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Short Title: Street Gang/Suppression.

(Public)

Sponsors:

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February 21, 2007

A BILL TO BE ENTITLED

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

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

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

6 "Article 13A.

7 "North Carolina Street Gang Suppression Act.

8 **"§ 14-50.15. Short title.**

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

11 **"§ 14-50.16. Pattern of criminal street gang activity.**

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

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

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

17 A violation of this subsection is a Class H felony, except that a person who violates  
18 subdivision (a)(1) of this section, and is an organizer, supervisor, or acts in any other  
19 position of management with regard to the criminal street gang, shall be guilty of a  
20 Class F felony.

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

24 (1) Has as one of its primary activities the commission of one or more  
25 felony offenses, or delinquent acts that would be felonies if committed  
26 by an adult,

27 (2) May have a common name, common identifying sign or symbol, and  
28 has three or more members individually or collectively engaged in, or  
29 who have engaged in, criminal street gang activity.

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

36 (1) Any offense under Article 5 of Chapter 90 of the General Statutes  
37 (Controlled Substances Act).

38 (2) Any offense under Chapter 14 of the General Statutes except Articles 9,  
39 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82,  
40 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195,  
41 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

42 (d) As used in this Article, 'pattern of criminal street gang activity' means  
43 engaging in, and having a conviction for, at least two prior incidents of criminal street  
44 gang activity, that have the same or similar purposes, results, accomplices, victims, or

1 methods of commission or otherwise are interrelated by common characteristics and are  
2 not isolated and unrelated incidents, provided that at least one of these offenses occurred  
3 after December 1, 2008, and the last of the offenses occurred within three years,  
4 excluding any periods of imprisonment, of prior criminal street gang activity. Any  
5 offenses committed by a defendant prior to indictment for an offense based upon a  
6 pattern of street gang activity shall not be used as the basis for any subsequent  
7 indictments for offenses involving a pattern of street gang activity.

8 **"§ 14-50.17. Soliciting; encouraging participation.**

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

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

12 **"§ 14-50.18. Soliciting; encouraging participation; minor.**

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

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

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

19 **"§ 14-50.19. Threats to deter from gang withdrawal.**

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

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

24 **"§ 14-50.20. Threats of punishment or retaliation.**

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

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

29 **"§ 14-50.21. Separate offense.**

30 Any offense committed in violation of G.S. 14-50.16 through G.S. 15-50.20 shall be  
31 considered a separate offense.

32 **"§ 14-50.22. Enhanced offense for criminal gang activity.**

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

37 **"§ 14-50.23. Contraband, seizure, and forfeiture.**

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

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.

43 (c) Innocent Activities. – The provisions of this section shall not apply to  
44 property used for criminal street gang activity where the owner or person who has legal

1 possession of the property does not have actual knowledge that the property is being  
2 used for criminal street gang activity.

3 **"§ 14-50.24. Real property used by criminal street gangs declared a public**  
4 **nuisance; abatement.**

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

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

13 **"§ 14-50.25. Reports of disposition; criminal street gang activity.**

14 When a defendant is found guilty of a criminal offense under this Article, other than  
15 an offense under G.S. 14-50.21, 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 **"§ 14-50.26. Matters proved in criminal trial court.**

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

24 **"§ 14-50.27. Local ordinances not preempted by State law.**

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

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

31 **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

32 . . .

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

- 37 (1) There is reasonable cause to believe that the person committed an  
38 offense involving trafficking in a controlled substance;
- 39 (2) The drug trafficking offense was committed while the person was on  
40 pretrial release for another offense; and
- 41 (3) The person has been previously convicted of a Class A through E  
42 felony or an offense involving trafficking in a controlled substance and  
43 not more than five years has elapsed since the date of conviction or the  
44 person's release from prison for the offense, whichever is later.

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

4 (1) There is reasonable cause to believe that the person committed an  
5 offense for the benefit of, at the direction of, or in association with,  
6 any criminal street gang, as defined in G.S. 14-50.16;

7 (2) The offense described in subdivision (1) of this subsection was  
8 committed while the person was on pretrial release for another offense;  
9 and

10 (3) The person has been previously convicted of an offense described in  
11 G.S. 14-50.17, and not more than five years has elapsed since the date  
12 of conviction or the person's release for the offense, whichever is later.

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

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

18 **"§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1,**  
19 **B2, C, D, or E felony and the defendant used, displayed, or threatened to**  
20 **use or display a firearm or deadly weapon during the commission of the**  
21 **felony.**

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

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

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

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

43 (f) Subsection (c) of this section does not apply if the evidence of the use,  
44 display, or threatened use or display of the firearm or deadly weapon is needed to prove

1 an element of the felony or if the person is not sentenced to an active term of  
2 imprisonment."

3           **SECTION 6.** This act becomes effective only if the General Assembly prior  
4 to December 1, 2008, specifically appropriates funds to implement it. The act  
5 appropriating funds must specifically reference this act by bill number, title, or Session  
6 Law number.

7           **SECTION 7.** This act becomes effective December 1, 2008, and applies to  
8 offenses committed on or after that date.