

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 274
Committee Substitute Favorable 7/26/07

Short Title: Street Gang Prevention Act.

(Public)

Sponsors:

Referred to:

February 21, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION
3 ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Chapter 14 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 13A.

8 "North Carolina Street Gang Prevention Act.

9 **"§ 14-50.15. Short title.**

10 This Article shall be known and may be cited as the "North Carolina Street Gang
11 Prevention Act".

12 **"§ 14-50.16. Definitions.**

13 The following definitions apply in this Article:

14 (1) 'Criminal street gang' or 'street gang' means any ongoing organization,
15 association, or group of three or more persons, whether formal or
16 informal, having as one of its primary activities the commission of one
17 or more felony offenses, or delinquent acts that would be felonies if
18 committed by an adult, which may have a common name, common
19 identifying sign or symbol, and has three or more members
20 individually or collectively engaged in, or who have engaged in,
21 criminal street gang activity.

22 (2) 'Criminal street gang activity' means to commit, to attempt to commit,
23 or to solicit, coerce, or intimidate another person to commit an act or
24 acts, with the specific intent that such act or acts were intended or
25 committed for the purpose, or in furtherance, of the person's
26 involvement in a criminal street gang or street gang. An act or acts are
27 included if accompanied by the necessary mens rea or criminal intent,
28 and would be chargeable by indictment under the following laws of
29 this State:

- 1 a. Any offense under Article 5 of Chapter 90 of the General
2 Statutes (Controlled Substances Act).
3 b. Any offense under Chapter 14 of the General Statutes except
4 Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting
5 G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184,
6 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248,
7 14-313 thereof.

8 (3) 'Pattern of criminal street gang activity' means engaging in, and having
9 a conviction for, at least two prior incidents of criminal street gang
10 activity, as defined in subdivision (2) of this section, that have the
11 same or similar purposes, results, accomplices, victims, or methods of
12 commission or otherwise are interrelated by common characteristics
13 and are not isolated and unrelated incidents, provided that at least one
14 of these offenses occurred after December 1, 2007, and the last of the
15 offenses occurred within three years, excluding any periods of
16 imprisonment, of prior criminal street gang activity. Any offenses
17 committed by a defendant prior to indictment for an offense based
18 upon a pattern of street gang activity shall not be used as the basis for
19 any subsequent indictments for offenses involving a pattern of street
20 gang activity.

21 **§ 14-50.17. Participation in criminal street gang activity prohibited.**

22 (a) It is unlawful for any person employed by or associated with a criminal street
23 gang to conduct or participate in a pattern of criminal street gang activity.

24 (b) It is unlawful for any person to acquire or maintain, directly or indirectly,
25 through a pattern of criminal street gang activity or proceeds derived therefrom, any
26 interest in or control of any real or personal property of any nature, including money.

27 (c) It is unlawful for any person who acts as an organizer, supervisor, or in any
28 other position of management with regard to a criminal street gang to engage in, directly
29 or indirectly, or conspire to engage in, a pattern of criminal street gang activity.

30 (d) It is unlawful for any person to cause, encourage, solicit, or coerce another to
31 participate in criminal street gang activity.

32 (e) It is unlawful for any person to communicate, directly or indirectly, with
33 another any threat of injury or damage to the person or property of the other person or to
34 any associate or relative of the other person with the intent to deter the person from
35 assisting a member or associate of a criminal street gang to withdraw from such
36 criminal street gang.

37 (f) It is unlawful for any person to communicate, directly or indirectly, with
38 another any threat of injury or damage to the person or property of the other person or to
39 any associate or relative of the other person with the intent to punish or retaliate against
40 the person for having withdrawn from a criminal street gang.

41 (g) Any person who violates

42 (1) Subsection (c) of this section: or

1 (2) Subsection (d) of this section where the person who is caused,
2 encouraged, solicited, or coerced to participate in criminal street gang
3 activity is under 16 years old,
4 shall be guilty of a Class F felony. Any person who violates any other provision of this
5 section shall be guilty of a Class H felony.

6 (h) Any crime committed in violation of this section shall be considered a
7 separate offense.

8 **"§ 14-50.18. Enhanced offense for criminal gang activity.**

9 A person who is convicted of a misdemeanor offense that is committed for the
10 benefit of, at the direction of, or in association with, any criminal street gang, is guilty
11 of an offense that is one class higher than the offense committed. A Class A1
12 misdemeanor shall be enhanced to a Class I felony under this section.

13 **"§ 14-50.19. Reports of disposition; criminal street gang activity.**

14 When a defendant is found guilty of a criminal offense other than an offense under
15 G.S. 14-50.17 or G.S. 14-50.18, the presiding judge shall determine whether the offense
16 involved criminal street gang activity. If the judge so determines, then the judge shall
17 indicate on the form reflecting the judgment that the offense involved criminal street
18 gang activity. The clerk of court shall ensure that the official record of the defendant's
19 conviction includes a notation of the court's determination.

20 **"§ 14-50.20. Contraband, seizure, and forfeiture.**

21 (a) All property of every kind used or intended for use in the course of, derived
22 from, or realized through criminal street gang activity or a pattern of criminal street
23 gang activity is subject to the seizure and forfeiture provisions of G.S. 14-2.3.

24 (b) In any action under this section, the court may enter a restraining order in
25 connection with any interest that is subject to forfeiture.

26 (c) Innocent Activities. – The provisions of this section shall not apply to
27 property used for criminal street gang activity, where the owner or person who has legal
28 possession of the property does not have actual knowledge that the property is being
29 used for criminal street gang activity.

30 **"§ 14-50.21. Local ordinances not preempted by State law.**

31 Nothing in this Article shall prevent a local governing body from adopting and
32 enforcing ordinances relating to gangs and gang violence that are consistent with this
33 Article. Where local laws duplicate or supplement the provisions of this Article, this
34 Article shall be construed as providing alternative remedies and not as preempting the
35 field.

36 **"§ 14-50.22. Real property used by criminal street gangs declared a public**
37 **nuisance; abatement.**

38 (a) Public Nuisance. – Any real property that is erected, established, maintained,
39 owned, leased, or used by any criminal street gang for the purpose of conducting
40 criminal street gang activity shall constitute a public nuisance and may be abated as
41 provided by Article 1 of Chapter 19 of the General Statutes.

42 (b) Innocent Activities. – The provisions of this section shall not apply to real
43 property used for criminal street gang activity, where the owner or person who has legal

1 possession of the real property does not have actual knowledge that the real property is
2 being used for criminal street gang activity.

3 **"§ 14-50.23. Matters proved in criminal trial court.**

4 A conviction of an offense defined as criminal gang activity shall preclude the
5 defendant from contesting any factual matters determined in the criminal proceeding in
6 any subsequent civil action or proceeding based on the same conduct.

7 **"§ 14-50.24. Applicability to juveniles under the age of 16.**

8 The provisions of this Article shall not apply to juveniles under the age of 16.

9 **"§ 14-50.25. Conditional discharge and expunction of records for first offense.**

10 (a) A person who is convicted of a Class H felony under G.S. 14-50.17 or any
11 enhanced offense under G.S. 14-50.18, and who:

12 (1) Has not been previously convicted of any criminal offense; and

13 (2) Was age 16 or 17 at the time of the offense

14 may apply to the court for a deferral of proceedings without entry of judgment, and for
15 placement on supervised probation upon such reasonable terms and conditions as the
16 court may require. If the court, in its discretion, defers proceedings pursuant to this
17 section, it shall place the defendant on supervised probation for not less than one year,
18 in addition to any other conditions. Prior to taking any action to discharge and dismiss
19 under this section, the court shall make a finding that the defendant has no previous
20 criminal convictions.

21 (b) Upon fulfillment of the terms and conditions of the probation provided for in
22 subsection (a) of this section, the court shall discharge such person and dismiss the
23 proceedings against him. Discharge and dismissal under this section shall be without
24 court adjudication of guilt and shall not be deemed a conviction for purposes of this
25 section or for purposes of disqualifications or disabilities imposed by law upon
26 conviction of a crime. Discharge and dismissal under this section may occur only once
27 with respect to any person.

28 (c) Disposition of a case to determine discharge and dismissal under this section
29 at the district court division of the General Court of Justice shall be final for the purpose
30 of appeal.

31 (d) Upon violation of a term or condition of the probation provided for in
32 subsection (a) of this section, the court may enter an adjudication of guilt and proceed as
33 otherwise provided.

34 (e) Upon discharge and dismissal pursuant to subsection (b) of this section, the
35 person, if not over 17 years of age at the time of the offense, may apply for an order to
36 expunge the complete record of the proceedings resulting in the dismissal and
37 discharge, pursuant to the procedures and requirements set forth in G.S. 90-96(b), (c),
38 and (f).

39 (f) A person who files a petition for expunction of a criminal record under this
40 section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the
41 time the petition is filed. Fees collected under this subsection shall be deposited in the
42 General Fund. This subsection does not apply to petitions filed by an indigent.

1 (g) This section is supplemental and in addition to existing law and shall not be
2 construed so as to repeal any existing provision contained in the General Statutes of
3 North Carolina."

4 **SECTION 1.(b)** Chapter 14 of the General Statutes is amended by adding a
5 new section to read:

6 "**§ 14-34.9. Discharging a firearm from within an enclosure.**

7 Unless covered under some other provision of law providing greater punishment,
8 any person who willfully or wantonly discharges or attempts to discharge a firearm, as a
9 part of a pattern of criminal street gang activity, from within any building, structure,
10 motor vehicle, or other conveyance, erection, or enclosure toward a person or persons
11 not within that enclosure shall be punished as a Class E felon."

12 **SECTION 1.(c)** G.S. 14-2.3 reads as rewritten:

13 "**§ 14-2.3. Forfeiture of gain acquired through felonies.criminal activity.**

14 (a) Except as is otherwise provided in Article 3 of Chapter 31A, in the case of
15 any violation of Article 13A of Chapter 14, or a general statute constituting a felony
16 other than a nonwillful homicide, any money or other property or interest in property
17 acquired thereby shall be forfeited to the State of North Carolina, including any profits,
18 gain, remuneration, or compensation directly or indirectly collected by or accruing to
19 any felon.offender.

20 (b) An action to recover such property shall be brought by either a District
21 Attorney or the Attorney General pursuant to G.S. 1-532. The action must be brought
22 within three years from the date of the conviction for the felony.offense.

23 (c) Nothing in this section shall be construed to require forfeiture of any money
24 or property recovered by law-enforcement officers pursuant to the investigation of a
25 felony-an offense when the money or property is readily identifiable by the owner or
26 guardian of the property or is traceable to him."

27 **SECTION 2.** G.S. 15A-533 reads as rewritten:

28 "**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

29 (a) A defendant charged with any crime, whether capital or noncapital, who is
30 alleged to have committed this crime while still residing in or subsequent to his escape
31 or during an unauthorized absence from involuntary commitment in a mental health
32 facility designated or licensed by the Department of Health and Human Services, and
33 whose commitment is determined to be still valid by the judge or judicial officer
34 authorized to determine pretrial release to be valid, has no right to pretrial release. In
35 lieu of pretrial release, however, the individual shall be returned to the treatment facility
36 in which he was residing at the time of the alleged crime or from which he escaped or
37 absented himself for continuation of his treatment pending the additional proceedings
38 on the criminal offense.

39 (b) A defendant charged with a noncapital offense must have conditions of
40 pretrial release determined, in accordance with G.S. 15A-534.

41 (c) A judge may determine in his discretion whether a defendant charged with a
42 capital offense may be released before trial. If he determines release is warranted, the
43 judge must authorize release of the defendant in accordance with G.S. 15A-534.

1 (d) ~~Subject to rebuttal by the person, it shall be presumed~~ There shall be a
2 rebuttable presumption that no condition of release will reasonably assure the
3 appearance of the person as required and the safety of the community if a judicial
4 official finds the following:

- 5 (1) There is reasonable cause to believe that the person committed an
6 offense involving trafficking in a controlled substance;
7 (2) The drug trafficking offense was committed while the person was on
8 pretrial release for another offense; and
9 (3) The person has been previously convicted of a Class A through E
10 felony or an offense involving trafficking in a controlled substance and
11 not more than five years has elapsed since the date of conviction or the
12 person's release from prison for the offense, whichever is later.

13 (e) There shall be a rebuttable presumption that no condition of release will
14 reasonably assure the appearance of the person as required and the safety of the
15 community, if a judicial official finds the following:

- 16 (1) There is reasonable cause to believe that the person committed an
17 offense for the benefit of, at the direction of, or in association with,
18 any criminal street gang, as defined in G.S. 14-50.16;
19 (2) The offense described in subdivision (1) of this subsection was
20 committed while the person was on pretrial release for another offense;
21 and
22 (3) The person has been previously convicted of an offense described in
23 G.S. 14-50.17, and not more than five years has elapsed since the date
24 of conviction or the person's release for the offense, whichever is later.

25 ~~Such person~~ Persons who are considered for bond under the provisions of subsections
26 (d) and (e) of this section may only be released by a district or superior court judge upon
27 a finding that there is a reasonable assurance that the person will appear and release
28 does not pose an unreasonable risk of harm to the community."

29 **SECTION 3.** G.S. 15A-1340.16A reads as rewritten:

30 "**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1,**
31 **B2, C, D, or E felony and the defendant used, displayed, or threatened to**
32 **use or display a firearm or deadly weapon during the commission of the**
33 **felony.**

34 (a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

35 (c) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found
36 as provided in this section that: (i) the person committed the felony by using, displaying,
37 or threatening the use or display of a firearm or deadly weapon and (ii) the person
38 actually possessed the firearm or deadly weapon about his or her person, then the person
39 shall have the minimum term of imprisonment to which the person is sentenced for that
40 felony increased by 60 months. The maximum term of imprisonment shall be the
41 maximum term that corresponds to the minimum term after it is increased by 60
42 months, as specified in G.S. 15A-1340.17(e) and (e1).

43 (d) An indictment or information for the Class A, B1, B2, C, D, or E felony shall
44 allege in that indictment or information the facts set out in subsection (c) of this section.

1 The pleading is sufficient if it alleges that the defendant committed the felony by using,
2 displaying, or threatening the use or display of a firearm or deadly weapon and the
3 defendant actually possessed the firearm or deadly weapon about the defendant's person.
4 One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a
5 single trial.

6 (e) The State shall prove the issues set out in subsection (c) of this section
7 beyond a reasonable doubt during the same trial in which the defendant is tried for the
8 felony unless the defendant pleads guilty or no contest to the issues. If the defendant
9 pleads guilty or no contest to the felony but pleads not guilty to the issues set out in
10 subsection (c) of this section, then a jury shall be impaneled to determine the issues.

11 (f) Subsection (c) of this section does not apply if the evidence of the use,
12 display, or threatened use or display of the firearm or deadly weapon is needed to prove
13 an element of the felony or if the person is not sentenced to an active term of
14 imprisonment."

15 **SECTION 4.** There is appropriated to the Department of Crime Control and
16 Public Safety, Governor's Crime Commission, the sum of three million dollars
17 (\$3,000,000) for the 2007-2008 fiscal year to be used to provide grants for street gang
18 violence prevention, intervention, and suppression programs.

19 The Governor's Crime Commission shall develop the criteria for eligibility
20 for these funds. The criteria shall include a matching requirement of twenty-five percent
21 (25%), one-half of which may be in in-kind contributions, and presentation of a written
22 plan for the services to be provided by the funds. Funds shall be available to public and
23 private entities or agencies for juvenile or adult programs that meet the criteria
24 established by the Governor's Crime Commission.

25 The Governor's Crime Commission shall report to the Chairs of the House of
26 Representatives and Senate Appropriations Committees and the Chairs of the House of
27 Representatives and Senate Appropriations Subcommittees on Justice and Public Safety
28 by April 15, 2008, on this program. The report shall include all of the following:

- 29 (1) The grant award process.
- 30 (2) A description of each grant awarded.
- 31 (3) The performance criteria for evaluating grant programs.
- 32 (4) A list of State grants awarded in the 2007 grant cycle.

33 **SECTION 5.** Section 4 of this act becomes effective July 1, 2007. The
34 remainder of this act becomes effective December 1, 2007, and applies to offenses
35 committed on or after that date.