

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1358  
Judiciary I (Civil) Committee Substitute Adopted 7/10/07

Short Title: Street Gang Prevention Act.

(Public)

Sponsors:

Referred to:

March 26, 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 has 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, 38, 40, 43, 46, 47, 59 thereof; and further  
5           excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183,  
6           14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247,  
7           14-248, 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 gang activity.

24           (b)   It is unlawful for any person to acquire or maintain, directly or indirectly,  
25           through a pattern of criminal gang activity or proceeds derived therefrom, any interest in  
26           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 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 caused, encouraged,  
2           solicited, or coerced to participate in criminal street gang activity is  
3           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 an offense under G.S. 14-50.17 or  
11 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), the court may enter an adjudication of guilt and proceed as otherwise  
33 provided.

34 (e) Upon discharge and dismissal pursuant to subsection (b) of this section, the  
35 person may apply for an order to expunge the complete record of the proceedings  
36 resulting in the dismissal and discharge, pursuant to the procedures and requirements set  
37 forth in G.S. 90-96(b), (c), and (f).

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

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

1           **SECTION 1.(b)** G.S. 14-34.1(b) reads as rewritten:

2           "(b) A person who willfully or wantonly discharges a weapon described in  
3 subsection (a) of this section from a vehicle towards a person, or into an occupied  
4 dwelling or into any occupied vehicle, aircraft, watercraft, or other conveyance that is in  
5 operation is guilty of a Class D felony."

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

7           "**§ 14-2.3. Forfeiture of gain acquired through felonies.**criminal activity.

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

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

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

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

22           "**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

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

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

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

38           ~~Subject to rebuttal by the person, it shall be presumed~~There shall be a  
39 rebuttable presumption that no condition of release will reasonably assure the  
40 appearance of the person as required and the safety of the community if a judicial  
41 official finds the following:

42           (1) There is reasonable cause to believe that the person committed an  
43 offense involving trafficking in a controlled substance;

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

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

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

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

23 **SECTION 3.** There is appropriated to the Department of Crime Control and  
24 Public Safety, Governor's Crime Commission, the sum of three million dollars  
25 (\$3,000,000) for the 2007-2008 fiscal year to be used to provide grants for street gang  
26 violence prevention, intervention, and suppression programs.

27 The Governor's Crime Commission shall develop the criteria for eligibility  
28 for these funds. The criteria shall include a matching requirement of twenty-five percent  
29 (25%), one-half of which may be in in-kind contributions, and presentation of a written  
30 plan for the services to be provided by the funds. Funds shall be available to public and  
31 private entities or agencies for juvenile or adult programs that meet the criteria  
32 established by the Governor's Crime Commission.

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

- 37 (1) The grant award process.  
38 (2) A description of each grant awarded.  
39 (3) The performance criteria for evaluating grant programs.  
40 (4) A list of State grants awarded in the 2007 grant cycle.

41 **SECTION 4.** Section 3 of this act becomes effective July 1, 2007. This  
42 section of the act is effective when it becomes law. The remainder of this act becomes  
43 effective December 1, 2007, and applies to offenses committed on or after that date.