

2) Investigative Grand Jury

An investigative grand jury is a tool that prosecutors can use to get to the truth. It is a local tool that allows Solicitors to professionally investigate crime in their circuit by taking testimony and subpoenaing documents prior to bringing a criminal action. Many other states and the federal government already use investigative grand juries. Taking testimony is a more thorough way of investigating criminal allegations. Testimony of one person can be expanded upon and corroborated by testimony of other witnesses. Further testimony may lead to the discovery of other evidence that can expose the truth. The grand jury can also compel testimony from those who are reluctant to testify out of fear of retaliation by dangerous criminals. The secrecy of the grand jury process protects those who are testifying and also protects the innocent from public scrutiny if they are wrongfully investigated.

The Prosecution Commission will work with the General Assembly to implement a state-wide investigative grand jury or a pilot program that can be expanded state-wide.

The following is a proposed bill establishing a circuit-wide investigative grand jury:

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 14 TO CHAPTER 7, TITLE 14 SO AS TO ENACT THE "SPECIAL INVESTIGATIVE GRAND JURIES ACT" TO AUTHORIZE CIRCUIT SOLICITORS TO APPLY FOR AN ORDER CONVENING A CIRCUIT-WIDE SPECIAL INVESTIGATIVE GRAND JURY UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR THE EMPANELMENT OF THE SPECIAL INVESTIGATIVE GRAND JURY, AND TO PROVIDE THE POWERS OF THE CIRCUIT SOLICITOR WHEN THE SPECIAL INVESTIGATIVE GRAND JURY IS CONVENED.

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

SECTION 1. This act may be cited as the "Special Investigative Grand Juries Act".

SECTION 2. Chapter 7, Title 14 of the 1976 Code is amended by adding:

"Article 14 Special Investigative Grand Juries

Section 14-7-1580. (A) Notwithstanding another provision of law, when a circuit solicitor, in his discretion, has reason to believe that a special investigative grand jury would assist in the investigation and prosecution of criminal activity involving a violation of or a conspiracy to violate a criminal law as delineated in Section 14-7-1630 or a criminal law that carries a maximum sentence of fifteen years or more, anywhere in the Solicitor's circuit, the Circuit Solicitor may apply to a circuit court judge for an order to have a circuit-wide special investigative grand jury empaneled. It will remain empaneled for twelve months. The Circuit Solicitor may petition the court for an order extending the special investigative grand jury's work for an additional six months. This extension only may be granted twice.

(B) The application must be in writing and state that a special investigative grand jury is needed to investigate criminal activity under the jurisdiction of the special investigative grand jury and the Circuit Solicitor.

(C) The special investigative grand jury has jurisdiction to investigate criminal activity throughout the circuit.

(D) Once empaneled, the special investigative grand jury may be convened at any time during its term by the Circuit Solicitor to investigate crime under its jurisdiction.

Section 14-7-1583. (A) The Circuit Solicitor or his designee, the alternate grand jurors, the witness under examination, and a stenographer may be present while the special investigative grand jury is in session.

(B) A circuit court judge, upon the request of the Circuit Solicitor or the grand jury, may order that an interpreter, security officers, and other persons as the judge may determine are necessary to the presentation of the evidence may be present while the special investigative grand jury is in session.

(C) All persons who are to be present while the grand jury is in session must be identified in the record, must be sworn to secrecy, and shall not disclose any information pertaining to the grand jury.

(D) No person other than the permanent grand jurors may be present during the deliberations or voting of the grand jury.

Section 14-7-1585. The special investigative grand jury of eighteen persons must be composed of citizens of the counties that make up the circuit. In order to empanel the grand jury, the clerks of court of the counties comprising the circuit will summon a total of one hundred citizens proportionate to each county's percentage of the total population in the circuit. Otherwise, a special investigative grand jury convened pursuant to this article must be selected and empaneled in the same manner pursuant to the relevant provisions of Article 3 regarding the drawing and summoning of jurors in circuit courts. The grand jury panel shall report to the courthouse of the county with the largest population in the circuit. Once the special investigative grand jury is empaneled, it will be the Circuit Solicitor's responsibility to provide a meeting place for the special investigative grand jury.

Section 14-7-1590. The Circuit Solicitor's Office is responsible for all costs associated with the empanelment of the special investigative grand jury.

Section 14-7-1595. (A) When a special circuit investigative grand jury is convened pursuant to the provisions of this article, the Circuit Solicitor is authorized to:

(1) subpoena witnesses to give sworn testimony to a certified court reporter before the special investigative grand jury; and

(2) be present to examine witnesses before the special investigative grand jury and to give legal advice to the special investigative grand jury regarding matters before it.

(B) The finding and return of indictments and the form of an indictment returned by a special investigative grand jury convened pursuant to the provisions of this article must be in the same manner and form as indictments returned by the county or state grand jury.

(C) This article may not be construed to repeal or amend an existing statute regarding the formation, function, duties, or responsibilities of the county or state grand jury.

Section 14-7-1598. The Clerk of Court for the most populated county in the circuit, upon the request of the Circuit Solicitor or his designee, shall issue subpoenas or subpoenas duces tecum to compel individuals, documents, or other materials to be brought from anywhere in this State to the special investigative grand jury. In addition, a special investigative grand jury may proceed in the same manner as provided by the subpoena rules of the South Carolina Rules of Civil Procedure and Sections 19-9-10 through 19-9-130, except when either is inconsistent with the provisions of this article; provided the subpoena rules of the South Carolina Rules of Civil Procedure and Sections 19-9-10 through 19-9-130 are not considered a limitation upon this section, but supplemental to it. The subpoenas and subpoenas duces tecum may be for investigative purposes and for the retention of documents or other materials so subpoenaed for proper criminal proceedings. A law enforcement officer with appropriate jurisdiction is empowered to serve these subpoenas and subpoenas duces tecum and receive these documents and other materials for return to a special investigative grand jury. A person violating a subpoena or subpoena duces tecum issued pursuant to this article, or who fails to fully answer all questions put to him before proceedings of a special investigative grand jury when the response to it is not privileged or otherwise protected by law, including the granting of immunity, may be punished by the presiding judge for contempt. When a violation or failure to answer is alleged to have occurred, the Circuit Solicitor or his designee may petition the presiding judge to compel compliance by the person alleged to have committed the violation or who has failed to answer. If the presiding judge considers compliance is warranted, he may order this compliance and may hold the individual in contempt when the compliance does not occur."

SECTION 3. This act takes effect upon approval by the Governor.

3) Gang Statute

Both North Carolina and Georgia have statutes aimed at the elimination of criminal street gangs. These statutes are similar to other states' Racketeering Influenced and Corrupt Organizations (RICO) Acts. In order to effectively eliminate gangs, law enforcement must be able to arrest and Solicitors must be able to prosecute multiple offenders simultaneously. Otherwise gangs can quickly replace their arrested members and continue, without interruption, the gang's activities.

Gang statutes give law enforcement and prosecutors the ability to do this. These statutes also allow the state to seize gang assets further diminishing their ability to harm the community.

The following is from the preamble to the Georgia Gang Statute. This provides a good explanation for the need of this type of statute.

(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 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.

The following is the Georgia Street Gang Statute:

GEORGIA STREET GANG TERRORISM AND PREVENTION ACT

§ 16-15-1. Short title

This chapter shall be known and may be cited as the "Georgia Street Gang Terrorism and Prevention Act."

Credits

Laws 1992, p. 3236, § 1; Laws 1998, p. 270, § 8.

§ 16-15-2. Legislative intent

(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 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.

Credits

Laws 1992, p. 3236, § 1; Laws 1995, p. 933, § 13; Laws 1996, p. 6, § 16; Laws 1998, p. 270, § 8; Laws 2010, Act 406, § 1, eff. July 1, 2010.

§ 16-15-3. Definitions

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.

(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.

Credits

Laws 1992, p. 3236, § 1; Laws 1998, p. 270, § 8; Laws 1999, p. 81, § 16; Laws 2006, Act 616, § 1, eff. July 1, 2006; Laws 2010, Act 406, § 2, eff. July 1, 2010.

§ 16-15-4. Unlawful acts; penalties

- (a) It shall be unlawful for any person employed by or associated with a criminal street gang to conduct or participate in criminal 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 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.
- (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.
- (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.
- (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.
- (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 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.
- (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 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.
- (k)(1) Any person who violates subsection (a), (b), or (c) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years or pay a fine of not less than \$10,000.00 nor more than \$15,000.00, or both.
- (2) Any person who violates subsection (a) of this Code section through the commission of a violation of Code Section 42-5-18 shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to a mandatory minimum term of imprisonment of two years but not more than 20 years which shall be served consecutively to any other sentence imposed, and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court.
- (3) Any person who violates subsection (d) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 years which shall be served consecutively to any other sentence imposed.
- (4) Any person who violates subsection (e), (f), (g), (h), (i), or (j) of this Code section shall be guilty of a felony and upon conviction thereof, in addition to any other penalty imposed, shall be sentenced to imprisonment for five years but not more than 20 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.
- (m) Any crime committed in violation of this Code section shall be considered a separate offense.

Credits

Laws 1992, p. 3236, § 1; Laws 1998, p. 270, § 8; Laws 2006, Act 616, § 2, eff. July 1, 2006; Laws 2010, Act 406, § 3, eff. July 1, 2010; Laws 2011, Act 245, § 16, eff. May 13, 2011; Laws 2016, Act 606, § 4, eff. May 3, 2016.
§ 16-15-5. Forfeiture of contraband property

(a) As used in this Code section, the terms "proceeds" and "property" shall have the same meanings as set forth in Code Section 9-16-2.

(b) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this chapter and proceeds are declared to be contraband and no person shall have a property right in them.

(c) Any property subject to forfeiture pursuant to subsection (b) of this Code section shall be forfeited in accordance with Chapter 16 of Title 9.

Credits

Laws 1992, p. 3236, § 1; Laws 1993, p. 91, § 16; Laws 1998, p. 270, § 8; Laws 2015, Act 98, § 2-26, eff. July 1, 2015.

§ 16-15-6. Applicability with respect to local ordinances

Nothing in this chapter shall prevent a local governing body from adopting and enforcing ordinances relating to gangs and gang violence which are consistent with this chapter. Where local laws duplicate or supplement the provisions of this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

Credits

Laws 1992, p. 3236, § 1; Laws 1998, p. 270, § 8.

§ 16-15-7. Abatement of nuisances; actions for damages or injunctions

(a) Any real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Title 41, relating to nuisances.

(b) An action to abate a nuisance pursuant to this Code section may be brought by the district attorney, solicitor-general, prosecuting attorney of a municipal court or city, or county attorney in any superior, state, or municipal court.

(c) Any person who is injured by reason of criminal gang activity shall have a cause of action for three times the actual damages sustained and, where appropriate, punitive damages; provided, however, that no cause of action shall arise under this subsection as a result of an otherwise legitimate commercial transaction between parties to a contract or agreement for the sale of lawful goods or property or the sale of securities regulated by Chapter 5 of Title 10 or by the federal Securities and Exchange Commission. Such person shall also recover attorney's fees in the trial and appellate court and costs of investigation and litigation reasonably incurred. All averments of a cause of action under this subsection shall be stated with particularity. No judgment shall be awarded unless the finder of fact determines that the action is consistent with the intent of the General Assembly as set forth in Code Section 16-15-2.

(d) The state, any political subdivision thereof, or any person aggrieved by a 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.

Credits

Laws 1998, p. 270, § 8; Laws 2010, Act 406, § 4, eff. July 1, 2010.

§ 16-15-8. Effect of conviction of criminal gang activity on subsequent civil action

A conviction of an offense defined as criminal gang activity shall estop the defendant in any subsequent civil action or proceeding as to matters proved in the criminal proceeding.

Credits

Laws 1998, p. 270, § 8.

§ 16-15-9. Certain offenses admissible as evidence

For the purpose of proving the existence of a criminal street gang and criminal gang activity, the commission, adjudication, or conviction 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. Evidence offered under this Code section shall not be subject to the restrictions in paragraph (22) of Code Section 24-8-803.

Credits

Laws 2006, Act 616, § 3, eff. July 1, 2006; Laws 2010, Act 406, § 5, eff. July 1, 2010; Laws 2016, Act 606, § 5, eff. May 3, 2016.

§ 16-15-10. Criminal Street Gang Reward Fund

There shall be established as part of the Prosecuting 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 gang activity that leads to the death or maiming of another person or property damage in the amount of \$2,500.00 or more.

Credits

Laws 2006, Act 616, § 3, eff. July 1, 2006; Laws 2010, Act 406, § 6, eff. July 1, 2010.

§ 16-15-11. Georgia Criminal Street Gang Database

(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.

Credits

Laws 2010, Act 406, § 7, eff. July 1, 2010.