

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 733*
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Short Title: Street Gang Prevention Act. (Public)

Sponsors: Senators Graham; Berger of Franklin, Bingham, Cowell, Dalton, Dannelly, Dorsett, Holloman, Hoyle, Kinnaird, Lucas, Malone, Rand, Swindell, and Weinstein.

Referred to: Judiciary II.

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON STREET GANG PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13A.

"North Carolina Street Gang Prevention Act.

"§ 14-50.15. Short title.

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

"§ 14-50.16. Legislative findings and intent.

(a) The General Assembly finds and declares that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this Article to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The General Assembly recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly, however, further finds that the State of North Carolina is in a state of crisis that has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected.

1 (c) The General Assembly finds that there are criminal street gangs operating in
2 North Carolina and that the number of gang-related murders is increasing. It is the intent
3 of the General Assembly in enacting this Article to seek the eradication of criminal
4 activity by street gangs by focusing upon patterns of criminal gang activity and upon the
5 organized nature of street gangs which together are the chief source of terror created by
6 street gangs.

7 (d) The General Assembly further finds that an effective means of punishing and
8 detering the criminal activities of street gangs is through forfeiture of the profits,
9 proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

10 **"§ 14-50.17. Definitions.**

11 The following definitions apply in this Article:

12 (1) "Criminal street gang" or "street gang" means any ongoing
13 organization, association, or group of three or more persons, whether
14 formal or informal, which engages in a pattern of criminal gang
15 activity as defined in subdivision (2) of this section. The existence of
16 the organization, association, or group of individuals associated in fact
17 may be established by evidence of a common name or common
18 identifying signs, symbols, tattoos, graffiti, or attire or other
19 distinguishing characteristics.

20 (2) "Pattern of criminal gang activity" means the commission, attempted
21 commission, conspiracy to commit, or solicitation, coercion, or
22 intimidation of another person to commit at least two of the following
23 offenses, provided that at least one of these offenses occurred after
24 December 1, 2005, and the last of the offenses occurred within three
25 years, excluding any periods of imprisonment, of prior criminal gang
26 activity:

27 a. Any offense under Article 5 of Chapter 90 of the General
28 Statutes (Controlled Substances Act).

29 b. Any offense under Chapter 14 of the General Statutes except
30 Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further
31 excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183,
32 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247,
33 14-248, 14-313 thereof.

34 **"§ 14-50.18. Participation in criminal street gang activity prohibited.**

35 (a) It is unlawful for any person employed by or associated with a criminal street
36 gang to conduct or participate in the criminal street gang through a pattern of criminal
37 gang activity.

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

41 (c) It is unlawful for any person who occupies a position of organizer,
42 supervisory position, or any other position of management with regard to a criminal
43 street gang to engage in, directly or indirectly, or conspire to engage in, a pattern of
44 criminal gang activity.

1 (d) It is unlawful for any person to cause, encourage, solicit, or coerce another to
2 participate in a criminal street gang.

3 (e) It is unlawful for any person to communicate, directly or indirectly, with
4 another any threat of injury or damage to the person or property of the other person or to
5 any associate or relative of the other person with the intent to deter the person from
6 assisting a member or associate of a criminal street gang to withdraw from such
7 criminal street gang.

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

12 (g) Any person who violates this section shall be punished as follows:

13 (1) A person who violates subsection (a) or (b) of this section shall, in
14 addition to any other penalty imposed by law, be punished as a Class E
15 felon.

16 (2) A person who violates subsection (a), (b), (d), (e), or (f) of this section
17 may, if the person also violates subsection (c) of this section in the
18 same course of conduct, in addition to any other penalty provided by
19 law, be punished by imprisonment for an additional 10 years which
20 shall be served consecutively to any other sentence imposed on the
21 person by law.

22 (3) A person who violates subsection (d), (e), or (f) of this section shall, in
23 addition to any other penalty provided by law, be punished as a Class
24 G felon.

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

27 **"§ 14-50.19. Enhanced offense for criminal gang activity.**

28 Unless a different classification is expressly stated, a person who is convicted of an
29 offense that is committed for the benefit of, at the direction of, or in association with,
30 any criminal street gang, is guilty of an offense that is one class higher than the offense
31 committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this
32 section.

33 This section does not apply to the offenses set forth in G.S. 14-50.18.

34 **"§ 14-50.20. Reports of disposition; criminal street gang activity.**

35 When a defendant is found guilty of an offense, the presiding judge shall determine
36 whether the offense was committed for the benefit of, at the direction of, or in
37 association with, any criminal street gang. If the judge determines that the offense so
38 qualifies, then the judge shall indicate on the form reflecting the judgment that the
39 offense involved criminal street gang activity. The clerk of court shall ensure that the
40 official record of the defendant's conviction includes the court's determination.

41 **"§ 14-50.21. Contraband, seizure, and forfeiture.**

42 (a) All of the following are declared to be contraband, and no person shall have a
43 property interest in them:

(1) All property that is directly or indirectly used or intended for use in any manner to facilitate a violation of this Article.

(2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this Article.

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

(c) Within 60 days of the date of the seizure of contraband pursuant to this section, the district attorney or the Attorney General shall initiate a forfeiture proceeding as provided in G.S. 14-2.3.

"§ 14-50.22. Local ordinances not preempted by State law.

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

"§ 14-50.23. Real property used by criminal street gangs declared a public nuisance; abatement; persons injured by gangs entitled to treble damages.

Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes. If the property is owned by a person who is not a member of the criminal street gang, this section shall apply only if the person has knowledge of the criminal gang activity.

"§ 14-50.24. Matters proved in criminal trial court.

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

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

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

Unless covered under some other provision of law providing greater punishment, any person who willfully or wantonly discharges or attempts to discharge a firearm from within any building, structure, motor vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. G.S. 15A-533 reads as rewritten:

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

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In

1 lieu of pretrial release, however, the individual shall be returned to the treatment facility
2 in which he was residing at the time of the alleged crime or from which he escaped or
3 absented himself for continuation of his treatment pending the additional proceedings
4 on the criminal offense.

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

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

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

- 14 (1) There is reasonable cause to believe that the person committed an
15 offense involving trafficking in a controlled substance;
- 16 (2) The drug trafficking offense was committed while the person was on
17 pretrial release for another offense; and
- 18 (3) The person has been previously convicted of a Class A through E
19 felony or an offense involving trafficking in a controlled substance and
20 not more than five years has elapsed since the date of conviction or the
21 person's release from prison for the offense, whichever is later.

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

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

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

38 **SECTION 4.** G.S. 15A-1340.16(d) reads as rewritten:

39 "(d) Aggravating Factors. – The following are aggravating factors:

- 40 (1) The defendant induced others to participate in the commission of the
41 offense or occupied a position of leadership or dominance of other
42 participants.
- 43 (2) The defendant joined with more than one other person in committing
44 the offense and was not charged with committing a conspiracy.

- 1 (2a) The offense was committed for the benefit of, or at the direction of,
2 any criminal street gang, with the specific intent to promote, further, or
3 assist in any criminal conduct by gang members, and the defendant
4 was not charged with committing a conspiracy. A "criminal street
5 gang" means any ongoing organization, association, or group of three
6 or more persons, whether formal or informal, having as one of its
7 primary activities the commission of felony or violent misdemeanor
8 offenses, or delinquent acts that would be felonies or violent
9 misdemeanors if committed by an adult, and having a common name
10 or common identifying sign, colors, or symbols.
- 11 (3) The offense was committed for the purpose of avoiding or preventing a
12 lawful arrest or effecting an escape from custody.
- 13 (4) The defendant was hired or paid to commit the offense.
- 14 (5) The offense was committed to disrupt or hinder the lawful exercise of
15 any governmental function or the enforcement of laws.
- 16 (6) The offense was committed against or proximately caused serious
17 injury to a present or former law enforcement officer, employee of the
18 Department of Correction, jailer, fireman, emergency medical
19 technician, ambulance attendant, justice or judge, clerk or assistant or
20 deputy clerk of court, magistrate, prosecutor, juror, or witness against
21 the defendant, while engaged in the performance of that person's
22 official duties or because of the exercise of that person's official duties.
- 23 (7) The offense was especially heinous, atrocious, or cruel.
- 24 (8) The defendant knowingly created a great risk of death to more than
25 one person by means of a weapon or device which would normally be
26 hazardous to the lives of more than one person.
- 27 (9) The defendant held public office at the time of the offense and the
28 offense related to the conduct of the office.
- 29 (10) The defendant was armed with or used a deadly weapon at the time of
30 the crime.
- 31 (11) The victim was very young, or very old, or mentally or physically
32 infirm, or handicapped.
- 33 (12) The defendant committed the offense while on pretrial release on
34 another charge.
- 35 (13) The defendant involved a person under the age of 16 in the
36 commission of the crime.
- 37 (14) The offense involved an attempted or actual taking of property of great
38 monetary value or damage causing great monetary loss, or the offense
39 involved an unusually large quantity of contraband.
- 40 (15) The defendant took advantage of a position of trust or confidence,
41 including a domestic relationship, to commit the offense.
- 42 (16) The offense involved the sale or delivery of a controlled substance to a
43 minor.

- 1 (16a) The offense is the manufacture of methamphetamine and was
2 committed where a person under the age of 18 lives, was present, or
3 was otherwise endangered by exposure to the drug, its ingredients, its
4 by-products, or its waste.
- 5 (17) The offense for which the defendant stands convicted was committed
6 against a victim because of the victim's race, color, religion,
7 nationality, or country of origin.
- 8 (18) The defendant does not support the defendant's family.
- 9 (18a) The defendant has previously been adjudicated delinquent for an
10 offense that would be a Class A, B1, B2, C, D, or E felony if
11 committed by an adult.
- 12 (19) The serious injury inflicted upon the victim is permanent and
13 debilitating.
- 14 (20) Any other aggravating factor reasonably related to the purposes of
15 sentencing.

16 Evidence necessary to prove an element of the offense shall not be used to prove any
17 factor in aggravation, and the same item of evidence shall not be used to prove more
18 than one factor in aggravation. Evidence necessary to establish that an enhanced
19 sentence is required under ~~G.S. 15A-1340.16~~ G.S. 15A-1340.16A,
20 G.S. 15A-1340.16B, or G.S. 14-50.19 may not be used to prove any factor in
21 aggravation.

22 The judge shall not consider as an aggravating factor the fact that the defendant
23 exercised the right to a jury trial."

24 **SECTION 5.** Chapter 15A of the General Statutes is amended by adding a
25 new section to read:

26 **"§ 15A-1340.16B. Enhanced sentence if defendant is convicted of a Class A, B1,**
27 **B2, C, D, or E felony that was committed for the benefit of, at the**
28 **direction of, or in association with, any criminal street gang, and the**
29 **defendant possessed, displayed, or discharged a firearm during the**
30 **commission of the felony.**

31 (a) Notwithstanding G.S. 15A-1340.16A, a person who is convicted of a Class A,
32 B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in
33 association with, any criminal street gang as defined in G.S. 14-50.17, and who
34 possessed, displayed, or discharged a firearm during the commission of the felony shall
35 be punished pursuant to one of the following subdivisions:

36 (1) If the person possessed a firearm during the commission of the felony,
37 the person shall, in addition to the punishment for the underlying
38 felony, be sentenced to a minimum term of imprisonment for 60
39 months.

40 (2) If the person displayed a firearm during the commission of the felony,
41 the person shall, in addition to the punishment for the underlying
42 felony, be sentenced to a minimum term of imprisonment for 84
43 months.

1 (3) If the person discharged a firearm during the commission of the
2 felony, the person shall, in addition to the punishment for the
3 underlying felony, be sentenced to a minimum term of imprisonment
4 for 120 months.

5 (b) An indictment or information for the Class A, B1, B2, C, D, or E felony shall
6 allege in that indictment or information or in a separate indictment or information the
7 facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that
8 the defendant committed the felony by possessing, displaying, or discharging the
9 firearm. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are
10 tried at a single trial.

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

16 (d) The enhanced punishment provided by this section for the acts of possessing
17 or displaying a firearm applies even if the firearm is incapable of firing.

18 (e) The court shall not suspend any sentence imposed under this section and shall
19 not place a person sentenced under this section on probation for the sentence imposed
20 under this section. Sentences imposed pursuant to this section shall be consecutive to all
21 other sentences imposed and shall begin at the expiration of any other sentence being
22 served by the defendant."

23 **SECTION 6.** The Revisor of Statutes shall recodify the existing
24 G.S. 15A-1340.16B and subsequent statutes accordingly.

25 **SECTION 7.** G.S. 15A-1340.16A(c) reads as rewritten:

26 "(c) ~~If~~ Except as provided in G.S. 15A-1340.16B, if a person is convicted of a
27 Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the
28 person committed the felony by using, displaying, or threatening the use or display of a
29 firearm and (ii) the person actually possessed the firearm about his or her person, then
30 the person shall have the minimum term of imprisonment to which the person is
31 sentenced for that felony increased by 60 months. The maximum term of imprisonment
32 shall be the maximum term that corresponds to the minimum term after it is increased
33 by 60 months, as specified in G.S. 15A-1340.17(e) and (e1)."

34 **SECTION 8.** There is appropriated to the State Bureau of Investigation the
35 amount of one hundred fifty thousand dollars (\$150,000) to create a Statewide criminal
36 street gang member database.

37 **SECTION 9.** From funds appropriated to the Governor's Crime
38 Commission, the sum of two million dollars (\$2,000,000) for the 2005-2006 fiscal year
39 to be used to provide grants for street gang violence prevention and intervention
40 programs.

41 The Governor's Crime Commission shall develop the criteria for eligibility
42 for these funds. The criteria shall include a matching requirement of twenty-five percent
43 (25%), one-half of which may be in in-kind contributions, and presentation of a written
44 plan for the services to be provided by the funds. Funds shall be available to public and

1 private entities or agencies for juvenile or adult programs that meet the criteria
2 established by the Governor's Crime Commission.

3 The Governor's Crime Commission shall report on the uses of these funds no
4 later than April 1, 2006, to the House of Representatives Appropriations Subcommittee
5 on Justice and Public Safety, the Senate Appropriations Subcommittee on Justice and
6 Public Safety, and the Fiscal Research Division.

7 **SECTION 10.** Sections 8 and 9 of this act become effective July 1, 2005.
8 The remainder of this act becomes effective December 1, 2005, and applies to offenses
9 committed on or after that date.