

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

2

SENATE BILL 202
Judiciary Committee Substitute Adopted 4/7/97

Short Title: Gang Crime/Enhanced Penalties.

(Public)

Sponsors:

Referred to: Appropriations.

February 20, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ADD TO THE LIST OF AGGRAVATING FACTORS THE OFFENSE
3 WAS COMMITTED IN ASSOCIATION WITH A CRIMINAL STREET GANG.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 15A-1340.16(d) reads as rewritten:

6 "(d) Aggravating Factors. – The following are aggravating factors:

7 (1) The defendant induced others to participate in the commission of the
8 offense or occupied a position of leadership or dominance of other
9 participants.

10 (2) The defendant joined with more than one other person in committing the
11 offense and was not charged with committing a conspiracy.

12 (2a) The offense was committed for the benefit of, or at the direction of, any
13 criminal street gang, with the specific intent to promote, further, or
14 assist in any criminal conduct by gang members, and the defendant was
15 not charged with committing a conspiracy. A 'criminal street gang'
16 means any ongoing organization, association, or group of three or more
17 persons, whether formal or informal, having as one of its primary
18 activities the commission of felony or violent misdemeanor offenses, or
19 delinquent acts that would be felonies or violent misdemeanors if

- 1 committed by an adult, and having a common name or common
2 identifying sign, colors, or symbols.
- 3 (3) The offense was committed for the purpose of avoiding or preventing a
4 lawful arrest or effecting an escape from custody.
- 5 (4) The defendant was hired or paid to commit the offense.
- 6 (5) The offense was committed to disrupt or hinder the lawful exercise of
7 any governmental function or the enforcement of laws.
- 8 (6) The offense was committed against a present or former law enforcement
9 officer, employee of the Department of Correction, jailer, fireman,
10 emergency medical technician, ambulance attendant, justice or judge,
11 clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror,
12 or witness against the defendant, while engaged in the performance of
13 that person's official duties or because of the exercise of that person's
14 official duties.
- 15 (7) The offense was especially heinous, atrocious, or cruel.
- 16 (8) The defendant knowingly created a great risk of death to more than one
17 person by means of a weapon or device which would normally be
18 hazardous to the lives of more than one person.
- 19 (9) The defendant held public office at the time of the offense and the
20 offense related to the conduct of the office.
- 21 (10) The defendant was armed with or used a deadly weapon at the time of
22 the crime.
- 23 (11) The victim was very young, or very old, or mentally or physically
24 infirm, or handicapped.
- 25 (12) The defendant committed the offense while on pretrial release on
26 another charge.
- 27 (13) The defendant involved a person under the age of 16 in the commission
28 of the crime.
- 29 (14) The offense involved an attempted or actual taking of property of great
30 monetary value or damage causing great monetary loss, or the offense
31 involved an unusually large quantity of contraband.
- 32 (15) The defendant took advantage of a position of trust or confidence to
33 commit the offense.
- 34 (16) The offense involved the sale or delivery of a controlled substance to a
35 minor.
- 36 (17) The offense for which the defendant stands convicted was committed
37 against a victim because of the victim's race, color, religion, nationality,
38 or country of origin.
- 39 (18) The defendant does not support the defendant's family.
- 40 (18a) The defendant has previously been adjudicated delinquent for an offense
41 that would be a Class A, B1, B2, C, D, or E felony if committed by an
42 adult.

1 (19) The serious injury inflicted upon the victim is permanent and
2 debilitating.

3 (20) Any other aggravating factor reasonably related to the purposes of
4 sentencing.

5 Evidence necessary to prove an element of the offense shall not be used to prove any
6 factor in aggravation, and the same item of evidence shall not be used to prove more than
7 one factor in aggravation. Evidence necessary to establish that an enhanced sentence is
8 required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

9 The judge shall not consider as an aggravating factor the fact that the defendant
10 exercised the right to a jury trial."

11 Section 2. This act becomes effective December 1, 1997, and applies to
12 offenses committed on or after that date.