

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 513  
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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

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE MISDEMEANOR OFFENSE OF ETHNIC  
3 INTIMIDATION AND TO ADD ETHNIC ANIMOSITY AS AN  
4 AGGRAVATING FACTOR TO BE CONSIDERED IN FELONY SENTENCES.

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 guilty of a misdemeanor punishable by imprisonment up to two years, or a fine or  
12 both."

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

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

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

20 (1) Aggravating factors:

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

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

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

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

32 (2) Mitigating factors:

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

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

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