

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

2

HOUSE BILL 732
Committee Substitute Favorable 4/15/03

Short Title: Street Gang Terrorism Prevention Act.

(Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA STREET GANG TERRORISM
AND PREVENTION ACT OF 2003.

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 and Terrorism Prevention Act.

"§ 14-50.15. Short title.

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

(c) The General Assembly finds that there are criminal street gangs operating in
North Carolina and that the number of gang-related murders is increasing. It is the intent
of the General Assembly in enacting this Article to seek the eradication of criminal

1 activity by street gangs by focusing upon patterns of criminal gang activity and upon the
2 organized nature of street gangs which together are the chief source of terror created by
3 street gangs.

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

7 **"§ 14-50.17. Definitions.**

8 The following definitions apply in this Article:

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

17 (2) "Pattern of criminal gang activity" means the commission, attempted
18 commission, conspiracy to commit, or solicitation, coercion, or
19 intimidation of another person to commit at least two of the following
20 offenses, provided that at least one of these offenses occurred after
21 December 1, 2003, and the last of the offenses occurred within three
22 years, excluding any periods of imprisonment, of prior criminal gang
23 activity:

24 a. Any offense under G.S. 75D-3.

25 b. Any offense under G.S. 14-277.3 (Stalking).

26 c. Any offense under Article 7A of Chapter 14 of the General
27 Statutes (Rape or Other Sex Offenses).

28 d. Any offense under G.S. 14-239 (Allowing prisoners to escape;
29 punishment), G.S. 148-45 (Escaping or attempting escape from
30 State prison system; failure of conditionally and temporarily
31 released prisoners and certain youthful offenders to return to
32 custody of Department of Correction), or Article 33 of Chapter
33 14 of the General Statutes (Prison Breach and Prisoners).

34 e. Any offense under Article 35 (Offenses Against the Public
35 Peace), 52A (Sale of Weapons in Certain Counties), 54A (The
36 Felony Firearms Act), or 54B (Concealed Handgun Permit) of
37 Chapter 14 of the General Statutes.

38 f. Any offense under G.S. 14-316.1 (Contributing to delinquency
39 and neglect by parents and others).

40 **"§ 14-50.18. Participation in criminal street gang activity prohibited.**

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

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

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

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

10 (e) It is unlawful for any person to communicate, directly or indirectly, with
11 another any threat of injury or damage to the person or property of the other person or to
12 any associate or relative of the other person with the intent to deter the person from
13 assisting a member or associate of a criminal street gang to withdraw from such
14 criminal street gang.

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

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

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

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

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

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

34 **"§ 14-50.19. Contraband, seizure, and forfeiture.**

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

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

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

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

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

4 **"§ 14-50.20. Local ordinances not preempted by State law.**

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

10 **"§ 14-50.21. Real property used by criminal street gangs declared a public**
11 **nuisance; abatement; persons injured by gangs entitled to treble**
12 **damages.**

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

19 **"§ 14-50.22. Matters proved in criminal trial court.**

20 A conviction of an offense defined as criminal gang activity shall stop the defendant
21 in any subsequent civil action or proceeding as to matters proved in the criminal
22 proceeding."

23 **SECTION 2.** This act becomes effective December 1, 2003, and applies to
24 offenses committed on or after that date.