

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 513

Short Title: Ethnic Intimidation.

(Public)

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Sponsors: Representatives Flaherty and Howard Hunter.

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Referred to: Judiciary III.

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April 1, 1991

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE MISDEMEANOR OFFENSE OF ETHNIC  
2 INTIMIDATION AND TO ADD ETHNIC ANIMOSITY AS AN  
3 AGGRAVATING FACTOR TO BE CONSIDERED IN FELONY SENTENCES.  
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5 The General Assembly of North Carolina enacts:

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

8 "**§ 14-401.14. Ethnic intimidation.**

9 If a person shall, because of race, religion, or ethnicity, injure another person, or  
10 damage or deface the property of another person, or threaten to do any such act, he shall  
11 be punished as a Class I felon."

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

13 "(a) If the sentencing judge imposes a prison term on a person convicted of a  
14 felony other than a Class A or Class B felony, he may suspend the sentence and place  
15 the convicted felon on probation as provided by Article 82 of this Chapter. If the  
16 convicted felon is under 21 years of age at the time of conviction and the sentencing  
17 judge elects to impose an active prison term, the judge must either sentence the felon as  
18 a committed youthful offender in accordance with Article 3B of Chapter 148 of the  
19 General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14,  
20 or make a "no benefit" finding as provided by G.S. 148-49.14 and impose a regular  
21 prison term. If the judge imposes a prison term, whether or not the term is suspended,  
22 and whether or not he sentences the convicted felon as a committed youthful offender,  
23 he must impose the presumptive term provided in this section unless, after consideration  
24 of aggravating or mitigating factors, or both, he decides to impose a longer or shorter

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

18 (1) Aggravating factors:

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

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

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

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

30 (2) Mitigating factors:

- 31 a. The defendant has no record of criminal convictions or a record  
32 consisting solely of misdemeanors punishable by not more than  
33 60 days' imprisonment.
- 34 b. The defendant committed the offense under duress, coercion,  
35 threat, or compulsion which was insufficient to constitute a  
36 defense but significantly reduced his culpability.
- 37 c. The defendant was a passive participant or played a minor role  
38 in the commission of the offense.
- 39 d. The defendant was suffering from a mental or physical  
40 condition that was insufficient to constitute a defense but  
41 significantly reduced his culpability for the offense.
- 42 e. The defendant's immaturity or his limited mental capacity at the  
43 time of commission of the offense significantly reduced his  
44 culpability for the offense.

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

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