

The Little Rascals: Our Gang(s) and the Street Gang Suppression Act of 2008

November 14, 2008
Volume 7, Number 9

By Brian Beasley, Consigliere and Legal Adviser, High Point PD

WHOOOP, WHOOOP, WHOOOP – UNSOLICITED EDITORIAL ALERT!¹

The law I am about to discuss with you is deeply flawed. The legislature had good intentions in trying to get us some helpful tools to use against gangs, but what they came up with is not going to help you much, if at all. One indication that the law was hurriedly put together and passed is that the law itself refers you to statutes that have been repealed (taken off the books) for years. I have hope that the legislature will amend or rewrite this law in the coming years, making it a much more useful piece of legislation for us.

With that out of the way, let's look at what we've got. First, we need to remember that these laws go into effect starting DECEMBER 1, 2008. Second, we need to learn some definitions:

1. **“street gang”** – This is defined in brand new N.C.G.S. 14-50.16(b) as “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.”²Street gang and criminal street gang are synonymous terms.
2. **“Criminal Street Gang Activity”** – as defined in G.S. 14-50.16(c) 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.” The acts they are talking about here encompass all of your Chapter 90 drug offenses and almost all of Chapter 14. There are several specific offenses in Chapter 14 that this section excludes, such

¹ The comments in this box are my own and do not necessarily reflect the views of the Chief of the High Point Police Department, the rest of the High Point Police Department, the High Point City Council, the Mayor of High Point, or the customers at the new Wal-Mart on North Main Street in High Point. Add SR&S to this list as well.

² According to the great musical West Side Story, they may also sing and snap their fingers together. “When you're a Jet, you're a Jet all the way, from your first cigarette to your last dying day.” The legislature chose not to include this telltale sign of gang allegiance.

ROLL CALL TRAINING

From North Carolina's 24/7 Police Attorney Law Firm

PO Box 4803
Greensboro, NC 27404-4803
Telephone (336) 691-7058
fax (336) 969-1879
www.policeshelp.net

as fornication³ and bigamy,⁴ but most of the ones excluded are the ones that wouldn't make sense as gang activity anyway.⁵

3. **"Pattern of Criminal Street Gang Activity"** – G.S. 14-50.16(d) says this "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."

My weak attempt to translate: To have a pattern, we need two prior convictions. One of those has to have occurred after December 1, 2008, and they both can't be older than 3 years. I must admit, I've read the last sentence of that paragraph quite a few times, and I don't still don't understand what they are talking about. I wonder if they did.

So those are the definitions. If you are going to come into contact with street gang activity,⁶ you are going to have to have a handle on these definitions. Nobody said that reading, understanding, and knowing the law would be easy. Actually someone did say that, but it's the same officer who has been walking around our department with a hot pink cast on his left arm,⁷ so why are you going to listen to him?

Okay, now that we know the definitions, let's use them to make some stuff illegal. New N.C.G.S. 14-50.17 makes it a Class H felony to cause, encourage, solicit, or coerce a person 16 years of age or older to participate in "criminal street gang activity." If you do these things to a person under 16 years of age, G.S. 14-50.18 makes it a Class F felony.

Apparently, street gangs don't like it when their members try to withdraw their membership. In fact, they can get downright violent about it. So G.S. 14-50.19 deals with threats made to keep people from leaving the gang by making it a Class H felony 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." For those that do get out, G.S. 14-50.20 protects them from retaliation. It makes it a Class H felony 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."

The more broad prohibition on gang activity comes from G.S. 14-50.16 which reads as follows:

"§ 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:

³ Yes – still illegal under 14-184.

⁴ 14-183 – anyone know what the punishment is for a man committing bigamy? Two wives.

⁵ For example, 14-145: Unlawful posting of advertisements. "West Side Story" meets "Newsies."

⁶ As opposed to highway gang activity and the very deadly "PVA gang activity."

⁷ Not that there's anything wrong with that.

- (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.”

Now, for obvious reasons, the crimes we’ve just talked about on this page will be considered to be “offenses involving street gang activity.” This becomes important when trying to prove a “pattern of criminal street gang activity” for later crimes. For other crimes, G.S. 14-50.25 says that the presiding judge must determine whether the crime involved criminal street gang activity and if it did, that has to be indicated on the judgment form. NOW WAKE UP – THIS NEXT SENTENCE IS IMPORTANT. What this means for you is that if a crime you have charged involves “criminal street gang activity” under the above definition, you need to tell the district attorney (or at least include it in your prosecution summary) so that the district attorney can tell the judge so that the judge can put it in the judgment so that the next time we charge this gangbanger we might be able to actually use this complicated law. Reread that last sentence twice and then just do it.

Another important provision is G.S. 14-50.22. This law says that if you are 15 years old or older and you commit a misdemeanor for the benefit of, at the direction of, or in association with any criminal street gang, you will be punished one class higher than the misdemeanor you committed. A Class A1 misdemeanor would now become a Class I felony. To take advantage of this, I believe that you will have to include this allegation in your warrant.⁸ It (the fact that it was done for a gang) is then going to have to be proved to the judge (or jury) before the higher punishment is allowed.

How do you do this? The easiest way is to charge the misdemeanor on the warrant the same way you always have and add this paragraph to the warrant: “This offense was committed for the benefit of, at the direction of, or in association with a criminal street gang.” I don’t believe it requires any further “to wits” or explanations.

There are some additional features to this section, like some special rules for pre-trial release and deferred prosecution and expungement for some offenders under 18 years of age. But one unusual provision that you need to be aware of is that the crimes I have discussed so far (except for the misdemeanor punishment enhancement which includes 15 year olds) do NOT apply to juveniles. You may not charge a juvenile with violating 14-50.16 through 14-50.20. I don’t know why, except it says so in G.S. 14-50.28.

Finally, you need to know about one more law connected with criminal street gang activity. This law had so much promise, but is so poorly written that it is virtually unusable. It is the new law designed to punish drive-by shootings. New G.S. 14-34.9 (effective December 1, 2008) reads:

“§ 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

⁸ Based on Blakely v. Washington, 542 U.S. 296 (2004).

conveyance, erection, or enclosure toward a person or persons not within that enclosure shall be punished as a Class E felon."

So, a person is guilty of this offense if he or she:

1. Willfully or wantonly (these mean the same thing – you meant to do it)
2. Discharges or attempts to discharge (attempt punished same as complete offense)
3. A firearm (duh!)
4. As a part of a pattern of criminal street gang activity
5. From within any building, structure,⁹ motor vehicle, other conveyance,¹⁰ erection,¹¹ or enclosure¹²
6. Toward someone not within that enclosure.

This would be a great law if it didn't include element #4, which requires the shooting to be part of criminal street gang activity. As you no doubt remember from our definitions on page two, proving a pattern of criminal street gang activity is going to require proof of two prior convictions of crimes involving similar criminal street gang activity. This means that this is a very hard-to-prosecute law. My advice to you is that you charge murder, attempted murder, or AWDWIKISI,¹³ as the facts support and leave this crime alone. If, in about 5 years from now, the legislature has not amended this law and you run across someone who actually qualifies for proof of a pattern of criminal street gang activity and commits this act, by all means – charge them up.

Thus concludes our unbiased look at the new Street Gang Suppression Act. Remember that these provisions are not "effective" until December 1, 2008.



Smith, Rodgers & Strickland PLLC

provides 24-hour real-time legal support for client law enforcement agencies.

"The materials on this website are instructional only, and do not constitute legal advice or create an attorney-client relationship. Readers should consult in-house counsel or city/county attorneys for advice and guidance on specific legal issues and applications. Clients of SR&S may of course contact the firm's 24-hour switchboard for immediate legal consultation in real-time."

⁹ Probably same as building.

¹⁰ I believe this would include horses, bicycles, and the bed of a pickup truck. There will be an argument in court about whether it has to be an "enclosed space" since the title of the statute includes "within an enclosure." I think that argument will be unsuccessful.

¹¹ Insert your own joke here using the phrases "up," "standing," "4 hours," and "see a physician." Or be creative, I don't care.

¹² Ralph Strickland and I agree that this would probably include a fenced in yard.

¹³ Assault With A Deadly Weapon With Intent To Kill Inflicting Serious Injury