgia laws dating back to 1968 were among the weakest laws in the country.

Prior laws were particularly troublesome because they required the initiation of a formal criminal proceeding before a witness

35. Id. at 6 n.4 (quoting Bureau of Justice Assistance, URBAN STREET GANG ENFORCEMENT 74 (1997)) (emphasis in original).
37. See O.C.G.A. § 16-10-32 (Supp. 1998); Record of Proceedings, supra note 6.
38. See O.C.G.A. § 16-10-32(a)-(b), (d) (Supp. 1998).
41. See id. § 16-10-93(b)(2), (c).
42. See 1998 Ga. Laws 270, § 6, at 275 (codified at O.C.G.A. § 16-11-37(d) (Supp. 1998)).
43. See O.C.G.A. § 16-11-37(d) (Supp. 1998).
44. See Crews Interview, supra note 5.
45. See 18 U.S.C. § 1512(a)-(c) (Supp. 1997); PAC PAMPHLET, supra note 1, at 6 nn.4, 9, 11 &13.
46. See PAC PAMPHLET, supra note 1, at 6 n.4; Record of Proceedings, supra note 6.
intimidation charge could be brought.\textsuperscript{48} Furthermore, under prior Georgia law,\textsuperscript{49} conduct that did not rise to the level of a terroristic act or a terroristic threat\textsuperscript{50} was not a violation, even if it discouraged a witness from coming forward.\textsuperscript{51}

The sponsors of HB 1391 intended to close any legal loopholes that enabled gang members to intimidate witnesses without repercussions.\textsuperscript{52} Therefore, under sections 4 and 5 of the Act, it is no longer necessary to institute a formal proceeding before a violation of Code sections 16-10-32 and -93 can be found.\textsuperscript{53} Furthermore, sections 4, 5, and 6 increase the penalties violators will face.\textsuperscript{54} For example, a violator of Code section 16-10-93 previously faced one to five years in prison.\textsuperscript{55} Now, the penalty for such a violation is two to ten years in prison, or a fine of $10,000 to $20,000, or both.\textsuperscript{56}

Similarly, a person convicted of committing a terroristic threat or act, under Code section 16-11-37, previously faced one to five years imprisonment, or a fine of up to $1000, or both.\textsuperscript{57} Now, under new subsection (d), if the threat or act is committed in retaliation against a witness or party, the violator faces five to ten years in prison, or a fine of at least $50,000, or both.\textsuperscript{58} This subsection is based on 18 U.S.C. § 1513, which prohibits retaliation against witnesses, victims, and informants.\textsuperscript{59}

\textsuperscript{48} See Record of Proceedings, supra note 6.
\textsuperscript{50} A person commits a terroristic threat when he threatens violence or properly damage with the intention of terrorizing another. See 1968 Ga. Laws 1249, § 26-1307(a), at 1281 (codified at O.C.G.A. § 16-11-37(a), (b)(1) (1996)). A person commits a terroristic act when he uses a burning symbol or throws an object at an occupied "conveyance." 1974 Ga. Laws 1022 (codified at O.C.G.A. § 16-11-37(b)(2) (1996)).
\textsuperscript{51} See PAC PAMPHLET, supra note 1, at 6 n.4.
\textsuperscript{52} See id.
\textsuperscript{53} See O.C.G.A. § 16-10-32(c)(2) (Supp. 1998) ("An official proceeding need not be pending or about to be instituted at the time of any offense defined in this Code section."); id. § 16-10-93(3)(B) (proceeding need not be under way); see also United States v. Kelly, 36 F.3d 1118, 1128 (D.C. Cir. 1994) (interpreting 18 U.S.C. § 1512 (Supp. 1997), on which the Georgia Code sections are modeled).
\textsuperscript{54} See PAC PAMPHLET, supra note 1, at 15 n.16.
\textsuperscript{55} See 1988 Ga. Laws 316 (formerly found at O.C.G.A. § 16-10-93 (1996)).
\textsuperscript{56} See O.C.G.A. § 16-10-93(b)(2) (Supp. 1998).
\textsuperscript{57} See 1968 Ga. Laws 1249, § 26-1307(c), at 1282 (formerly found at O.C.G.A. § 16-11-37(c) (1996)).
\textsuperscript{58} See O.C.G.A. § 16-11-37(d) (Supp. 1998).
\textsuperscript{59} See 18 U.S.C. § 1513 (Supp. 1997); PAC PAMPHLET, supra note 1, at 15 n.16.
Finally, sections 4 and 5 explicitly provide that any crimes committed in violation of Code sections 16-10-32(a) or (b) and 16-10-93(a) or (b) shall be considered separate offenses. These provisions are based on Code section 16-11-106, which deals with the possession of a weapon during the commission, or attempted commission, of certain crimes. The legislators intended to prevent convictions under sections 4 and 5 of the Act from being merged with other criminal offenses.

Section 7: RICO

Section 7 amends the Georgia Racketeering Influenced and Corrupt Organizations (RICO) Act by expanding the scope of racketeering activity, as it is defined by Code section 16-14-3(9)(A). Specifically, three acts are added to the list of activities that can support a RICO conviction. The additions are: (1) violations of new Code section 16-10-32, relating to witness intimidation; (2) tampering with jurors or court officers, in violation of Code section 16-10-97; and (3) money laundering. The additions to the statutory predicate acts were made to strengthen RICO, which has become an effective weapon against large, interstate gangs. The three acts added to the list were chosen because, according to the bill’s supporters, gangs are often involved in witness intimidation and money laundering.

Section 8: “Georgia Street Gang Terrorism and Prevention Act”

Introduction

Section 8 is the heart of the Act. It replaces the 1992 Georgia Street Gang Terrorism and Prevention Act. The Act shifts the focus of the law from “membership” to “criminal street gang” activity. Sponsors of the Act believe this produces a “workable” law that will not violate

60. See O.C.G.A. §§ 16-10-32(d), -93(c) (Supp. 1998).
61. See id. § 16-11-106 (Supp. 1996); PAC PAMPHLET, supra note 1, at 10 n.12.
65. See PAC PAMPHLET, supra note 1, at 16 n.17.
66. See id.
68. Record of Proceedings, supra note 6.
any constitutional rights. Nevertheless, opponents of the Act expressed concern that the law may be used arbitrarily to harass individuals, especially minority youth.

Definitions

Code section 16-15-3 defines the terms "[c]riminal street gang,"71 and "[p]attern of criminal gang activity."72 The new definition of "criminal street gang" is intended to focus on activity rather than

69. Crews Interview, supra note 5 (noting that negotiations involving ACLU and National Association of Criminal Defense Lawyers were held before HB 1391 was introduced to the General Assembly to avoid later "surprises").


“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 subsection (2) 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.

Id.

72. Id. § 16-15-3(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.

Id.
LEGISLATIVE REVIEW

1998]

membership. Sponsors of the Act believe this shift will alleviate constitutional concerns raised by the 1992 Act.

Sponsors also found the new definition necessary because the prior definition was "unworkable." The original definition required proof of an ongoing organization with a common name or identifying symbol. This was problematic, because

[o]ne of the unique characteristics of the street gangs in Georgia, unlike their West Coast and Midwest counterparts, is a lack of fixed loyalty among the members except at the top leadership levels. . . . In addition, Asian gangs never adopted the graffiti and symbology and some of the more sophisticated gangs moved away from the use of graffiti and tattoos precisely because they attract the attention of law enforcement.

In contrast to prior law, the Act emphasizes the commission of certain enumerated acts, such as any racketeering activity, stalking, and sexual battery. The activities included in the Act are those that the Task Force found to be common gang activities.

In order to constitute a "pattern of criminal gang activity," at least two of the specified acts must be committed, with at least one of the offenses occurring after July 1, 1998, and the last offense occurring within three years of prior gang activity. The original draft of HB 1391, as prepared by the Task Force, specified the time period as five years. Negotiations between supporters of the bill and groups such as the ACLU resulted in the time period being shortened to three years.

Though prosecutors no longer need to prove factors such as the use of common identifying signs or symbols, the original drafters and the

73. See Record of Proceedings, supra note 6.
74. See Crews Interview, supra note 5.
75. PAC PAMPHLET, supra note 1, at 18 n.18; see also Crews Interview, supra note 5.
76. See PAC PAMPHLET, supra note 1, at 18 n.19 (citing Green v. State, 266 Ga. 237, 466 S.E.2d 577 (1996) (holding that there was insufficient evidence to convict defendant under 1992 Georgia Gang Act)).
77. Id.
78. See O.C.G.A. § 16-15-3(2) (Supp. 1998) (listing activities that constitute a "[p]attern of criminal gang activity"); see also supra note 72.
79. See Crews Interview, supra note 5.
81. See PAC PAMPHLET, supra note 1, at 20 n.22.
82. See id.; Crews Interview, supra note 5.
sponsors of the bill intended that such evidence, if it exists, may still
be used to prove a particular defendant is involved with a criminal
street gang.83

A significant change in the definition of a “[p]attern of criminal
activity” is the addition of “[a]ny offense defined as racketeering
activity by Code section 16-14-3” to the list of crimes constituting
“criminal gang activity.”84 By including “racketeering activity” on
the list, the Act includes all of the activities that supported a pattern
of criminal activity under prior law, and adds many more.85 This addition
was intended to enable Georgia prosecutors to use crimes committed
in other states to establish a pattern of criminal gang activity.86

Appliability

Section 8 of the Act makes it unlawful to “participate in [a] criminal
street gang through a pattern of criminal gang activity.”87 The intent
is to keep the focus on criminal conduct rather than gang
membership.88 Specifically, this section of the Act, which is derived
from Code section 16-14-4 and 18 U.S.C. § 1961 (RICO), requires “more
than mere membership; there must be an intent to further the gang
through specified criminal conduct.”89

Section 8 also makes it unlawful to “acquire or maintain” proceeds
or property through a pattern of criminal gang activity.90 This portion
of the Act is based on Code section 16-14-4(a), which makes it unlawful
to acquire or maintain property through a pattern of racketeering
activity.91

83. See PAC PAMPHLET, supra note 1, at 19 n.20.
3238 (formerly found at O.C.G.A. § 16-15-3(2) (Supp. 1992)).
(formerly found at O.C.G.A. § 16-14-3(2) (Supp. 1992)). Code section 16-14-3 designates
Furthermore, Georgia courts have held that conduct designated as “racketeering
activity” by the Federal RICO laws may serve as a predicate offense for Georgia RICO
laws. See, e.g., State v. Shearson Lehman Brothers, Inc., 188 Ga. App. 120, 121, 372
S.E.2d 276, 278 (1988).
86. See Record of Proceedings, supra note 6; PAC PAMPHLET, supra note 1, at 21 n.24.
88. See Crews Interview, supra note 5.
89. PAC PAMPHLET, supra note 1, at 24 n.32.
91. See 1980 Ga. Laws 405, § 1, at 408 (codified at O.C.G.A. § 16-14-4(a) (1986)); PAC
PAMPHLET, supra note 1, at 25 n.33.
1998] LEGISLATIVE REVIEW 91

Code section 16-15-4(c), as amended in section 8 of the Act, targets the leaders of criminal street gangs.92 The subsection is based on 21 U.S.C. § 848, which deals with Continuing Criminal Enterprises (CCE) and has been successfully used to prosecute the leaders of major drug rings.93

Subsection (d) is based on a Florida statute,94 and prohibits the recruitment of new gang members.95 In prosecutions under this subsection, the State is required to prove that the defendant knew that the gang for which he was recruiting was involved in criminal activity.96

Subsections (e) and (f) prohibit conduct aimed at preventing members from withdrawing from a gang.97 These subsections are intended to outlaw activity that does not rise to the level of a terroristic threat.98

Subsection (g) provides for penalties.99 A violation of subsections (a) or (b) of this Code section will result in three to fifteen years imprisonment, a $5000 to $10,000 fine, or both.100 Such a penalty is in addition to any other penalty provided for by law.101 A violation of subsection (c) may result in ten years of imprisonment, to be served in addition to and consecutive to any other penalty provided for by law.102 Thus, a gang leader convicted of a violation of subsection (b) of this Code section for two counts of burglary faces a potential twenty years imprisonment on each burglary count, plus fifteen years for the gang activity violation, plus an additional ten years for being in a leadership role.103 This is a total of sixty-five years imprisonment.

Finally, subsection (h) instructs that violations of the Code section are to be considered “separate offenses.”104 The drafters of the Act intended “to prevent a street gang conviction from being merged with

93. See PAC PAMPHLET, supra note 1, at 25 n.34.
94. See FLA. STAT. ANN. § 874.05 (West 1996) (making it a felony to cause, encourage, solicit, or recruit criminal street gang membership); PAC PAMPHLET, supra note 1, at 25 n.35.
96. See PAC PAMPHLET, supra note 1, at 25 n.35.
98. See PAC PAMPHLET, supra note 1, at 25 nn.36-37.
100. See id. § 16-15-4(g)(1).
101. See id.
102. See id. § 16-15-4(g)(2).
103. See PAC PAMPHLET, supra note 1, at 26 n.38.
the underlying criminal offense." Additionally, the author of the original version of the bill and the primary sponsor believe the Act should allow prosecutors to use prior convictions to establish a pattern of criminal gang activity. The intended result of the various subsections of Code section 16-15-4 is to provide law enforcement and prosecutors with additional tools that will enable them to "keep the bad guys away from the good guys for longer periods of time."

Section 8 of the Act also provides law enforcement officers with a new, powerful anti-gang weapon--a forfeiture provision. The Georgia General Assembly found forfeiture of property to be an "effective means of punishing and deterring the criminal activities of street gangs." Prior law contained the same language, but failed to provide the State with any way of bringing forfeiture proceedings against violators. Code section 16-15-5, as amended in the Act, remedies the deficiency. In so doing, the section expressly adopts the forfeiture procedures laid out in Code section 16-13-49, which deals with forfeiture of property and proceeds from drug offenses. Thus, all of the forfeiture defenses available in drug forfeiture cases are intended to be available in forfeiture proceedings brought under Code section 16-15-5. The language in this Code section tracks the language in Code section 16-7-95, which relates to offenses involving explosives, and mirrors the forfeiture provisions applicable to drug cases.

The Act also creates several civil causes of action that can be used as tools against gang activity. Subsection (a) of Code section 16-15-7 creates a nuisance cause of action that can be used to close down premises used by gangs. This provision is based on a similar

105. PAC PAMPHLET, supra note 1, at 27 n.39.
106. See id. (noting that prior convictions cannot be used to establish a pattern of racketeering activity under Georgia's RICO law).
107. Crews Interview, supra note 5.
109. Id. § 16-15-2(d).
110. See 1992 Ga. Laws 3238, § 1, at 3237 (formerly found at O.C.G.A. § 16-15-2(d) (1996)). The California statute, after which the 1992 Act was modeled, was originally designed to contain a forfeiture provision but ultimately failed to do so. See Selected 1992 Legislation, supra note 3, at 220 n.11.
112. See id. § 16-15-5(c).
113. See PAC PAMPHLET, supra note 1, at 28 n.40.
114. See id.
116. See id. § 16-15-7(a).
California law.117 Such an action may be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal court, or city or county attorney.118 This expands the general rule that an action to abate a public nuisance must be brought by the district attorney.119

Code section 16-15-7(c) gives private persons injured by gang activity a cause of action for treble damages and, in appropriate cases, punitive damages.120 The subsection was amended on the Senate floor to ensure that it will not be used in proceedings arising out of legitimate commercial transactions, sales contracts, or the sale of securities.121 The subsection was subsequently amended further to provide that the finder of fact, in an action brought under this section, must find that the action serves the intent of the General Assembly.122

Finally, subsection (d) of Code section 16-15-7 provides injunctive relief to persons being harmed by gang activity.123 This subsection is based on Code section 16-14-6(a), which provides for certain civil remedies.124 In any civil action or proceeding brought under any of the above-listed subsections, a defendant will be estopped from contesting any facts proven at a prior criminal proceeding.125

Section 9: Bail

Section 9 of the Act amends Code section 17-6-1(f) by providing for increased bail in cases where the court finds “probable cause” that the offense was committed “in furtherance of a pattern of criminal gang activity.”126 Once such a finding is made, increased bail is mandated.127 Further, upon such a finding, any pretrial release is conditioned on the defendant not contacting any other gang members, the victim, or

117. See PAC PAMPHLET, supra note 1, at 30 n.43 (citing CAL. PENAL CODE § 186.22n (West 1995)).
118. See O.C.G.A. § 16-15-7(b) (Supp. 1998).
119. See PAC PAMPHLET, supra note 1, at 30 n.44 (citing O.C.G.A. § 41-2-2 (1996)).
120. See O.C.G.A. § 16-15-7(c) (Supp. 1998).
122. See O.C.G.A. § 16-15-7(c) (Supp. 1998).
123. See id. § 16-15-7(d).
the victim's family.\textsuperscript{128} Supporters of the Act intended to tighten Georgia's bail laws, thus making it harder for gang members to return to the streets where they can silence potential witnesses.\textsuperscript{129}

\textit{Section 10: Victim’s Rights}

Section 10 of the Act adds a new Code section to the "Crime Victims' Bill of Rights," which is found in Chapter 17 of the Georgia Code.\textsuperscript{130} The new Code section enables superior courts to issue temporary restraining orders and protective orders to protect victims and witnesses from harassment.\textsuperscript{131} The language in this section is based on 18 U.S.C. § 1514, which restrains harassment of victims and witnesses.\textsuperscript{132} The Act's supporters sought to eliminate the "code of silence" created by the community's fear of retaliation and, thereby, encourage citizens to communicate about criminal activity to the police.\textsuperscript{133}

\textit{Sections 11, 12, 13: Law Enforcement and Correctional Facilities}

Sections 11, 12, and 13 mandate or request action by law enforcement personnel, law enforcement agencies, and penal institutions, respectively.\textsuperscript{134} Section 11 of the Act creates a new Code section that mandates the reporting of gang activity occurring on or around schools that employ campus police to the Georgia Bureau of Investigation (GBI) and to local law enforcement.\textsuperscript{135} As originally drafted, section 12 of HB 1391 required the GBI to create and maintain a statewide information database on organized criminal activity.\textsuperscript{136} This provision was struck from the bill because of financial concerns, and because such a database would duplicate work already being done by the Federal Bureau of Investigation.\textsuperscript{137}

Section 12 of the Act amends paragraph (20) of Code section 35-8-7, to require the "Georgia Peace Officer Standards and Training Council"

\begin{itemize}
\item \textsuperscript{128} See \textit{id.}.
\item \textsuperscript{129} See PAC PAMPHLET, supra note 1, at 32 n.48.
\item \textsuperscript{130} See 1998 Ga. Laws 270, § 10, at 280 (codified at O.C.G.A. § 17-17-6 (Supp. 1998)).
\item \textsuperscript{131} See O.C.G.A. § 17-17-6(b)(1), (c)(1) (Supp. 1998).
\item \textsuperscript{132} See PAC PAMPHLET, supra note 1, at 32 n.49.
\item \textsuperscript{133} Hoffman Interview, supra note 11.
\item \textsuperscript{134} See 1998 Ga. Laws 270, §§ 11-13, at 282 (codified at O.C.G.A. §§ 20-8-6, 35-8-7(20) (Supp. 1998)).
\item \textsuperscript{135} See O.C.G.A. § 20-8-6 (Supp. 1998).
\item \textsuperscript{136} See HB 1391, as introduced, 1998 Ga. Gen. Assem.
\item \textsuperscript{137} See PAC PAMPHLET, supra note 1, at 36-37 n.50.
\end{itemize}
to establish training programs related to street gangs.\textsuperscript{138} The amendment was included in the Act because the drafters found that police training related to organized crime failed to adequately address street gangs.\textsuperscript{139}

Section 13 of the Act recognizes the success that criminal street gangs have had in continuing their activities from within penal institutions.\textsuperscript{140} The General Assembly "requests and encourages" the operators of adult and juvenile correctional facilities to establish policies and procedures that will reduce the amount of criminal gang activity occurring within penal institutions.\textsuperscript{141} Originally, HB 1391 contained three sections that would have required prison officials to separate gang members.\textsuperscript{142} These sections were amended when the Georgia Sheriff’s Association expressed concern that the proposed sections would give rise to inmate litigation if prison officials failed to separate gang members.\textsuperscript{143}

\textit{Adam P. Princenthal}

\textsuperscript{138} See O.C.G.A. § 35-8-7(20) (Supp. 1998).
\textsuperscript{139} See PAC PAMPHLET, supra note 1, at 37 n.51; see also Hoffman Interview, supra note 11 (noting that "a youth can be arrested for an incident without the police even [realizing] that [the offense] was gang-related").
\textsuperscript{141} Id.
\textsuperscript{143} See PAC PAMPHLET, supra note 1, at 38 n.52.