

March 21, 2007

**S 1358. STREET GANG PREVENTION ACT.** Filed 3/21/07. *TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.*

To be summarized in tomorrow's *Daily Bulletin*.

**Intro. by Graham.**

GS 14, 15A

March 22, 2007

**S 1358. STREET GANG PREVENTION ACT.** Filed 3/21/07. *TO ENACT THE NORTH CAROLINA STREET GANG PREVENTION ACT.*

Adds new Article 13A ("North Carolina Street Gang Prevention Act") to GS Chapter 14, amends GS 15A-533 ("right to pretrial release in capital and non-capital cases"), enacts new GS 15A-1340.16E ("enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony"), enacts new GS 14-34.9 (discharging a firearm from within an enclosure), and makes conforming changes

*Definitions.* New GS 14-50.17 defines operative terms.

*Offenses and punishments.* New GS 14-50.18 makes it a Class H felony to (1) participate in a criminal street gang through a pattern of criminal gang activity, (2) obtain or maintain through a pattern of criminal gang activity any interest or control in any real or personal property including money, and (3) encourage or coerce another person to participate or to threaten harm to anyone because a participant has withdrawn from a street gang or because someone has helped a participant withdraw. Punishment is increased by imprisonment for an additional 10 years for anyone committing any of these offenses and occupying a management position in the gang. New GS 14-50.19 provides that anyone who commits any other criminal offense and does so in association with a criminal street gang is guilty of an offense that is one class higher than the one committed. New GS 14-50.20 provides that the judge is to determine, when a defendant is found guilty of an offense, whether the offense was committed in association with a criminal street gang and, if so, to indicate that on the criminal judgment form. The clerk is to ensure that the conviction record shows this determination.

*Property and contraband.* New GS 14-50.21 provides that all property used in a criminal gang activity offense or derived from proceeds of the activity is contraband and no one has a property interest in it. The property is subject to a restraining order and the district attorney or Attorney General is to initiate a forfeiture proceeding within 60 days of seizure. New GS 14-50.23 provides that real property used in criminal gang activity constitutes a public nuisance and may be abated. If the property owner is not a member of the gang, then abatement may occur only if the owner has knowledge of the activity.

*Local ordinances.* New GS 14-50.22 provides that local ordinances dealing with gangs and gang violence that duplicate or supplement the act are not preempted and provide alternative remedies.

*Civil actions.* New GS 14-50.24 provides that a conviction for criminal gang activity precludes the defendant from contesting factual matters determined in the criminal proceeding in any subsequent civil proceeding based on the same conduct.

*Applicability to juveniles.* New GS 14-50.25 provides that the act does not apply to juveniles under the age of 16.

*Discharging a firearm from within a vehicle or other enclosure.* New GS 14-34.9 makes it a Class E felony to discharge or attempt to discharge a firearm as a part of a pattern of criminal gang activity from within any building or enclosure, including a vehicle, unless the offense is covered under some other provision of law that provides greater punishment.

*Pretrial release.* New GS 15A-533(e) creates a rebuttable presumption against pretrial release if there is reasonable cause to believe that the person in custody has committed a criminal gang activity offense while on pretrial release for another offense and has, within five years, been convicted of another criminal gang activity offense.

*Extra sentence for firearm use.* New GS 15A-1340.16E provides that if a person is convicted of a Class A, B1, B2, C, D, or E felony committed in association with street gang activity, the

person's sentence is to be enhanced by a minimum of 60 months if the person possessed a firearm (even if the firearm is incapable of firing) during the felony, by 84 months if the person displayed the firearm, and by 120 months if the person discharged the firearm. The firearm components must be proved beyond a reasonable doubt; a defendant may plead guilty to the underlying offenses but not guilty to the firearm components, in which case the jury determines the firearm components. Directs that the court is not to suspend any sentence imposed under the section or place a person sentenced under the section on probation, and that the enhanced sentences imposed are to be consecutive to all other sentences imposed.

*Appropriations.* \$10 million for 2007-08 to the Department of Juvenile Justice and Delinquency Prevention (Department) to provide, in conjunction with the Governor's Crime Commission (Commission), grants for street gang violence prevention and intervention programs. Requires the Department, in conjunction with the Commission, to develop eligibility for these funds, including a matching requirement. Requires reporting no later than April 1, 2008.

*Effective dates.* Appropriation provision becomes effective July 1, 2007; the remainder of the act is effective December 1, 2007.

**Intro. by Graham.**

GS 14, 15A, APPROP

July 10, 2007

**S 1358. STREET GANG PREVENTION ACT.** Filed 3/21/07. Senate committee substitute makes the following changes to 1st edition. Deletes legislative findings and intent and renumbers the remaining statutes.

Modifies proposed GS 14-50.16 (definitions) (1) to define *criminal street gang activity* as acts committed with the specific intent to further the person's involvement in the street gang, (2) to expand the terminology to read pattern of criminal *street gang activity*, (3) to provide that any offenses committed by a defendant before an indictment that is based on a pattern of street gang activity may not be used as a basis for subsequent indictments involving a pattern of street gang activity, and (4) to delete the definition of *criminal street gang member*. Modifies proposed GS 14-50.17(g) to establish the following levels of punishment. A Class F felony for violating subsection (c) (organizing or managing) or for violating subsection (d) (soliciting or coercing) with respect to a person under 16. A Class H felony for any other violation.

Modifies proposed GS 14-50.18 (enhanced offenses) to (1) limit it to misdemeanors, (2) delete a qualifier that it does not apply if a different classification is expressly stated, and (3) make a conforming change.

Modifies proposed GS 14-50.19 (reports) to provide that the presiding judge is to determine whether the offense involved criminal street gang activity if the defendant is found guilty of a *criminal* offense other than an offense under GS 14-50.17 (participation in criminal street gang activity prohibited) and GS 14-50.18 (enhanced offense for criminal gang activity).

Modifies proposed GS 14-50.20 (contraband) to provide that property used in the course of or derived from criminal street gang activity or a pattern of criminal street gang activity is subject to the seizure and forfeiture provisions of GS 14-2.3. Deletes provision requiring the district attorney or the Attorney General to initiate a forfeiture proceeding within 60 days of the seizure of contraband under the statute. Directs that the statute does not apply to a person having legal possession of the property and no actual knowledge that the property is being used for criminal gang activity. Modifies GS 14-50.22 (public nuisance) to provide that provisions of the statute regarding abatement of real property used by criminal street gangs do not apply when the owner or person having legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

Enacts proposed new GS 14-50.25 to provide for the conditional discharge and expunction of records for first offenses under proposed GS 14-50.17 or 14-50.18 for first-time offenders who are age 16 or 17 at the time of the offense. Provides that the statute is supplemental and does not repeal any existing provision of law contained in the General Statutes.

Deletes proposed GS 14-34.9 regarding discharging a firearm from within an enclosure as a part of a pattern of criminal gang activity. Amends GS 14-2.3 to include violations of proposed Article 13A of GS Chapter 14 under the provisions regarding the forfeiture of gain acquired through criminal activity (was, felonies). Deletes proposed amendments to GS 15A-1340.16(d)

and GS 15A-1340.16A(c). Deletes proposed new GS 15A-1340.16E (regarding enhanced sentencing for certain felonies committed relating to criminal street gang activity).

Changes the appropriation of \$10 million for the 2007-08 fiscal year to the Department of Juvenile Justice and Delinquency Prevention to an appropriation of \$3 million to the Department of Crime Control and Public Safety, Governor's Crime Commission, for grants for street gang violence prevention, intervention, and *suppression* programs.

May 20, 2008

**S 1358. STREET GANG/PREVENTION AND INTERVENTION (NEW).** Filed 3/21/07. Senate committee substitute replaces the 2nd edition with *AN ACT TO ADOPT A STRATEGIC APPROACH TO PREVENT YOUTH INVOLVEMENT IN STREET GANG ACTIVITY, AND TO BE ENTITLED THE "NORTH CAROLINA STREET GANG PREVENTION AND INTERVENTION ACT."*

Amends GS 143B-543 to expand the legislative intent regarding preventing juveniles from becoming delinquent to include gang prevention among community-based programs and strategies.

Under current law, the county Juvenile Crime Prevention Councils (County Council) are the planning bodies for community-based programs serving juveniles and their families. Amends GS 143B-549 to direct each County Council to assess the needs of juveniles regarding involvement or risk of involvement with gangs or gang activity, and to assess the local resources available to address those needs. Additionally directs each County Council to develop intervention strategies for juveniles associated with or at risk of becoming associated with gang activity.

Amends GS 143B-557 to expand the powers and duties of the State Juvenile Crime Prevention Council (State Council) to include a focus on gang prevention. In addition, directs the State Council to review the level of gang activity statewide and to assess the progress of the state, and of local governments, in gang prevention and addressing the needs of juveniles identified as being associated with gang activity.

Directs the Department of Public Instruction and the Department of Juvenile Justice and Delinquency Prevention to report, by December 1, 2008, regarding school violence and gang activity, and effective practices for preventing and reducing violence and gang activity to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the Joint Legislative Education Oversight Committee.

Requires the Department of Crime Control and Public Safety to report, by December 1, 2008, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the protocols and procedures used to enter identifying information of juveniles in the GangNet database system.

Eliminates \$3 million appropriation for 2007-08 to the Department of Crime Control and Public Safety, Governor's Crime Commission.

Retains provisions from the 2nd edition, effective July 1, 2008, directing the Governor's Crime Commission to develop the criteria for eligibility funds appropriated for gang prevention and intervention.

June 18, 2008

**S 1358. STREET GANG/PREVENTION AND INTERVENTION.** Filed 3/21/07. House amendment makes the following changes to 3rd edition. Adds that the Governor's Crime Commission must identify cities and towns that do not have full-time parks and recreation staff and provide targeted outreach and information to public and private agencies and non-profit organizations in those areas concerning eligibility for funds.