

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 513
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Short Title: Ethnic Intimidation.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO CREATE THE MISDEMEANOR OFFENSE OF ETHNIC
INTIMIDATION AND TO ADD ETHNIC ANIMOSITY AS AN
AGGRAVATING FACTOR TO BE CONSIDERED IN FELONY SENTENCES.

The General Assembly of North Carolina enacts:

Section 1. Article 52 of Chapter 14 of the General Statutes is amended by
adding a new section to read:

§ 14-401.14. Ethnic intimidation.

If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a misdemeanor punishable by imprisonment up to two years, or a fine, or both.

Sec. 2. G.S. 15A-1340.4(a) reads as rewritten:

"(a) If the sentencing judge imposes a prison term on a person convicted of a felony other than a Class A or Class B felony, he may suspend the sentence and place the convicted felon on probation as provided by Article 82 of this Chapter. If the convicted felon is under 21 years of age at the time of conviction and the sentencing judge elects to impose an active prison term, the judge must either sentence the felon as a committed youthful offender in accordance with Article 3B of Chapter 148 of the General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14, or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular prison term. If the judge imposes a prison term, whether or not the term is suspended,

1 and whether or not he sentences the convicted felon as a committed youthful offender,
2 he must impose the presumptive term provided in this section unless, after consideration
3 of aggravating or mitigating factors, or both, he decides to impose a longer or shorter
4 term, or unless he imposes a prison term pursuant to any plea arrangement as to
5 sentence under Article 58 of this Chapter, or unless when two or more convictions are
6 consolidated for judgment he imposes a prison term (i) that does not exceed the total of
7 the presumptive terms for each felony so consolidated, (ii) that does not exceed the
8 maximum term for the most serious felony so consolidated, and (iii) that is not shorter
9 than the presumptive term for the most serious felony so consolidated. In imposing a
10 prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may
11 consider any aggravating and mitigating factors that he finds are proved by the
12 preponderance of the evidence, and that are reasonably related to the purposes of
13 sentencing, whether or not such aggravating or mitigating factors are set forth herein,
14 but unless he imposes the term pursuant to a plea arrangement as to sentence under
15 Article 58 of this Chapter, or unless when two or more convictions are consolidated for
16 judgment he imposes a prison term (i) that does not exceed the total of the presumptive
17 terms for each felony so consolidated, (ii) that does not exceed the maximum term for
18 the most serious felony so consolidated, and (iii) that is not shorter than the presumptive
19 term for the most serious felony so consolidated, he must consider each of the following
20 aggravating and mitigating factors:

21 (1) Aggravating factors:

- 22 a. The defendant induced others to participate in the commission
23 of the offense or occupied a position of leadership or
24 dominance of other participants.
- 25 b. The offense was committed for the purpose of avoiding or
26 preventing a lawful arrest or effecting an escape from custody.
- 27 c. The defendant was hired or paid to commit the offense.
- 28 d. The offense was committed to disrupt or hinder the lawful
29 exercise of any governmental function or the enforcement of
30 laws.
- 31 e. The offense was committed against a present or former: law
32 enforcement officer, employee of the Department of Correction,
33 jailer, fireman, emergency medical technician, ambulance
34 attendant, justice or judge, clerk or assistant or deputy clerk of
35 court, magistrate, prosecutor, juror, or witness against the
36 defendant, while engaged in the performance of his official
37 duties or because of the exercise of his official duties.
- 38 f. The offense was especially heinous, atrocious, or cruel.
- 39 g. The defendant knowingly created a great risk of death to more
40 than one person by means of a weapon or device which would
41 normally be hazardous to the lives of more than one person.
- 42 h. The defendant held public office at the time of the offense and
43 the offense related to the conduct of the office.

- 1 i. The defendant was armed with or used a deadly weapon at the
2 time of the crime.
- 3 j. The victim was very young, or very old, or mentally or
4 physically infirm.
- 5 k. The defendant committed the offense while on pretrial release
6 on another felony charge.
- 7 l. The defendant involved a person under the age of 16 in the
8 commission of the crime.
- 9 m. The offense involved an attempted or actual taking of property
10 of great monetary value or damage causing great monetary loss,
11 or the offense involved an unusually large quantity of
12 contraband.
- 13 n. The defendant took advantage of a position of trust or
14 confidence to commit the offense.
- 15 o. The defendant has a prior conviction or convictions for criminal
16 offenses punishable by more than 60 days' confinement. Such
17 convictions include those occurring in North Carolina courts
18 and courts of other states, the District of Columbia, and the
19 United States, provided that any crime for which the defendant
20 was convicted in a jurisdiction other than North Carolina would
21 have been a crime if committed in this State. Such prior
22 convictions do not include any crime that is joinable, under G.S.
23 Chapter 15A, with the crime or crimes for which the defendant
24 is currently being sentenced.
- 25 p. The offense involved the sale or delivery of a controlled
26 substance to a minor.
- 27 q. The offense was committed because of the race, color, religion,
28 nationality, or country of origin of another person.

29 Evidence necessary to prove an element of the offense may not be used to prove any
30 factor in aggravation, and the same item of evidence may not be used to prove more
31 than one factor in aggravation.

32 The judge may not consider as an aggravating factor the fact that the defendant
33 exercised his right to a jury trial.

34 (2) Mitigating factors:

- 35 a. The defendant has no record of criminal convictions or a record
36 consisting solely of misdemeanors punishable by not more than
37 60 days' imprisonment.
- 38 b. The defendant committed the offense under duress, coercion,
39 threat, or compulsion which was insufficient to constitute a
40 defense but significantly reduced his culpability.
- 41 c. The defendant was a passive participant or played a minor role
42 in the commission of the offense.

- 1 d. The defendant was suffering from a mental or physical
2 condition that was insufficient to constitute a defense but
3 significantly reduced his culpability for the offense.
- 4 e. The defendant's immaturity or his limited mental capacity at the
5 time of commission of the offense significantly reduced his
6 culpability for the offense.
- 7 f. The defendant has made substantial or full restitution to the
8 victim.
- 9 g. The victim was more than 16 years of age and was a voluntary
10 participant in the defendant's conduct or consented to it.
- 11 h. The defendant aided in the apprehension of another felon or
12 testified truthfully on behalf of the prosecution in another
13 prosecution of a felony.
- 14 i. The defendant acted under strong provocation, or the
15 relationship between the defendant and the victim was
16 otherwise extenuating.
- 17 j. The defendant could not reasonably foresee that his conduct
18 would cause or threaten serious bodily harm or fear, or the
19 defendant exercised caution to avoid such consequences.
- 20 k. The defendant reasonably believed that his conduct was legal.
- 21 l. Prior to arrest or at an early stage of the criminal process, the
22 defendant voluntarily acknowledged wrongdoing in connection
23 with the offense to a law enforcement officer.
- 24 m. The defendant has been a person of good character or has had a
25 good reputation in the community in which he lives.
- 26 n. The defendant is a minor and has reliable supervision available.
- 27 o. The defendant has been honorably discharged from the United
28 States armed services."

29 Sec. 3. This act becomes effective October 1, 1991, and applies to offenses
30 occurring on or after that date.