**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4368**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Henderson

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Introduced in the House on January 14, 2014

Currently residing in the House Committee on **Judiciary**

Summary: Criminal Gang Prevention Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/3/2013 House Prefiled

12/3/2013 House Referred to Committee on **Judiciary**

1/14/2014 House Introduced and read first time ([House Journal‑page 50](file:///H:\HJ%20Archive\2014\01-14-14.docx))

1/14/2014 House Referred to Committee on **Judiciary** ([House Journal‑page 50](file:///H:\HJ%20Archive\2014\01-14-14.docx))

**VERSIONS OF THIS BILL**

[12/3/2013](file:///p:\pprever\2013-14\4368_20131203.docx)

**A** **BILL**

TO AMEND SECTION 16-8-230, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE CRIMINAL GANG PREVENTION ACT, SO AS TO REVISE THE DEFINITION OF “CRIMINAL GANG”; TO AMEND SECTION 16‑8‑240, RELATING TO THE USE OR THREATENED USE OF PHYSICAL VIOLENCE BY CRIMINAL GANG MEMBERS TO COERCE PERSONS TO PARTICIPATE IN A CRIMINAL GANG, SO AS TO REVISE THE OFFENSE TO DELETE THE REQUIREMENT OF THE USE OR THREATENED USE OF PHYSICAL VIOLENCE AMONG OTHER THINGS; BY ADDING SECTION 16‑8‑245 SO AS TO PROVIDE FOR ENHANCED PENALTIES FOR GANG‑RELATED OFFENSES; TO AMEND SECTION 17‑15‑10, AS AMENDED, RELATING TO PERSONS WHO MAY BE RELEASED PENDING TRIAL UNDER CERTAIN CONDITIONS, SO AS TO REFERENCE THE PROVISIONS OF SECTION 17‑15‑15; AND TO AMEND SECTION 17‑15‑15, RELATING TO DEPOSIT OF A CASH PERCENTAGE IN LIEU OF BOND, SO AS TO PROVIDE THAT IF A CRIMINAL GANG MEMBER CHARGED WITH A FELONY OFFENSE IS RELEASED PENDING TRIAL ON BOND, THE BOND MUST BE SET FOR AT LEAST FIFTY THOUSAND DOLLARS CASH OR SURETY UNLESS CERTAIN FINDINGS ARE MADE BY THE COURT ON THE RECORD.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑8‑230(2) of the 1976 Code, as added by Act 82 of 2007, is amended to read:

“(2) ‘Criminal gang’ means a formal or informal ongoing organization, association, or group that consists of ~~five~~ three or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity.”

SECTION 2. Section 16‑8‑240 of the 1976 Code, as added by Act 82 of 2007, is amended to read:

“Section 16‑8‑240. (A) It is unlawful for a criminal gang member to ~~use or threaten to use physical violence against another person with the intent to coerce, induce, or solicit that person or~~ cause, encourage, solicit, recruit, or coerce another person to actively participate in criminal gang activity, or to prevent another criminal gang member from withdrawing from or leaving a criminal gang. A criminal gang member who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars or imprisoned not more than two years, or both. A criminal gang member convicted for a second or subsequent offense pursuant to this subsection is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(B) A criminal gang member who uses a firearm, any other deadly weapon, or physical violence to ~~coerce, induce, or solicit~~ cause, encourage, solicit, recruit, or coerce another person to actively participate in a criminal gang, or to prevent another criminal gang member from withdrawing or leaving a criminal gang, in addition to the punishment prescribed in subsection (A), may be punished by an additional fine of not more than ten thousand dollars or by imprisonment for an additional period of not more than ten years, or both.

(C) If the person ~~solicited, recruited, coerced, or threatened~~ encouraged, solicited, recruited, or coerced in violation of this section is under the age of eighteen, an additional term of three years may be imposed in addition and consecutive to the penalty prescribed for a violation of this section.

(D) A person who has been ~~coerced, intimidated, threatened, or injured~~ encouraged, solicited, recruited, or coerced in violation of this section has a civil cause of action against a criminal gang or criminal gang member violating this section for treble the amount of the actual damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs from the criminal gang or criminal gang member.

(E) Nothing in this section limits prosecution under any other provision of law.”

SECTION 3. Article 3, Chapter 8, Title 16 of the 1976 Code is amended by adding:

“Section 16‑8‑245. When a person is convicted of a criminal offense and the court finds beyond a reasonable doubt that the offense was committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, the court may enhance the maximum penalty of the underlying offense by adding:

(1) two additional years for a Class A misdemeanor making the offense a Class F felony;

(2) one additional year for a Class B misdemeanor making the offense a Class A misdemeanor;

(3) one additional year for a Class C misdemeanor making the offense a Class B misdemeanor;

(4) life imprisonment for a Class A felony;

(5) five additional years for a Class B felony making the offense a Class A felony;

(6) five additional years for a Class C felony making the offense a Class B felony;

(7) five additional years for a Class D felony making the offense a Class C felony;

(8) five additional years for a Class E felony making the offense a Class D felony; and

(9) five additional years for a Class F felony making the offense a Class E felony.”

SECTION 4. Section 17‑15‑10 of the 1976 Code, as last amended by Act 286 of 2012, is further amended to read:

“Section 17‑15‑10. (A) ~~Any~~ A person charged with a noncapital offense triable in either the magistrates, county, or circuit court, ~~shall,~~ at his appearance before any of such courts, may be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion and subject to the provisions of Section 17‑15‑15 that ~~such a~~ release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If ~~such~~ a determination is made by the court that a person may be released pending trial, it may impose any one or more of the following conditions of release:

(1) require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;

(2) place the person in the custody of a designated person or organization agreeing to supervise him;

(3) place restrictions on the travel, association, or place of abode of the person during the period of release;

(4) impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

(B) ~~Any~~ A person charged with the offense of burglary in the first degree pursuant to Section 16‑11‑311 may have his bond hearing for that charge in summary court unless the solicitor objects.”

SECTION 5. Section 17‑15‑15 of the 1976 Code is amended to read:

“Section 17‑15‑15. ~~(a)~~(A) Except as provided in subsection (D), in lieu of requiring actual posting of bond as provided in ~~item (a) of~~ Section 17‑15‑10, the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten percent of the amount of bond set, which amount, when the defendant fulfills the condition of the bond, ~~shall~~ must be returned to the defendant by the clerk except as provided in subsection ~~(c)~~(C).

~~(b)~~(B) The cash deposit provided for in subsection ~~(a)~~ (A) ~~shall~~ must be assignable at any time after it is posted with the clerk of court by written assignment executed by the defendant and delivered to the clerk. After assignment and after the defendant fulfills the condition of his bond, the clerk shall return the cash deposit to the assignee ~~thereof~~.

~~(c)~~(C) In the event the cash deposit is not assigned but the defendant is required by the court to make restitution to the victim of his crime, ~~such~~ the deposit may be used for the purpose of ~~such~~ restitution.

(D) The provisions of this section do not apply to a criminal gang member charged with a felony offense. If the court finds that a criminal gang member may be released pending trial, bond must be set for at least fifty thousand dollars cash or surety, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pretrial supervision is available, and the defendant agrees to comply with the mandate of intensive pretrial supervision.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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