

SB143 INTRODUCED



1 KMIX5A-1
2 By Senator Barfoot
3 RFD: Judiciary
4 First Read: 23-Mar-23
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SYNOPSIS:

This bill would identify gang members.

This bill would enhance penalties for any criminal activity that benefits, promotes, or furthers the interest of a gang.

The bill would establish mandatory consecutive penalties for any individual who knowingly possesses, uses, or carries a firearm during the commission of any act intended to benefit, promote, or further the interest of a gang.

Under existing law, juveniles who are 16 years of age or older are tried as an adult for certain crimes.

This bill would require any juvenile 16 years of age or older to be tried as an adult for any gang related criminal activity.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for



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29 the purpose.

30 The purpose or effect of this bill would be to
31 require a new or increased expenditure of local funds
32 within the meaning of the amendment. However, the bill
33 does not require approval of a local governmental
34 entity or enactment by a 2/3 vote to become effective
35 because it comes within one of the specified exceptions
36 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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43 Relating to crimes and offenses; to add Article 12,
44 commencing with Section 13A-6-260, to Chapter 6 of Title 13A
45 to the Code of Alabama 1975, to identify gang members, to
46 enhance penalties for any criminal activity that benefits,
47 promotes, or furthers the interest of a gang, and to establish
48 mandatory consecutive penalties for any firearm possession in
49 certain circumstances; to amend Section 12-15-204, Code of
50 Alabama 1975, to require any juvenile 16 years of age or older
51 to be tried as an adult for any gang related criminal
52 activity; and in connection therewith would have as its
53 purpose or effect the requirement of a new or increased
54 expenditure of local funds within the meaning of Section
55 111.05 of the Constitution of Alabama of 2022.

56 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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57 Section 1. Article 12, commencing with Section
58 13A-6-260, is added to Chapter 6 of Title 13A, Code of Alabama
59 1975, to read as follows:

60 §13A-6-260

61 For the purposes of this article, the following terms
62 have the following meanings:

63 (1) DESTRUCTIVE DEVICE. The same meaning as in Section
64 13A-10-190.

65 (2) FIREARM. Any of the following:

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

69 b. A firearm silencer.

70 c. A destructive device.

71 (3) FIREARMS SILENCER. Any device for silencing,
72 muffling, or diminishing the report of a portable firearm,
73 including any combination of parts, designated or
74 redesignated, and intended for use in assembling or
75 fabricating a firearm silencer, and any part intended only for
76 use in such assembly or fabrication.

77 (4) GANG. The same meaning as "streetgang" in Section
78 13A-6-26.

79 (5) GANG MEMBER. An individual who meets either of the
80 following at the time of the planning or commission of the
81 underlying offense:

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

83 1. Admits to gang membership.

84 2. Is identified as a gang member by a parent or



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85 guardian.

86 3. Is identified as a gang member by a documented
87 reliable informant.

88 4. Is identified as a gang member by an informant of
89 previously untested reliability and the identification is
90 corroborated by independent information.

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

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

93 2. Adopts the use of a hand sign identified as used by
94 a gang.

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

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

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

98 6. Has been observed in the company of one or more
99 known gang members four or more times. Observation in a
100 custodial setting requires a willful association. This
101 subparagraph may be used to identify gang members who recruit
102 and organize in jails, prisons, and other detention settings.

103 7. Has authored any communication indicating
104 responsibility for the commission of any crime by a gang.
105 Where a single act or factual transaction satisfied the
106 requirements of more than one of the criteria in this
107 subdivision, each of those criteria has been satisfied for the
108 purposes of this subdivision.

109 (6) MACHINE GUN. Any weapon that shoots, is designed to
110 shoot, or can be readily restored to shoot automatically more
111 than one shot, without manual reloading, by a single function
112 of the trigger. The term shall also include the frame receiver



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113 of any such weapon, any part designed and intended solely and
114 exclusively, or combination of parts designed and intended,
115 for use in converting a weapon into a machine gun, and any
116 combination of parts from which a machine gun can be assembled
117 if such parts are in the possession or under the control of a
118 person.

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

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

123 §13A-6-261

124 Upon a finding, beyond a reasonable doubt, that a gang
125 member has committed the charged offense for the purpose of
126 benefiting, promoting, or furthering the interest of a gang,
127 the following sentencing enhancements shall apply:

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

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

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

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

136 §13A-6-262

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



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141 (1) To a term of imprisonment of not less than five
142 years.

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

145 (3) If the firearm is discharged, to a term of
146 imprisonment of not less than 10 years.

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

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

153 (b) No term of imprisonment imposed on a person
154 pursuant to this section shall run concurrently with any other
155 term of imprisonment, including any term of imprisonment for
156 the gang related activity during which the firearm was used,
157 carried, or possessed pursuant to Section 13A-11-261.

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

160 "§12-15-204

161 (a) Notwithstanding any other provision of law, any
162 person who has attained the age of 16 years at the time of the
163 conduct charged and who is charged with the commission of any
164 act or conduct, which if committed by an adult would
165 constitute any of the following, shall not be subject to the
166 jurisdiction of juvenile court but shall be charged, arrested,
167 and tried as an adult:

168 (1) A capital offense.



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169 (2) A Class A felony.

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

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

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

177 a. A law enforcement officer or official.

178 b. A correctional officer or official.

179 c. A parole or probation officer or official.

180 d. A juvenile court probation officer or official.

181 e. A district attorney or other prosecuting officer or
182 official.

183 f. A judge or judicial official.

184 g. A court officer or official.

185 h. A person who is a grand juror, juror, or witness in
186 any legal proceeding of whatever nature when the offense stems
187 from, is caused by, or is related to the role of the person as
188 a juror, grand juror, or witness.

189 i. A teacher, principal, or employee of the public
190 education system of Alabama.

191 (6) Trafficking in drugs in violation of Section
192 13A-12-231, or as the same may be amended.

193 (7) A violation of Article 12 of Chapter 6 of Title
194 13A.

195 ~~(7)~~ (8) Any lesser included offense of the above
196 offenses charged or any lesser felony offense charged arising



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197 from the same facts and circumstances and committed at the
198 same time as the offenses listed above. Provided, however,
199 that the juvenile court shall maintain original jurisdiction
200 over these lesser included offenses if the grand jury fails to
201 indict for any of the offenses enumerated in subsections
202 (a) (1) to (a) ~~(6)~~ (7), inclusive. The juvenile court shall also
203 maintain original jurisdiction over these lesser included
204 offenses, subject to double jeopardy limitations, if the court
205 handling criminal offenses dismisses all charges for offenses
206 enumerated in subsections (a) (1) to (a) ~~(6)~~ (7), inclusive.

207 (b) Notwithstanding any other provision of law, any
208 person who has been convicted or adjudicated a youthful
209 offender in a court handling criminal offenses pursuant to the
210 provisions of this section shall not thereafter be subject to
211 the jurisdiction of juvenile court for any pending or
212 subsequent offense. Provided, however, pursuant to Section
213 12-15-117, the juvenile court shall retain jurisdiction over
214 an individual of any age for the enforcement of any prior
215 orders of the juvenile court requiring the payment of fines,
216 court costs, restitution, or other money ordered by the
217 juvenile court until paid in full.

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

222 Section 3. Although this bill would have as its purpose
223 or effect the requirement of a new or increased expenditure of
224 local funds, the bill is excluded from further requirements



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225 and application under Section 111.05 of the Constitution of
226 Alabama of 2022, because the bill defines a new crime or
227 amends the definition of an existing crime.

228 Section 4. This act shall become effective on the first
229 day of the third month following its passage and approval by
230 the Governor, or its otherwise becoming law.