

SENATE BILL 409

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, to create the "Gang-Free School Zone Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following language as a new, appropriately designated part::

39-17-1901. This part shall be known and may be cited as the "Gang Free School Zone Act."

39-17-1902.

(a) Any person who actively participates in any criminal gang, as defined in § 40-35-121(a)(1), and who knowingly promotes, furthers, or assists in any criminal conduct by members of that gang is guilty of a Class E felony.

(b) If the underlying criminal conduct described in subsection (a) is committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, vocational, junior high, middle school, high school, youth center, or recreation center during hours in which the facility is open for classes or school-related programs or when minors are using the facility, such conduct is punished one (1) classification higher than provided in this title for such offense, including a Class A misdemeanor being punished as a Class E felony.

(c) In order to secure a conviction or sustain a juvenile petition, pursuant to this part, it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal gang, nor is it necessary to prove that the person is a member of the criminal gang.

Active participation in the criminal gang is all that is required for prosecution and conviction.

39-17-1903.

(a) A person commits unlawful possession of a firearm by a criminal gang member when he or she knowingly:

(1) Possesses, carries, or conceals on or about his or her person a firearm while on any street, road, alley, gangway, sidewalk, or any other lands, except when inside his or her own abode or inside his or her fixed place of business, and:

(A) Is not the holder of a currently valid handgun permit issued pursuant to § 39-17-1351; and

(B) Is a member of a criminal gang.

(2) Possesses or carries in any vehicle a firearm which is immediately accessible at the time of the offense while on any street, road, alley, or any other lands, except when inside his or her own abode or garage, and:

(A) Is not the holder of a currently valid handgun permit issued pursuant to § 39-17-1351; and

(B) Is a member of a criminal gang;

(b) Unlawful possession of a firearm by a criminal gang member is a Class D felony.

(c) For purposes of this Section:

(1) "Criminal gang" or "gang" has the meaning as defined in § 40-35-121(a)(1).

(2) "Criminal gang member" or "gang member" has the meaning as defined in § 40-35-121(2).

39-17-1904.

Upon a defendant being convicted and sentenced for a felony or misdemeanor, the presiding judge shall determine whether the offense involved

criminal gang activity. If the judge determines that the offense involved criminal gang activity, then the judge shall indicate on the uniform judgment document reflecting the judgment that the offense involved criminal gang activity. The judge's determination may be made by adopting any determination agreed upon between the prosecuting attorney and the defendant's attorney. The clerk of court shall ensure that the uniform judgment document of the defendant's conviction includes a notation of the court's determination.

SECTION 2. The supreme court is requested to amend the uniform judgment document promulgated pursuant to Supreme Court Rule 17 to provide a "gang-related" box or other method by which the sentencing judge may notate that the conviction involved criminal gang activity.

SECTION 3. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to prohibited acts occurring on or after the effective date of this act.