

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

HOUSE BILL 274
RATIFIED BILL

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."

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-2.3 reads as rewritten:

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

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

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

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

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, as a part of a pattern of criminal street gang activity, from within any building, structure, motor vehicle, or other conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13A.

"North Carolina Street Gang Suppression Act.

"§ 14-50.15. Short title.

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

"§ 14-50.16. Pattern of criminal street gang activity.

(a) It is unlawful for any person employed by or associated with a criminal street gang to do either of the following:

(1) To conduct or participate in a pattern of criminal street gang activity.

(2) To acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity.

A violation of this section is a Class H felony, except that a person who violates subdivision (a)(1) of this section, and is an organizer, supervisor, or acts in any other

position of management with regard to the criminal street gang, shall be guilty of a Class F felony.

(b) As used in this Article, 'criminal street gang' or 'street gang' means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:

- (1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult;
- (2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and
- (3) May have a common name, common identifying sign or symbol.

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

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

(d) As used in this Article, 'pattern of criminal street gang activity' means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

"§ 14-50.17. Soliciting; encouraging participation.

(a) It is unlawful for any person to cause, encourage, solicit, or coerce a person 16 years of age or older to participate in criminal street gang activity.

(b) A violation of this section is a Class H felony.

"§ 14-50.18. Soliciting; encouraging participation; minor.

(a) It is unlawful for any person to cause, encourage, solicit, or coerce a person under 16 years of age to participate in criminal street gang activity.

(b) A violation of this section is a Class F felony.

(c) Nothing in this section shall preclude a person who commits a violation of this section from criminal culpability for the underlying offense committed by the minor under any other provision of law.

"§ 14-50.19. Threats to deter from gang withdrawal.

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal street gang.

(b) A violation of this section is a Class H felony.

"§ 14-50.20. Threats of punishment or retaliation.

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal street gang.

(b) A violation of this section is a Class H felony.

"§ 14-50.21. Separate offense.

Any offense committed in violation of G.S. 14-50.16 through G.S. 14-50.20 shall be considered a separate offense.

"§ 14-50.22. Enhanced offense for criminal gang activity.

A person age 15 or older who is convicted of a misdemeanor offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony under this section.

"§ 14-50.23. Contraband, seizure, and forfeiture.

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

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

"§ 14-50.24. Real property used by criminal street gangs declared a public nuisance; abatement.

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

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

"§ 14-50.25. Reports of disposition; criminal street gang activity.

When a defendant is found guilty of a criminal offense, other than an offense under G.S. 14-50.16 through G.S. 14-50.20, the presiding judge shall determine whether the offense involved criminal street gang activity. If the judge so determines, then the judge shall indicate on the form reflecting the judgment that the offense involved criminal street gang activity. The clerk of court shall ensure that the official record of the defendant's conviction includes a notation of the court's determination.

"§ 14-50.26. 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.

"§ 14-50.27. 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.

"§ 14-50.28. Applicability to juveniles under the age of 16.

Except as provided in G.S. 14-50.22, 14-50.29, and 14-50.30, the provisions of this Article shall not apply to juveniles under the age of 16.

"§ 14-50.29. Conditional discharge for first offenders under the age of 18.

(a) Whenever any person who has not yet attained the age of 18 years, and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require.

(b) If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section, the court shall make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the terms and conditions of the probation provided for in this section, the court shall discharge the defendant and dismiss the proceedings against the defendant.

(c) Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or condition of the probation provided for in this section, the court may enter an adjudication of guilt and proceed as otherwise provided.

(d) Upon discharge and dismissal pursuant to this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in G.S. 14-50.30(a). If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person had not yet attained 18 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.

(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

"§ 14-50.30. Expunction of records.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

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

SECTION 4. G.S. 15A-533 reads as rewritten:

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

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

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

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

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

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

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

SECTION 5. G.S. 15A-1340.16A reads as rewritten:

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

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

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

(d) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

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

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

SECTION 6. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2008.

Beverly E. Perdue
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2008