

New Gang Sentencing Enhancements

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Two new sentencing enhancements related to gangs will come into effect for offenses committed on or after December 1, 2017.

[Session Law 2017-194](#) made numerous changes to North Carolina's gang suppression laws. For starters, it dropped the "Street" from the title of the "Street Gang Suppression Act" in Article 13A of Chapter 14, replacing it with "Criminal." It is the "North Carolina Criminal Gang Suppression Act" now. Numerous conforming changes are made throughout Chapters 14 and 15A.

Among the other changes in the law are two new felony sentence enhancements, both added within Structured Sentencing (Article 81B of Chapter 15A). The first is for felonies committed as part of criminal gang activity. The second is for criminal gang activity by a criminal gang leader or organizer.

Criminal Gang Activity Enhancement. Under new G.S. 15A-1340.16E(a), a person convicted of a Class C through I felony is subject to a **one-class enhancement**, capped at Class C, if that felony is found to have been committed as part of "criminal gang activity," as that term is now defined in G.S. 14-50.16A(2).

That subdivision defines "criminal gang activity" as the "commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit" any of the following offenses, aside from the noted exceptions, in certain circumstances:

- Any offense in Article 5 of Chapter 90 (the Controlled Substances Act), or
- Any offense in Chapter 14 *except* those in Article 9 (Hazing); Article 22A (Trespass upon Posted Property to Hunt, Fish, Trap, or Remove Pine Needles/Straw); Article 40 (Protection of the Family); Article 46 (Regulation of Landlord and Tenant); Article 59 (Public Intoxication); and further excepting G.S. 14-82 (Taking horses, mules, or dogs); G.S. 14-145 (Unlawful posting of advertisements); G.S. 14-183 (Bigamy); G.S. 14-184 (Fornication and adultery); G.S. 14-186 (Opposite sexes occupying same bedroom at hotel for immoral purposes); G.S. 14-190.9 (Indecent exposure); G.S. 14-247 (Private use of publicly owned vehicle); G.S. 14-248 (Obtaining repairs and supplies for private vehicle at expense of State); and G.S. 14-313 (Youth access to tobacco products).

In addition to being one of those covered offenses, a crime constitutes criminal gang activity only when either of the following conditions is met:

- The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang, or
- The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.

"Criminal gang" is defined in new G.S. 14-50.16A(1) as an organization, association, or group of three or more persons that has as one of its primary activities the commission of criminal or delinquent acts, and shares a common

name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including common activities, customs, or behaviors.

“Criminal gang member” is defined in new G.S. 14-50.16A(4) as a person who meets three or more of nine enumerated criteria, such as admitting to being a gang member, being identified as a gang member by a reliable source, or appearing in any form of social media to promote a criminal gang. It does not appear that a person necessarily must be a criminal gang member to be eligible for the enhancement. A non-gang member who committed a covered offense with the intent to benefit, promote, or further the interests of a gang could seemingly be eligible, too.

Criminal Gang Leader or Organizer Enhancement. Under G.S. 15A-1340.16E(b), if the criminal gang activity enhancement described above applies *and* the person is also found to be a “criminal gang leader or organizer” as that term is defined in G.S. 14-50.16A(3), then the defendant’s principal felony is subject to a **two-class enhancement**, capped at Class C.

“Criminal gang leader or organizer” is defined as a criminal gang member who acts in a position of management and who meets two or more of five enumerated criteria, such as exercising decision-making authority over gang matters, or recruiting gang members. G.S. 14-50.16A(3).

Further exceptions. Neither enhancement applies to the handful of gang crimes included in Article 13A of Chapter 14 (like soliciting or encouraging a person to participate in criminal gang activity under G.S. 14-50.17). G.S. 15A-1340.16E(f).

Procedure. The State must allege the facts that qualify the defendant for the enhancement in the indictment or information charging the principal felony. One pleading is sufficient for all felonies tried at a single trial. The State must prove the facts qualifying the defendant for the enhancement beyond a reasonable doubt in the same manner as an aggravating factor as described in G.S. 15A-1340.16(a1), (a2), and (a3)—which generally means to a jury unless the defendant admits to them. The law’s express mention of G.S. 15A-1340.16(a1) and (a3) probably brings these enhancements within the coverage of G.S. 15A-1201, allowing them to be found by a judge when a defendant has waived his or her right to a jury trial.

Sentencing. Both enhancements are capped at Class C. Felonies sentenced under either enhancement must run consecutively with any sentence being served by the person sentenced under the enhancement, although the appellate courts have consistently interpreted that language to allow for concurrent or consolidated sentences for things sentenced simultaneously. Neither enhancement requires an active sentence.