

House Judiciary Engrossed Substitute for HB191



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A BILL
TO BE ENTITLED
AN ACT

Relating to crimes and offenses; to add Article 12, commencing with Section 13A-6-260, to Chapter 6 of Title 13A to the Code of Alabama 1975, to identify gang members, to enhance penalties for any criminal activity that benefits, promotes, or furthers the interest of a gang, and to establish mandatory consecutive penalties for any firearm possession in certain circumstances; to amend Section 12-15-204, Code of Alabama 1975, to require any juvenile 16 years of age or older to be tried as an adult for any gang related criminal activity; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Article 12, commencing with Section 13A-6-260, is added to Chapter 6 of Title 13A, Code of Alabama 1975, to read as follows:

§13A-6-260

For the purposes of this article, the following terms

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29 have the following meanings:

30 (1) DESTRUCTIVE DEVICE. The same meaning as in Section
31 13A-10-190.

32 (2) FIREARM. Any of the following:

33 a. Any weapon which will, is designed to, or may
34 readily be converted to expel a projectile by the action of an
35 explosive or the frame or receiver of any such weapon.

36 b. A firearm silencer.

37 c. A destructive device.

38 (3) FIREARMS SILENCER. Any device for silencing,
39 muffling, or diminishing the report of a portable firearm,
40 including any combination of parts, designated or
41 redesignated, and intended for use in assembling or
42 fabricating a firearm silencer, and any part intended only for
43 use in such assembly or fabrication.

44 (4) GANG. The same meaning as "streetgang" in Section
45 13A-6-26.

46 (5) GANG MEMBER. An individual who meets either of the
47 following at the time of the planning or commission of the
48 underlying offense:

49 a. He or she meets one or more of the following:

50 1. Admits to gang membership.

51 2. Is identified as a gang member by a parent or
52 guardian.

53 3. Is identified as a gang member by a documented
54 reliable informant.

55 4. Is identified as a gang member by an informant of
56 previously untested reliability and the identification is



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57 corroborated by independent information.

58 b. He or she meets three or more of the following:

59 1. Adopts the style of dress of a gang.

60 2. Adopts the use of a hand sign identified as used by
61 a gang.

62 3. Has a tattoo identified as used by a gang.

63 4. Associates with one or more known gang members.

64 5. Is identified as a gang member by physical evidence.

65 6. Has been observed in the company of one or more

66 known gang members four or more times. Observation in a

67 custodial setting requires a willful association. This

68 subparagraph may be used to identify gang members who recruit

69 and organize in jails, prisons, and other detention settings.

70 7. Has authored any communication indicating

71 responsibility for the commission of any crime by a gang.

72 Where a single act or factual transaction satisfied the

73 requirements of more than one of the criteria in this

74 subdivision, each of those criteria has been satisfied for the

75 purposes of this subdivision.

76 (6) MACHINE GUN. Any weapon that shoots, is designed to

77 shoot, or can be readily restored to shoot automatically more

78 than one shot, without manual reloading, by a single function

79 of the trigger. The term shall also include the frame receiver

80 of any such weapon, any part designed and intended solely and

81 exclusively, or combination of parts designed and intended,

82 for use in converting a weapon into a machine gun, and any

83 combination of parts from which a machine gun can be assembled

84 if such parts are in the possession or under the control of a

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85 person.

86 (7) SHORT-BARRELED RIFLE. The same meaning as in
87 Section 13A-11-62.

88 (8) SHORT-BARRELED SHOTGUN. The same meaning as in
89 Section 13A-11-62.

90 §13A-6-261

91 Upon a finding, beyond a reasonable doubt, that a gang
92 member has committed the charged offense for the purpose of
93 benefiting, promoting, or furthering the interest of a gang,
94 the following sentencing enhancements shall apply:

95 (1) On conviction of a Class A felony, he or she shall
96 be punished not less than 25 years.

97 (2) On conviction of a Class B felony, he or she shall
98 be punished for a Class A felony.

99 (3) On conviction of a Class C felony, he or she shall
100 be punished for a Class B felony.

101 (4) On conviction of a Class D felony, he or she shall
102 be punished for a Class C felony.

103 §13A-6-262

104 (a) Any individual who knowingly possesses, uses, or
105 carries a firearm during the commission of any act intended to
106 benefit, promote, or further the interest of a gang shall be
107 punished as follows:

108 (1) To a term of imprisonment of not less than five
109 years.

110 (2) If the firearm is brandished, to a term of
111 imprisonment of not less than seven years.

112 (3) If the firearm is discharged, to a term of



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113 imprisonment of not less than 10 years.

114 (4) If the firearm possessed is a short-barreled rifle
115 or short-barreled shotgun, to a term of imprisonment of not
116 less than 10 years.

117 (5) If the firearm possessed is a machine gun, a
118 destructive device, or is equipped with a firearm silencer, to
119 a term of imprisonment of not less than 30 years.

120 (b) No term of imprisonment imposed on a person
121 pursuant to this section shall run concurrently with any other
122 term of imprisonment, including any term of imprisonment for
123 the gang related activity during which the firearm was used,
124 carried, or possessed pursuant to Section 13A-6-261.

125 Section 2. Section 12-15-204, Code of Alabama 1975, is
126 amended to read as follows:

127 "§12-15-204

128 (a) Notwithstanding any other provision of law, any
129 person who has attained the age of 16 years at the time of the
130 conduct charged and who is charged with the commission of any
131 act or conduct, which if committed by an adult would
132 constitute any of the following, shall not be subject to the
133 jurisdiction of juvenile court but shall be charged, arrested,
134 and tried as an adult:

135 (1) A capital offense.

136 (2) A Class A felony.

137 (3) A felony which has as an element thereof the use of
138 a deadly weapon.

139 (4) A felony which has as an element thereof the
140 causing of death or serious physical injury.

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141 (5) A felony which has as an element thereof the use of
142 a dangerous instrument against any person who is one of the
143 following:

- 144 a. A law enforcement officer or official.
- 145 b. A correctional officer or official.
- 146 c. A parole or probation officer or official.
- 147 d. A juvenile court probation officer or official.
- 148 e. A district attorney or other prosecuting officer or
149 official.
- 150 f. A judge or judicial official.
- 151 g. A court officer or official.
- 152 h. A person who is a grand juror, juror, or witness in
153 any legal proceeding of whatever nature when the offense stems
154 from, is caused by, or is related to the role of the person as
155 a juror, grand juror, or witness.
- 156 i. A teacher, principal, or employee of the public
157 education system of Alabama.

158 (6) Trafficking in drugs in violation of Section
159 13A-12-231, or as the same may be amended.

160 (7) A violation of Article 12 of Chapter 6 of Title
161 13A.

162 ~~(7)~~ (8) Any lesser included offense of the above
163 offenses charged or any lesser felony offense charged arising
164 from the same facts and circumstances and committed at the
165 same time as the offenses listed above. Provided, however,
166 that the juvenile court shall maintain original jurisdiction
167 over these lesser included offenses if the grand jury fails to
168 indict for any of the offenses enumerated in subsections



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169 (a) (1) to (a) ~~(6)~~ (7), inclusive. The juvenile court shall also
170 maintain original jurisdiction over these lesser included
171 offenses, subject to double jeopardy limitations, if the court
172 handling criminal offenses dismisses all charges for offenses
173 enumerated in subsections (a) (1) to (a) ~~(6)~~ (7), inclusive.

174 (b) Notwithstanding any other provision of law, any
175 person who has been convicted or adjudicated a youthful
176 offender in a court handling criminal offenses pursuant to the
177 provisions of this section shall not thereafter be subject to
178 the jurisdiction of juvenile court for any pending or
179 subsequent offense. Provided, however, pursuant to Section
180 12-15-117, the juvenile court shall retain jurisdiction over
181 an individual of any age for the enforcement of any prior
182 orders of the juvenile court requiring the payment of fines,
183 court costs, restitution, or other money ordered by the
184 juvenile court until paid in full.

185 (c) This section shall apply to all cases in which the
186 alleged criminal conduct occurred after April 14, 1994. All
187 conduct occurring before April 14, 1994, shall be governed by
188 pre-existing law."

189
190 Section 3. Although this bill would have as its purpose
191 or effect the requirement of a new or increased expenditure of
192 local funds, the bill is excluded from further requirements
193 and application under Section 111.05 of the Constitution of
194 Alabama of 2022, because the bill defines a new crime or
195 amends the definition of an existing crime.

196 Section 4. This act shall become effective on the first

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197 day of the third month following its passage and approval by
198 the Governor, or its otherwise becoming law.