

February 20, 2007

H 274. STREET GANG PREVENTION ACT. Filed 2/20/07. *TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.* Adds new Article 13A (North Carolina Street Gang Prevention Act) to GS Chapter 14, amends GS 15A-533 (right to pretrial release in capital and noncapital cases), enacts new GS 15A-1340.16E (enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony), enacts new GS 14-34.9 (discharging a firearm from within an enclosure), and makes conforming changes

Criminal street gang and pattern of criminal gang activity. New GS 14-50.17 defines these terms. A *criminal street gang* or *street gang* is composed of three or more individuals, may be formal or informal, and engages in a pattern of criminal gang activity. Its existence may be established by evidence of a common name or common identifying signs or attire or distinguishing characteristics. *Pattern of criminal gang activity* means the commission, attempt or conspiracy to commit, or attempt to cause others to commit two criminal offenses (with certain offenses excepted), at least one of which was in the past three years.

Offenses and punishments. New GS 14-50.18 makes it a Class H felony to (1) participate in a criminal street gang through a pattern of criminal gang activity, (2) obtain or maintain through a pattern of criminal gang activity any interest or control in any real or personal property including money, and (3) encourage or coerce another person to participate or to threaten harm to anyone because a participant has withdrawn from a street gang or because someone has helped a participant withdraw. Punishment is increased by imprisonment for an additional 10 years for anyone committing any of these offenses and occupying a management position in the gang. New GS 14-50.19 provides that anyone who commits any other criminal offense and does so in association with a criminal street gang is guilty of an offense that is one class higher than the one committed. New GS 14-50.20 provides that the judge is to determine, when a defendant is found guilty of an offense, whether the offense was committed in association with a criminal street gang and, if so, to indicate that on the criminal judgment form. The clerk is to ensure that the conviction record shows this determination.

Property and contraband. New GS 14-50.21 provides that all property used in a criminal gang activity offense or derived from proceeds of the activity is contraband and no one has a property interest in it. The property is subject to a restraining order and the district attorney or Attorney General is to initiate a forfeiture proceeding within 60 days of seizure. New GS 14-50.23 provides that real property used in criminal gang activity constitutes a public nuisance and may be abated. If the property owner is not a member of the gang, then abatement may occur only if the owner has knowledge of the activity.

Local ordinances. New GS 14-50.22 provides that local ordinances dealing with gangs and gang violence that duplicate or supplement the act are not preempted and provide alternative remedies.

Civil actions. New GS 14-50.24 provides that a conviction for criminal gang activity precludes the defendant from contesting factual matters determined in the criminal proceeding in any subsequent civil proceeding based on the same conduct.

Applicability to juveniles. New GS 14-50.25 provides that the act does not apply to juveniles under the age of 12.

Discharging a firearm from within a vehicle or other enclosure. New GS 14-34.9 makes it a Class E felony to discharge or attempt to discharge a firearm as a part of a pattern of criminal gang activity from within any building or enclosure, including a vehicle, unless the offense is covered under some other provision of law that provides greater punishment.

Pretrial release. New GS 15A-533(e) creates a rebuttable presumption against pretrial release if there is reasonable cause to believe that the person in custody has committed a criminal gang activity offense while on pretrial release for another offense and has, within five years, been convicted of another criminal gang activity offense.

Extra sentence for firearm use. New GS 15A-1340.16E provides that if a person is convicted of a Class A, B1, B2, C, D, or E felony committed in association with street gang activity, the person's sentence is to be enhanced by a minimum of 60 months if the person possessed a firearm (even if the firearm is incapable of firing) during the felony, by 84 months if the person

displayed the firearm, and by 120 months if the person discharged the firearm. The firearm components must be proved beyond a reasonable doubt; a defendant may plead guilty to the underlying offenses and not guilty to the firearm components, in which case the jury determines the firearm components. Directs that the court is not to suspend any sentence imposed under the section or place a person sentenced under the section on probation, and that the enhanced sentences imposed are to be consecutive to all other sentences imposed.

Appropriations. Appropriates \$150,000 to the Department of Justice for software to create a statewide criminal street gang member database and appropriates \$10 million for 2007-08 from the General Fund to the Governor's Crime Commission (GCC) to provide grants for street gang violence prevention programs. The GCC is to report on the use of the funds by April 1, 2008.

The appropriations provisions are effective July 1, 2007; remainder is effective December 1, 2007, and applies to offenses committed on or after that date.

Intro. by Michaux.

GS 14, 15A, APPROP

July 26, 2007

H 274. STREET GANG PREVENTION ACT. Filed 2/20/07. House committee substitute makes the following changes to 1st edition. Deletes legislative findings and intent and renumbers the remaining statutes in proposed Article 13A of GS Chapter 14. Also makes technical and conforming changes throughout the article.

Modifies proposed GS 14-50.16 (definitions) as follows. Reorganizes the definition of *criminal street gang* and provides that a gang has as one of its primary activities the commission of one or more felony offenses (or delinquent acts that would be felonies). Adds a definition of *criminal street gang activity*, defined as acts committed with the specific intent to further the person's involvement in the street gang. Includes in the new definition the list of offenses formerly included in the definition of *pattern of criminal street gang activity*. Changes the term *pattern of criminal gang activity* to *pattern of criminal street gang activity* and modifies the definition by (1) changing from December 1, 2005, to December 1, 2007, the earliest date for the occurrence of at least one of the offenses and (2) providing that any offenses committed by a defendant before an indictment for an offense that is based on a pattern of street gang activity may not be used as a basis for subsequent indictments involving a pattern of street gang activity.

Modifies proposed GS 14-50.17(g) to establish the following levels of punishment: A Class F felony for violating subsection (c) (organizing or managing) or for violating subsection (d) (soliciting or coercing) with respect to a person under 16; a Class H felony for any other violation. Modifies proposed GS 14-50.18 (enhanced offenses) to (1) limit it to misdemeanors, (2) delete a qualifier that it does not apply if a different classification is expressly stated, and (3) remove the provision stating that the statute does not apply to offenses in GS 14-50.17.

Modifies proposed GS 14-50.19 (reports of disposition) to provide that the presiding judge is to determine whether the offense involved criminal street gang activity if the defendant is found guilty of a *criminal* offense other than an offense under GS 14-50.17 (participation in criminal street gang activity) or GS 14-50.18 (enhanced offense for criminal gang activity).

Modifies proposed GS 14-50.20 (contraband) to provide that property used in the course of or derived from criminal street gang activity or a pattern of criminal street gang activity is subject to the seizure and forfeiture provisions of GS 14-2.3. Deletes provision requiring the district attorney or the Attorney General to initiate a forfeiture proceeding within 60 days of the seizure of contraband under the statute. Directs that the statute does not apply to a person having legal possession of the property and no actual knowledge that the property is being used for criminal gang activity. Modifies GS 14-50.22 (public nuisance) to provide that provisions of the statute regarding abatement of real property used by criminal street gangs do not apply when the owner or person having legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

Modifies proposed new GS 14-50.24 to provide that it does not apply to juveniles under age 16 (was, 12). Enacts proposed new GS 14-50.25 to provide for the conditional discharge and expunction of records for the following first offenses committed by persons age 16 or 17: a Class H felony under proposed GS 14-50.17 or an enhanced misdemeanor under proposed GS

14-50.18. Provides that the statute is supplemental and does not repeal any existing provision of law contained in the General Statutes.

Amends GS 14-2.3 to include violations of proposed Article 13A of GS Chapter 14 under the provisions regarding the forfeiture of gain acquired through *criminal activity* (was, felonies). Deletes proposed amendment to GS 15A-1340.16(d) (aggravating factors). Deletes proposed new GS 15A-1340.16E (regarding enhanced sentencing for certain felonies committed relating to criminal street gang activity) and deletes proposed conforming changes. Instead amends GS 15A-1340.16A(c) (enhanced sentence for certain felonies involving a firearm) to expand the provision to also include deadly weapons.

Deletes the proposed appropriations for 2007-08 of \$150,000 to the Department of Justice and \$10 million to the Department of Juvenile Justice and Delinquency Prevention. Instead appropriates \$3 million to the Department of Crime Control and Public Safety, Governor's Crime Commission, for grants for street gang violence prevention, intervention, and suppression programs. Requires the commission to develop criteria for eligibility for the grants and report to various legislative officials by April 15, 2008. Makes technical and conforming changes.

July 30, 2007

H 274. STREET GANG PREVENTION ACT. Filed 2/20/07. House committee substitute makes the following changes to 2nd edition. Deletes the \$3 million appropriation to the Department of Crime Control and Public Safety and makes conforming changes.

July 31, 2007

H 274. STREET GANG PREVENTION ACT. Filed 2/20/07. House amendment makes the following changes to 3rd edition. Deletes proposed GS 14-50.25(f), which would have imposed a \$65 fee for filing a petition for expunction of a record for (1) a Class H felony for participating in criminal street gang activity or (2) a misdemeanor enhanced because of its relationship to a criminal street gang.

May 20, 2008

H 274. STREET GANG/SUPPRESSION (NEW). Filed 2/20/07. Senate committee substitute makes the following changes to 4th edition.

Changes the title to *AN ACT TO CREATE ADDITIONAL OFFENSES, PENALTIES, AND CRIMINAL PROCEDURE FOR PERSONS INVOLVED IN STREET GANG ACTIVITY AND TO BE ENTITLED THE "NORTH CAROLINA STREET GANG SUPPRESSION ACT."*

Amends the short title of proposed new GS Chapter 14, Article 13A, to "North Carolina Street Gang Suppression Act" (was, North Carolina Street Gang Prevention Act).

Makes organizational, structural, and substantive changes to the act.

Reorganizes proposed GS 14-50.16, incorporating language regarding unlawful patterns of criminal street gang activity that were previously codified in proposed GS 14.50.17 and amends catchline to *Pattern of criminal street gang activity* (was, Definitions), to more accurately reflect the reorganization.

Deletes proposed statute regarding enhanced offense for criminal gang activity and deletes the statute that made the act inapplicable to juveniles under the age of sixteen. Also deletes statute allowing a conditional discharge and expunction of records for a first offense.

Reorganizes proposed GS 14-50.17, subsections (c) through (g) and rewrites their content in separate statutory provisions GS 14-50.17 through GS 14-50.20. Provides that offenses in violation of GS 14-50.16 through GS 15-50.20 are considered separate offenses. Provides conforming catchlines and renumbers additional proposed statutes in the act accordingly.

Eliminates the requirement that the Governor's Crime Commission develop criteria for eligibility for funds appropriated, the reporting requirements by the Commission, and the effective date for the funding provisions. Instead provides that the act becomes effective only if prior to December 1, 2008, the General Assembly appropriates funds to implement it by specifically referencing this act by bill number, title, or Session Law number.

Effective December 1, 2008, and applies to offenses committed on or after that date.

July 14, 2008

H 274. STREET GANG/SUPPRESSION. Filed 2/20/07. Conference report recommends the following changes to 5th edition to reconcile matters in controversy. Amends proposed GS 14-50.16(b) to reorganize the definition of *street gang* by separating the elements of whether there are three or more members engaged in criminal street gang activity from whether the street gang has a common name, common identifying sign, or symbol.

Amends proposed GS 14-50.22 by clarifying that an enhanced offense related to criminal gang activity applies to a convicted person *15 years of age or older*. Makes a technical change to proposed GS 14-50.25.

Enacts a new GS 14-50.28 to provide that, except for GS 14-50.22, GS 14-50.29, and GS 14-50.30, the provisions of new Article 13A do not apply to juveniles under 16.

Enacts a new GS 14-50.29 to provide that if a person under 18 who has not been previously convicted of a felony or misdemeanor other than a traffic violation pleads guilty to or is guilty of (1) a Class H felony under this Article or (2) an enhanced offense under GS 14-50.22, the court may, without entering the guilty judgment and with consent of the defendant, defer proceedings and place the defendant on probation with reasonable conditions. Sets forth requirements related to probation, discharge, and dismissal. Enacts a new GS 14-50.30 to provide for procedures related to petition by those defendants for the expunction of the offense from the criminal record. Sets forth the required content of the petition related to the petitioner's good conduct during and after the period of probation.

Makes a technical change to proposed revised GS 15A-533.

Deletes a provision stating that the act will only be effective if the General Assembly specifically appropriates funds to implement it prior to December 1, 2008.

August 20, 2008

SL 2008-214 (H 274). STREET GANG/SUPPRESSION. AN ACT TO CREATE ADDITIONAL OFFENSES, PENALTIES, AND CRIMINAL PROCEDURE FOR PERSONS INVOLVED IN STREET GANG ACTIVITY AND TO BE ENTITLED THE "NORTH CAROLINA STREET GANG SUPPRESSION ACT." Summarized in *Daily Bulletin* 2/20/07, 7/26/07, 7/30/07, 7/31/07, 5/20/08, and 7/14/08. Enacted August 15, 2008. Effective December 1, 2008.