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REVISITING EVE'S LAW: SUGGESTIONS FOR IMPROVING THE NORTH CAROLINA ANTI-GANG STATUTE*

BEVERLY PETERSEN JENNISON**

When state social policies and social realities conflict, state legislatures need to focus upon the problem to try to fix it. Gang activity in a community is such a problem. Since 1998, the Governor's Crime Commission in North Carolina has studied the problem of gang proliferation and gang violence within the state. The state legislature did not act. Then, in the spring of 2008, Eve Carson, the president of the student body at the University of North Carolina at Chapel Hill, was brutally murdered. Calls were issued from the bench urging state legislators to act on the gang issue. The state legislature finally passed anti-gang legislation in the summer of 2008.

This Article focuses on the anti-gang statute enacted by the North Carolina legislature that summer in the wake of the Eve Carson murder. After briefly reviewing the legal status of the two individuals arrested for the Carson murder, and the current anti-gang efforts in North Carolina, the Article interposes the circumstances of the Carson murder with the provisions of the statute to predict whether or not the statute would have been effective in that particular situation if previously enacted. The Article suggests that the North Carolina Street Gang Prevention Act would not have been an effective deterrent or effective from a punitive standpoint after the fact in that particular case. As a result of that conclusion, the Article looks to statutory enactments in other jurisdictions to provide some suggestions for improving the current anti-gang legislation, concluding that the North Carolina law needs additional revision in order to be an effective piece of legislation.

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INTRODUCTION

Imagine that you send your child off to another state for his or her college education. As with all things involved with parenting, you worry constantly about what events could befall your child in his or her temporary home. Then imagine that in early March 2008, you receive two phone calls from your student: the first, early in the day, telling you that the University of North Carolina cell phone alert system had notified the campus community that the body of an unidentified woman was found earlier that day a short distance off campus; the second, later in the day, with the tearful information that the body found had been that of her friend and colleague, Eve Carson, the president of the student body at the University of North Carolina at Chapel Hill ("UNC").

1. See Jesse James DeConto, UNC Student Leader's Death Stuns Campus, NEWS & OBSERVER (Raleigh, N.C.), Mar. 7, 2008, at A1. News of Eve Carson's death stunned the Chapel Hill campus for many reasons. Eve was a well-liked and highly regarded student who had been brutally murdered in Chapel Hill, generally considered to be a safe place to live and attend school. The only other incident that even vaguely compares with this horrific murder occurred in 1995, when Wendell Williamson, a mentally ill UNC law student, opened fire on Franklin Street, the main street in Chapel Hill, with an M-1 rifle, killing UNC undergraduate Kevin Reichardt while Reichardt rode his bike through town. Gloria Lopez, Wendell Williamson Back at Dorothea Dix Hospital Following Disappearance, WRAL, June 11, 2004, http://www.wral.com/news/local/story/111584.

2. My daughter knew Eve Carson through a tight-knit community of students known as the NC Fellows Program with which both were involved at UNC. The program, a selective four-year leadership development program, seeks to bring together students to
Initially, police admitted to a lack of leads or motive, and Chapel Hill Police described the murder as a random crime. The actual break in the case came less than a week later when police were contacted by an individual who claimed to have knowledge of a confidential witness who had information regarding Carson’s death. In a subsequent interview, the confidential witness relayed a conversation with an individual named Demario Atwater. In that conversation, Atwater allegedly admitted that he and another individual, Laurence Lovette, had entered Carson’s Chapel Hill residence through an unlocked door, forced her into her car, obtained Carson’s ATM card and PIN, and withdrew approximately $1,400 in cash from Carson’s bank account. The confidential witness also reported to law enforcement officials that Lovette allegedly had shot Carson multiple times and that Carson was subsequently shot by Atwater.
On March 12, 2008, Atwater was arrested and charged with first-degree murder.\(^8\) The murder and arrest played out in the national news media.\(^9\) During police questioning after his arrest, Atwater identified Lovette as his accomplice, and on March 13, 2008, Lovette, located by police, was placed under arrest and similarly charged with the first-degree murder of Carson.\(^10\) As a result, Atwater and Lovette faced a variety of state charges, and Atwater also faced a federal prosecution, to which he entered into a plea agreement in April 2010.\(^11\) In May 2010, Atwater entered a plea agreement in the state

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[heavily armed members of the Durham Police Department’s Selective Enforcement Team took Demario James Atwater, 21, of 414-B Macon St., into custody at about 5 a.m. [on March 12, 2008] during a raid at a house on Rosedale Avenue. He spent most of the day being questioned at the Chapel Hill Police Department, and they charged him that Wednesday afternoon with one count of first-degree murder in the March 5 slaying of 22-year-old Eve Carson.](http://www.wral.com/news/local/story/2561551/)


11. See Anne Blythe, *Carson Suspect Pleads Not Guilty to Carjacking*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 2, 2008, at B4. Both Atwater and Lovette face state murder and kidnapping charges. *Id.* Jim Woodall, the district attorney for Orange County, North Carolina, announced plans to seek the death penalty for Atwater. *Id.* Since he was seventeen-years-old at the time of Carson’s murder, Lovette is ineligible for the death penalty. See N.C. GEN. STAT. § 14-17 (2009) (“[A]ny person who commits [first or second degree] murder shall be punished with death or imprisonment in the State’s prison for life without parole as the court shall determine ... except that any such person who was under 18 years of age at the time of the murder shall be punished with imprisonment in the State’s prison for life without parole.”) (emphasis added). Additionally, in *Roper v. Simmons*, 543 U.S. 551, 568-69 (2005), the United States Supreme Court abolished capital punishment for juvenile offenders in part because, in the Court’s opinion, teenagers are too immature to be held accountable for their crimes to the same extent as adults. Thus, in addition to the North Carolina prohibition on the death penalty for juveniles, under the *Roper* decision, Lovette could not receive the death penalty in the Carson case.

Additionally, federal charges were brought against Atwater; the rationale for these charges was that Atwater could face the death penalty on these federal charges if state prosecutors were unsuccessful in pursuing the death penalty based on the state charges. See Blythe, supra. Multiple documents were filed in the federal case by Atwater’s
case as well, and Lovette’s state trial date is expected to fall within the framework of summer to fall of 2010.12

Shortly after the Carson murder, Lovette was also charged in connection with another murder.13 During a court appearance by Lovette in connection with that crime,14 North Carolina District Court Judge Craig Brown sent “an SOS to Raleigh” (North Carolina’s state capital) which he “expect[ed] them to hear.”15 Judge Brown called upon North Carolina’s Governor at the time, Mike Easley, House Speaker Joe Hackney, Senate Leader Marc Basnight, and Attorney General Roy Cooper to take immediate action to combat the patent rise in gang violence within the state.16 Brown’s attorneys, most of which were unresolved by the court. U.S. v. Atwater, No. 1:108-cr-00384-JAB-1 (M.D.N.C. filed Oct. 27, 2008) (PACER). These documents included a general motion to strike the death penalty (filed Oct. 28, 2009), a motion to strike the death penalty grounded on a fundamental right to life (filed Jan. 31, 2010), and a motion to strike the death penalty due to selective prosecution (filed Feb. 1, 2010). Id. Ultimately, the judge in the federal case denied a change of venue. Judge Rules Atwater Trial Will Stay in State, NEWS 14 CAROLINA, Apr. 13, 2010, http://news14.com/triad-news-94-content/top_stories/?ArId=624506. Subsequent to that decision, Demario Atwater agreed on April 19, 2010, to plead guilty in federal district court to carjacking, kidnapping, and weapons charges relating to the Carson murder. See Man Gets a U.S. Plea Deal in UNC Death, NEWS & REC. (Greensboro, N.C.), Apr. 20, 2010, at A2. Sentencing in the federal case will take place on September 23, 2010. Id. Atwater’s alleged accomplice, Lovette, still faces charges in state court. Id. Atwater, however, has entered a plea in the state case. See infra note 12 and accompanying text.


13. See DeConato, supra note 8.

14. Lovette’s court appearance related to his alleged murder of Duke Ph.D candidate Abhijit Mahato, who had been murdered on January 18, 2008. UNC Murder Case Judge Calls on Lawmakers to Deal With Gang Violence, FOX NEWS, Mar. 14, 2008, http://www.foxnews.com/story/0.2933.337973.00.html. Mahato, a Ph.D engineering candidate, came to the United States from India in order to study at Duke. Id. It was not until Lovette was arrested for the murder of Carson that authorities connected him to Mahato’s death. Id.

15. Id. Brown’s comments were spontaneous and wholly unexpected. See id.

16. Id. In his comments, Brown called for legislative leaders to convene a special legislative session to address the state’s gang problem. Id. Brown’s call for action certainly appeared influenced by the community outcry over Carson’s death. On Tuesday, March 18, 2008, over ten thousand people attended a memorial service in Carson’s honor, where UNC Chancellor James Moeser, among others, spoke. See UNC Celebrates Eve Carson’s Life, WRAL, Mar. 19, 2008, http://www.wral.com/news/local/story/2595075/. Carson's family and hometown friends, as well as a large contingent of UNC students, my daughter included, were present at the service, which took place at the Dean E. Smith Center, and was meant “to celebrate [Carson’s] life and legacy.” Id.
comments came as a surprise to some, considering that police had not confirmed that gang activity was related to either death,\textsuperscript{17} despite the fact that the Internet and the UNC campus were both abuzz with speculation about gang connections to the Carson murder.\textsuperscript{18} Durham Mayor Bill Bell, in an interview shortly after Judge Brown’s comments, said that although he had not been informed of a gang connection to either death, he did support the Judge’s call for state action.\textsuperscript{19} According to Bell, gangs have become a major concern not just in Durham, but in small towns and large cities across the state.\textsuperscript{20}

Law enforcement statistics and scholarly research support Brown’s and Bell’s contentions.\textsuperscript{21} and sorrow that enveloped the Chapel Hill community in the days and weeks after Carson’s death. Coupled with reports of gang involvement in Carson’s death, see, e.g., Jesse DeConto, \textit{Gang Involvement Debated in Death of UNC’s Carson}, \textit{NEWS & OBSERVER} (Raleigh, N.C.), Mar. 11, 2008, at B3 (noting that the baseball hat which Atwater wore in the ATM photo is considered a gang symbol), the community displays of outrage and sorrow certainly make the timing of Brown’s comments understandable. While some gang experts were quoted as saying that the Houston Astros baseball cap that Atwater was wearing in the ATM photo is definitely a gang symbol, other officials found these assertions questionable. See \textit{id.} (discussing whether the “H” or the five-pointed star on the cap were used as gang symbols for local gangs).

17. Jesse DeConto, \textit{Gang Involvement Debated in Death of UNC’s Carson}, \textit{NEWS & OBSERVER} (Raleigh, N.C.), Mar. 11, 2008, at B3. Some might argue that Brown’s comments were also surprising since, as an officer of the court, he is required to provide all defendants with a fair trial, no matter his personal beliefs. Further, judges are charged with deciding cases and controversies as opposed to shaping legislative policy. But it should be noted that Brown assured Lovette that he would receive the fair trial he is guaranteed. \textit{id.} However, to further highlight the impact of his comments, Judge Brown resigned shortly thereafter. \textit{See Durham Judge in Lovette Case Resigns}, ABC11-WTVD, Mar. 6, 2008, http://abclocal.go.com/wtvd/story?section=news/local&id=6122569.

18. Various criminal chat sites on the Internet at the time of the murder reflected popular sentiment that this may have been a gang hit. Similarly, unsubstantiated rumors circulated among some members of the UNC student body to the same effect.

19. \textit{See UNC Murder Case Judge Calls on Lawmakers to Deal with Gang Violence}, supra note 14. According to Bell, roughly one thousand people in Durham, a city of 190,000, have a gang affiliation. \textit{id.}

20. According to Bell, the gang problem is “not limited just to Durham. We’re finding gangs in small cities, mid-sized cities and the large cities.” \textit{id.}

21. \textit{See GOVERNOR’S CRIME COMM’N, N.C. DEPT OF CRIME CONTROL & PUB. SAFETY, A COMPREHENSIVE ASSESSMENT OF GANGS IN NORTH CAROLINA: A REPORT TO THE GENERAL ASSEMBLY 5–6 (2008) [hereinafter COMPREHENSIVE ASSESSMENT], available at http://www.ncgccd.org/pubs/gangs2008.pdf. Some argue that the supposed rise in gang activity is not really a rise at all; they argue instead that, in the past, there was a greater degree of denial about the scope of the gang problem and now law enforcement and the media are more attuned to gang issues. \textit{id.} Regardless of this argument, current research supports the notion that gang activity is a serious concern in North Carolina. \textit{See id.} at vi (defining a gang as “(1) a group of three or more individuals with (2) a unique name and other identifying attributes who (3) demonstrate a commitment to crime as evidenced by prior and/or current substantiated activity”). According to a March 2008 report issued by the North Carolina Department of Crime and Public Safety, while
In the wake of the Carson murder, the Atwater/Lovette arrests, the revelation of Lovette's possible ties to another murder, and Judge Brown's comments, the North Carolina General Assembly took swift action. During the summer of 2008, the North Carolina House and Senate overwhelmingly passed the North Carolina Street Gang Suppression Act ("Act"). The law went into effect on December 1, 2008, and applies to offenses committed on or after that date.

Nationwide gang data suggests that gang activity has reached a plateau, it appears that gangs and gang activity remain on the rise in North Carolina. According to that same report, 550 gangs exist within sixty-two of the state's one hundred counties. And eighty-two percent of those gangs have ties to larger criminal organizations and groups, organizations that exist outside the state of North Carolina. Property crimes and drug-related offenses are most commonly committed by gang members in North Carolina, but weapons crimes, assaults, and murders also occur with some degree of frequency. See id. at 17; see also David R. Truman, The Jets and Sharks Are Dead: State Statutory Responses to Criminal Street Gangs, 73 WASH. U. L.Q. 683, 683 (1995), which states in relevant part that organized crime in America has progressed through a variety of incarnations, from the outlaw gangs of the Wild West to the glorified gangsters of the early half of [the twentieth] century (Al Capone, John Dillinger) to the Mafia ("La Cosa Nostra"), personified in the 1980s and 1990s by the Gambino crime family and its 'Dapper Don,' John Gotti. But today, organized crime in America is increasingly controlled by criminal street gangs, a new level of organized crime that consistently outpaces the efforts of law enforcement to control it. A far cry from the dancing, singing Jets and Sharks of West Side Story, these gangs are sophisticated, well-organized criminal enterprises.

North Carolina's increase in gang activity is not specific to North Carolina, however. Gang activity seems to be widespread through many areas of the United States. See generally id. (discussing the increase in gang activity throughout major cities and small towns in the United States).

22. See Dan Kane, Senate Solidly Behind Anti-Gang Bills, NEWS & OBSERVER (Raleigh, N.C.), May 22, 2008, at B1 ("Anti-gang legislation has become a big issue this year, largely because of two high-profile killings that so far have not been confirmed as gang-related. Eve Carson, UNC-Chapel Hill's student body president, and Abhijit Mahato, a Duke University graduate student, were shot in separate incidents.").


24. See N.C. GEN. STAT. §§ 14-50.15 to -50.30 (2009). While the Act serves as the prosecutorial prong of the North Carolina anti-gang movement, the North Carolina legislature also took into account the need for preventive measures. In June of 2008, the legislature allocated approximately $10 million for the funding of local gang prevention and intervention initiatives, with the grants being controlled under the umbrella of the Governor's Crime Commission, which has been in existence in North Carolina in its present iteration since 1993. See infra note 32 and accompanying text. Although the statute is not technically or even casually referred to as "Eve's Law," the author does so here because of the proximity in time of the murder of Eve Carson and the swift passage of this legislation, as well as in tribute to Eve Carson's memory. However, the Act has no retroactive effect in this instance and will not be applied in the Atwater/Lovette murder cases because it requires that at least one of the acts must have occurred after the effective date of the bill, which was December 1, 2008. See N.C. GEN. STAT. §§ 14-50.15 to -50.30.
The passage of the North Carolina anti-gang statute has given rise to both high praise and sharp criticism. On the one hand, some proponents believe that the Act effectively addresses issues of enforcement that have previously proven troublesome for legal entities to pursue and prove. On the other hand, critics maintain that the punitive nature of an anti-gang statute ignores the obvious social solutions, which might prove to be helpful in addressing the gang problem in the state, in favor of draconian solutions which could lead to incarceration even of the very young. This Article will examine both sides of the issue, first discussing some of the social programming currently being funded and used in North Carolina to lessen the pull of the gang culture within the state. Then, this Article will explain the parameters of the North Carolina statute as it currently exists. Since enactment of and interest in anti-gang legislation has been significant in recent state legislative sessions outside of North Carolina, this Article also will offer some comparisons to statutory solutions from selected other jurisdictions that, if adopted by the state, might prove to be more useful and effective against gangs in North Carolina than the current legislative

25. Interestingly, in the 2010 Governor's Crime Commission Report to the General Assembly, the Commission recognized to some extent that North Carolina was late to the game in enacting the statute. GOVERNOR'S CRIME COMM'N, N.C. DEPT OF CRIME CONTROL & PUB. SAFETY, GANGS IN NORTH CAROLINA: 2010 REPORT 1 (2010) [hereinafter 2010 REPORT], available at http://www.ncgccd.org/pdfs/pubs/2010 gangreport.pdf. Acknowledging that for twelve years (since 1998) the Governor's Crime Commission had been investigating the nature and extent of criminal gangs, the report nevertheless notes that “[e]arly obstacles to this ongoing investigation included denial of the presence of or problems caused by gangs or the lack of a standardized definition of what constitutes these sociological entities.” Id. Further, the Commission notes that “[t]oday, there is little denying that criminal gangs exist . . . in the state and that they do represent a criminal justice problem.” Id.

26. See Ryan Seals, New Gang Law Takes Effect Across State, NEWS & REC. (Greensboro, N.C.), Dec. 1, 2008, at A1. For example, Captain John Wolfe of the Greensboro Police Department’s Investigative Support Division, which includes the gang squad for the department, said that “the new law addresses many issues that have been obstacles to law enforcement . . . . [The law] begins to identify and define behaviors associated with criminal street gangs.” Id.

27. Id. Further, some critics feel that the law does not go far enough. Assistant District Attorney Howard Neumann of Guilford County stated that “[t]he law doesn’t do enough to address gang recruitment efforts . . . [and it will not] make cases easier to prosecute.” Id. Others feel that the answer lies in a combined effort which includes both prosecutorial prongs like the anti-gang statute as well as social programming efforts. See id. One solution to the present situation would be to strengthen the current statute in three main ways, as explained infra at Part II by tightening up the statutory provisions regarding juvenile participation in gang activity, adding more stringent provisions regarding gang activity near schools and recreational facilities, and more clearly delineating the statute’s provisions regarding solicitation of prospective gang members.
scheme. Finally, this Article will conclude that despite the state’s commendable efforts at social programming solutions to the gang problem in North Carolina, these solutions will only work when buttressed by a strong anti-gang statute which has the prosecutorial teeth to enforce substantial punitive measures in helping to “clean up” the gang problem within the state.

I. CURRENT ANTI-GANG EFFORTS IN NORTH CAROLINA

As has been the case in many states, North Carolina has plunged into the anti-gang arena with a two-pronged approach. The first is non-punitive social programming directed toward gang proliferation, gang prevention, and intervention for youths already mired in the world of gangs. The second involves legislative intervention in the form of an anti-gang statute. Both are discussed in detail below.

A. Social Programming Efforts in North Carolina

Commendably, North Carolina has focused on the social programming aspects of the gang problem for a number of years, especially under the auspices of the Governor’s Crime Commission (the “Commission”). The Commission “serves as the chief advisory body to the Governor and the Secretary of the Department of Crime Control and Public Safety on crime and justice issues” in the State of North Carolina. The Commission’s research arm, the Criminal Justice Analysis Center, began investigating the issue of gangs in 1999 through a survey taken throughout the state of various “law enforcement agencies, school resource officers and juvenile court counselors.” The Commission received its first grant of $1.5 million

28. See generally FIGHT CRIME: INVEST IN KIDS NEW YORK, CAUGHT IN THE CROSSFIRE: ARRESTING LONG ISLAND GANG VIOLENCE BY INVESTING IN KIDS (2004), available at http://www.nursefamilypartnership.org/assets/PDF/Journals-and-Reports/fight-crime-invest-in-kids-gangreport (discussing the importance of both police enforcement and investing in gang prevention strategies to reduce gang-related homicides). This report notes, in relevant part, that “[i]mplementing successful new anti-gang measures requires two critical actions: a greater understanding of the importance of prevention, and the political will at the federal, state, and local levels to invest in the programs proven to... get troubled kids back on track, and to keep them there.” Id. at 11.
29. See infra notes 32-35 and accompanying text.
31. GOVERNOR’S CRIME COMM’N, N.C. DEP’T OF CRIME CONTROL & PUB. SAFETY, MAJOR ACCOMPLISHMENTS: 1993-2008, at 10 [hereinafter MAJOR ACCOMPLISHMENTS], available at www.ncgccd.org/pubs/gcc_major_acc.pdf. The survey was replicated by the Criminal Justice Analysis Center in 2004 and 2007. Id. Interestingly, other states which also require reporting on their gang issues have historically required much more stringent reporting than North Carolina. See, e.g., California Street Terrorism Enforcement and
in FY 2006–2007, and since that time, it has overseen the allocation of funds, promising anti-gang social programs. In a continuation of that effort, in June 2008, as the state’s legislature was in the throes of decision-making with respect to the eventual passage of the state’s anti-gang statute, the North Carolina General Assembly allocated $10 million dollars for gang prevention and intervention funding and then tasked the Governor’s Crime Commission with determining eligibility criteria for these funds. According to the Commission, under this so-called preventative prong of the approach to the gang issue, public or private entities can apply for funds for community-based intervention and prevention projects. Having established selection criteria and identified effective community-based anti-gang strategies, the Commission looks for applications that represent “comprehensive programs that are primarily prevention and intervention based.”

Although the Commission considers funding for any innovative programs, on the grant initiative section of its Web site and in its grant initiative literature it has identified three model programs as

Prevention Act, CAL. PENAL CODE § 186.20 (West 2009) (mandating that reports to the state legislature by the District Attorney and the Los Angeles City Attorney include, inter alia: (1) the number of arrests and prosecutions under the act; (2) the number of trials and convictions which have resulted from the act; and (3) the number of sentence enhancements sought under the act and how many were ordered by the courts). This would seem to be extraordinarily useful information to gauge the effectiveness of an anti-gang statute. In contrast, see infra note 83 regarding the author’s unsuccessful attempts to determine similar information for the state of North Carolina.

32. MAJOR ACCOMPLISHMENTS, supra note 31, at 10. The Commission also administers all federal grants awarded to the State of North Carolina as well as state grants relating to its mission. See id. Established as the Governor’s Crime Commission in 1993, the Commission, by its own account, “has positively changed the North Carolina juvenile and criminal justice systems, victims’ services, and greatly contributed to community safety and security.” Id. at 1. Further, in the realm of anti-gang activity, the Commission claims to have “taken a leadership position on communicating and confronting the North Carolina gang issue.” Id. at 10. In FY 2007–2008, the North Carolina General Assembly awarded $4.8 million toward the efforts of the Commission and its sponsored programs, and in FY 2008–2009, funding increased to $10 million for gang intervention and prevention program development. Id. According to the Commission’s publications, more than fifty programs have been either created or expanded through this state funding. Id. The Criminal Justice Improvement Committee of the Commission also funded thirty-one anti-gang programs through an additional $1.4 million in federal funds. Id.

33. See MAJOR ACCOMPLISHMENTS, supra note 31, at 10. The prevention funding occurred as a result of Democratic efforts to stall the passage of the Act; without funding for prevention and intervention initiatives, House Democrats threatened to withhold votes for the Act. See Kane, supra note 22.

34. See MAJOR ACCOMPLISHMENTS, supra note 31, at 10.

35. Id.
One model program is the Cumberland Gang Prevention Partnership, which is a collaborative effort among local law enforcement officials, schools, faith-based organizations, and other public and private agencies that seek to reduce gang violence. The main goal of this program is “help[ing] parents prevent their youth from getting involved with gangs and provid[ing] resources for parents of youth that are already involved in gang activity.” This program is based out of Cumberland County, North Carolina.

Another favored model is the Gang of One, based in the Charlotte/Mecklenburg area. In addition to providing education to the community and at-risk youths about gangs, this organization connects youths and their families with community resources to help youths stay out or get out of gangs. This organization relies heavily on family members along with supportive members of the community to turn lives around.

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36. CRAIG R. TURNER, GOVERNOR'S CRIME COMM’N, 2008-2009 NORTH CAROLINA STREET GANG PREVENTION & INTERVENTION GRANT INITIATIVE 6-8 [hereinafter GRANT INITIATIVE], available at http://www.ncgccd.org/pdfs/2009/gang.pdf. According to grant initiative literature found on the Crime Commission Web site, the three programs are “successful effective practices” that could serve as models for communities considering anti-gang initiatives. Id. at 5. However, funding is not strictly limited to anti-gang intervention programs which follow these three models. Id.

37. Id. at 7.

38. Id. The Cumberland Gang Prevention Partnership is now under the umbrella of Cumberland CommuniCare. See Cumberland County CommuniCare, What Our Programs Do, http://www.cccommunicare.org/programs.php (last visited Aug. 24, 2010). The Cumberland CommuniCare Web site explains the group’s mission, which is to improve prevention and intervention services for delinquent and at-risk youth and their families. Id. The Web site shows how the group’s intervention team can assess the youth’s level of need and determine the proper resources that will be used to address a particular youth’s problem. See id.

39. See GRANT INITIATIVE, supra note 36, at 8. Established in 2004, the Gang of One claims to have assisted over 15,000 youths in their efforts to stay out of or withdraw from gang activity. Press Release, City of Charlotte (N.C.), Gang of One Receives Federal Grant (Sept. 18, 2008) (on file with the North Carolina Law Review).

40. See GRANT INITIATIVE, supra note 36, at 8. More specifically, once an individual has been identified as needing assistance in staying out or getting out of a gang, research is done by the organization to determine the resources that will best assist that individual stay out or get out of a gang. See id. After the completion of this preliminary research, a meeting is held with the youth at which Gang of One counselors and other interested parties, such as family members, discuss the community resources that will be made available in order to assist the youth and his or her family. Id.

41. See 'Gang of One' Educates Youth, Parents on Gang Violence, WSOC TV, Apr. 7, 2006, http://www.wsoc.tv/news/8528656/detail.html. In an effort to further its mission of educating youth and the community about gangs, Gang of One frequently organizes anti-gang educational meetings in the communities in which it works. Id. These meetings are “designed to educate participants about the problem of youth violence and empower them to become involved in youth violence prevention activities.” Id.
Finally, the High Point Model, developed in High Point, North Carolina, involves extensive police investigation into the local gang scene.\footnote{See GRANT INITIATIVE, supra note 36, at 6. This model has been successfully utilized not only in High Point, North Carolina, but also in Winston-Salem, North Carolina and in Newburgh, New York. Id.} Once extensive research has been conducted, task force volunteers, consisting largely of local police and concerned citizens, contact identified offenders and offer them community help in withdrawing from gangs.\footnote{Id.} If they agree to do so, the program offers substantial community resources, such as education, job training, and job placement opportunities, to these individuals.\footnote{Id. The National Urban League has endorsed the High Point Model as a national model for anti-gang social programming. See id.} These three favored models revolve around several main goals—namely, (1) development of community-based programs with adequate support networks for those affected by gangs; (2) involvement of families and community members in prevention and intervention strategies; (3) provision of educational opportunities for at-risk youth; and (4) provision of other community-based services such as education, job training, and job placement opportunities for those seeking to transition from gang membership.

As noted \textit{supra}, an inordinate amount of money has been expended in North Carolina for anti-gang social programming.\footnote{See supra notes 32–33 and accompanying text.} However, the results of these efforts have, at best, been dubious since the gang problem has continued to escalate in North Carolina.\footnote{See COMPREHENSIVE ASSESSMENT, supra note 21, at 5 (discussing the rise of gang activity in North Carolina).} From its inception in 1993 until 2006, the Governor’s Crime Commission issued a total of 130 grants for a total investment of state and federal funds in the amount of over $9 million.\footnote{See supra notes 32–33 and accompanying text.} Added to funding over the past few years, the total amount expended in social programming has well exceeded $20 million.\footnote{See supra note 31, at 10. That report notes that the General Assembly awarded $1.5 million in FY 2006–2007 to the Commission to confront the gang issue; for FY 2007–2008, the General Assembly awarded $4.8 million, with an additional $10 million awarded in FY 2008–2009 “for gang intervention and prevention program development.” Id. Additionally, the Criminal Justice Improvement Committee, a subcommittee of the Governor’s Crime Commission structure, awarded an additional $1.4 million obtained through federal funding for gang prevention programs. Id.} Obviously, then, funding of local anti-gang social programming is not a novel strategy for North Carolina; it has been utilized at least since the mid-1990s.
Clearly, the state legislature noticed an escalation in its gang population as well, since the funding awarded by the North Carolina General Assembly—the $10 million amount linked to passage of the anti-gang statute in 2008—was more than double the amount allocated during the previous fiscal year to achieve the state’s goals of anti-gang social programming. Arguably, such an increase in funding could fund many more local anti-gang initiatives. Nevertheless, grant money has been available for quite some time in North Carolina. Despite the fact that emphasis has been placed on these local anti-gang social programming initiatives, the gang problem in the state has burgeoned. Therefore, for better or for worse, it appears that social programming, in and of itself, will not be enough to stem that tide. Such anti-gang programming must be coupled with effective anti-gang legislation to contain and control the gang population problem within the state.

49. See MAJOR ACCOMPLISHMENTS, supra note 31, at 10. In the previous year, as noted supra note 48, the corresponding figure was $4.8 million.

50. However, with the decline in the economy and concomitant drop in the state’s coffers, this figure is likely to decrease substantially going forward, as with all government-provided funding. This demonstrates that throwing money at social programs, alone, cannot fix the gang problem in any jurisdiction.

51. See supra note 48 and accompanying text.

52. According to the Governor’s Crime Commission report to the General Assembly, “[i]n December 2009 there were 13,699 validated gang members and associates in the NC GangNET database [—a statewide web-based database that houses information on gang members entered from select law enforcement agencies].” 2010 REPORT, supra note 25, at 2. That report puts a positive spin on statistics regarding programs receiving grants from the Commission, noting, in relevant part, that once anti-gang grant programs were initiated in certain areas of the state in 2009, dramatic decreases occurred in the number of suspected and identified gang members as well as the average number of reported gang crimes. See id. at 6–8. However, the report is rife with qualifications noting, for example, that “[d]espite substantial percentage declines and increases for several offense categories, no statistically significant differences were found to exist between the average number of reported offenses over the two [reporting] periods.” Id. at 8 (emphasis added).

53. The author applauds the efforts of the State of North Carolina to address the growing gang issue with social programs which can tackle the root causes of the emergence of youth gangs. However, it is the author’s opinion that such programming alone has not solved the problem yet, and therefore, it is unlikely, by itself, to solve the problem in the future, unless the programming is used in conjunction with a more effective, stronger anti-gang statute. See discussion infra at Part II.

54. Having said this, it is important to note that the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) strongly advocates using community-based anti-gang strategies. See OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, BEST PRACTICES TO ADDRESS COMMUNITY GANG PROBLEMS 6 (2008), available at http://www.ncjrs.gov/pdffiles1/ojjdp/222799.pdf. In that publication, the OJJDP “provides guidance for communities that are considering how best to address a youth gang problem that already exists or threatens to become a reality.” Id. at ix. According to the publication, a community must undertake a seven-step process in order to confront its gang problem, and the most crucial step
B. North Carolina's Anti-gang Legislation Efforts

In the summer of 2008, after the Carson and Mahato murders, the North Carolina legislature finally passed anti-gang legislation after dragging its heels for several years. The statute, known as the 2008 Street Gang Suppression Act, became effective on December 1, 2008. According to the Bill Summary of the enacted statute, the Act seeks to impose additional offenses, heightened penalties, and specific criminal procedures for persons involved in criminal street gang activity. The Bill Summary for the 2008 statute further states that the Act seeks to define criminal street gangs and criminal street gang activity and to assign specific level felony punishment to certain actions affiliated with criminal street gangs. Further, the Act involves "a strategic planning process that empowers communities to assess their own gang problems and fashion a complement of anti-gang strategies and program activities." See id. The OJJDP advocates a community-based anti-gang strategy because it believes that gangs are, at least in part, a response to community dysfunction; therefore, it is up to the community to address its dysfunction by providing its youth with a safe and social environment in which they can grow and thrive. Id. at iii. Given that assessment by the OJJDP, it is possible that North Carolina's anti-gang social programming may have the potential to be successful, at least in part, provided that the Commission awards grants to those groups that have carefully planned strategic and coordinated measures to combat the state—and specific locality—gang problems.

55. North Carolina Street Gang Suppression Act, ch. 214, § 3, 2008 N.C. Sess. Laws 935, 936-40 (codified at N.C. GEN. STAT. §§ 14-50.15 to -50.30 (2009)). A year prior, efforts to pass the "Street Gang Prevention Act" failed in the North Carolina General Assembly. See H.B. 274, 2007-2008 Gen. Assem., Reg. Sess. (N.C. 2007), available at http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=h+274. Although legislative history on this point is scant, it seems legitimate to assume that the fervor to pass any anti-gang legislation had not been so high in the previous year, but was fueled by the two high profile murders of both Carson and Mahato shortly before the legislature passed the 2008 legislation. Curiously, as well, the prior year's effort was titled "Street Gang Prevention Act" (emphasis added) and the 2008 legislation was titled "Street Gang Suppression Act" (emphasis added) thus begging the question as to whether state legislators had come to the sad conclusion between the two legislative sessions that, indeed, there was a problem that needed suppressing and not just preventing. As noted by one commentator, "[p]revention programs [are] designed to identify and amend the factors associated with gang membership" while "[s]uppression strategies ... emphasize the supervision, arrest, prosecution, and incarceration of known gang members." Beth Bjerregaard, Antigang Legislation and Its Potential Impact: The Promises and the Pitfalls, 14 CRIM. JUST. POL'Y REV. 171, 172 (2003). Even though the North Carolina legislature is seemingly attempting to downplay a gang presence within the state, the very name of the 2008 statute, considered within this context, acknowledges the ongoing—and growing—gang problem in North Carolina.

57. Id.
58. Id. As early as 2005, the Research Division of the North Carolina General Assembly had identified legislation relating to street gangs as a "hot topic." RESEARCH DIV., N.C. GEN. ASSEMBLY, EMERGING ISSUES, HOT TOPICS AND TRENDS IN LEGISLATIVE ISSUES 23 (2005), available at http://www. nca. state. nc.us/ documentsites/
contains provisions relating to pretrial release, seizure and forfeiture of property, juveniles, and deferred prosecution and expunction of records. The main thrust of the statute, though, is found in its second provision, codified as title 14, section 50.16 of the General Statutes of North Carolina, which defines, proscribes, and penalizes criminal street gang activity.

According to section 14-50.16(a), it is illegal for individuals to engage in “a pattern of criminal street gang activity.” Any violation of this section results in a Class H felony; individuals who engage in such a pattern and additionally who are organizers, supervisors or managers within the gang will be found guilty of a Class F felony and sentenced more severely.

Section 14-50.16(b) defines a “criminal street gang” as a group of three or more people, who may or may not have a name, an
identifying symbol, or a sign, which has either committed a felony or engages in "criminal street gang activity."63 "Criminal street gang activity" consists of specific illegal activities (such as possession of a controlled substance, rape, homicide, burglary, or the like which are delineated in the North Carolina criminal law statutes and referred to in the Act) performed for a criminal street gang or in furtherance of a person's involvement in that criminal street gang.64 And finally, "a

organization, association, or group of three or more persons ... having as one of its primary activities the commission of one or more of the criminal acts" specified in the statute). California took the lead in the statutory fight against criminal street gangs with its 1988 passage of the Street Terrorism Enforcement and Protection Act ("STEP Act"). See Truman, supra note 21, at 683, for a discussion of California's original version of the STEP Act. The STEP Act, which has since been amended several times, created a new crime which forbade substantive participation in criminal street gangs. Id. The most important section of the original STEP Act, section 186.22(a), penalized "[a]ny person who actively participate[d] in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promote[d], further[ed], or assist[ed] in any felonious criminal conduct by gang members." See California Street Terrorism Enforcement and Prevention Act, ch. 1242, § 1, 1988 Cal. Stat. 4127, 4127–28 (codified at CAL. PENAL CODE § 186.22(a) (West 2009)).

Since the passage of the STEP Act in California in 1988, many other states have adopted and continue to adopt anti-gang legislation modeled after that statute. See Truman, supra note 21, at 688. North Carolina is one such state, and the similarity between its legislation and the original California STEP Act is readily apparent in many ways: both proscribe participation in "criminal street gang activity," specifically define key terms, and list requisite punishment for violation. Compare 1988 Cal. Stat. 4127 with N.C. GEN. STAT. §§ 14-50.15 to -50.30 (2009).

63. N.C. GEN. STAT. § 14-50.16(b) (2009). Specifically, a “criminal street gang” is defined 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.

Id.

64. See § 14-50.16(c). Criminal street gang activity is defined as

commit[ting] ... attempt[ing] to commit, or ... solicit[ing], coerce[ing], or intimidat[ing] 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 [specifically delineated criminal laws of the state of North Carolina].

Id. The specifically delineated criminal laws are:

(1) [a]ny offense under Article 5 of Chapter 90 of the General Statutes . . . [and]
(2) [a]ny offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting [sections] 14-78.1, 14-82, 14-86, 14-145,
pattern of criminal street gang activity” means engaging in an act of criminal street gang activity after having been convicted of at least two prior incidents of criminal street gang activity (so long as one of those prior incidents occurred after December 1, 2008, and within three years of the present incident). These terms are very carefully and explicitly defined in the Act, most likely in an attempt to avoid constitutional challenges based upon vagueness and overbreadth.  

Id. Article 5 of Chapter 90 is North Carolina’s Controlled Substances Act. See N.C. GEN. STAT. §§ 90-86 to -113.8 (2009). Chapter 14 of the General Statutes is titled “Criminal Law” and is the section of the North Carolina code that proscribes the vast majority of criminal behavior. See N.C. GEN. STAT. ch. 14 (2009).

65. Id. § 14-50.16(d). Specifically, the statute states that a pattern of 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.

Id. Compare this section of the North Carolina statute with the New Jersey anti-gang statute, which more specifically delineates indicia of gang affiliation and also only requires one or more offenses within a prior five-year period for conviction. N.J. STAT. ANN. § 2C:33-29(a) (West 2009). Possible amendments to this section of the New Jersey anti-gang statute introduced in January 2010 also pushed for tougher penalties pertaining to certain types of “gang criminality.” S.B. 420, 2010 Leg., 214th Sess. (N.J. 2010), available at http://www.njleg.state.nj.us/2010/Bills/S0500/420_11.PDF.

66. A common challenge to anti-gang legislation has been vagueness. To put it simply, the void for vagueness doctrine, deriving from the Due Process Clauses of the Fifth and Fourteenth Amendments, requires that a statute be considered unconstitutionally vague when citizens are not provided with fair notice of prohibited conduct. See Beth Bjerregaard, The Constitutionality of Anti-Gang Legislation, 21 CAMPBELL L. REV. 31, 33 (1998); see also L.B. v. State, 700 So. 2d 370, 371 (Fla. 1997) (“It is an established principle of our constitutional jurisprudence that a statute is considered vague if it ‘does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct.’” (quoting State v. Muller, 693 So. 2d 976, 977 (Fla. 1997))). There is much more to the vagueness doctrine with respect to anti-gang legislation, but that is a subject for another day. Suffice it to say that given the explicit definitions of key terms, and specific, pointed applications of those terms within the North Carolina statute, it is very unlikely that the North Carolina Street Gang Suppression Act would fail in the face of vagueness challenges. See Bjerregaard, supra, at 43-44 (noting that, between 1991 and 1998, no vagueness challenges to state anti-gang legislation were held to have merit, although several anti-loitering laws had been deemed unconstitutional).

67. A statute will be deemed overbroad “when legal, constitutionally protected activities are criminalized as well as illegal, unprotected activities, or when the legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free.” 73 AM.
arguments, common attacks on both anti-gang and anti-loitering statutes. 68

Thus, under the prosecutorial prong of the statute, three conditions must be met to achieve a conviction under the Act. First, an individual must have at least two previous convictions for a crime that fits the definition of criminal street gang activity as delineated in the Act. Of course, as specified in the statute, these acts must be done on behalf or in furtherance of an individual's involvement with a gang. Second, an individual must commit another crime that fits the definition of criminal street gang activity under the Act. Third, the last incident of criminal street gang activity must have occurred within three years of one of the other two incidents of criminal street gang activity. 69 If these three conditions are present, a prosecutor has grounds to secure a conviction under section 14.50-16 of the Act. 70

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68. Truman, supra note 21, at 712 (noting that a variety of constitutional challenges, including vagueness and overbreadth, the two most common challenges, have been raised to defend against state anti-gang statutes).

69. N.C. GEN. STAT. § 14-50.16(d); see supra note 65. At first blush, one might think that the difficulty in obtaining three convictions for criminal street gang activity within
The balance of the Act deals with other scenarios which could arise in the conduct of gang activity. For instance, the Act criminalizes the solicitation of participation in criminal street gang activity\textsuperscript{71} and the threat of or retaliation against someone who wishes to or has withdrawn from a criminal street gang.\textsuperscript{72} The Act also

three years proximity to one another would be insurmountable. However, considering the breadth of activity that meets the criteria for criminal street gang activity, this difficulty appears not to be as great. Every single drug offense delineated in the North Carolina statutes is considered criminal street gang activity, as are the vast majority of other criminal acts delineated in the criminal code of the state. See § 14-50.16(c)(1). Further, time spent in prison does not factor into the three-year period. See supra note 65. So, for example, if an individual was recently released from prison for a variety of drug-related charges, that person could possibly be convicted under the Act for engaging in “a pattern of criminal street gang activity” should that individual begin selling drugs again immediately after his or her release. Assuming that these drug offenses were all connected to the gang, or that the gang profited from them, then a prosecutor, it would seem, could easily establish the requisite “pattern of criminal street gang activity.” § 14-50.16(a).

70. The Act does not apply retroactively, and, as noted supra, there has been no definitive proof that Atwater and Lovette were affiliated with a gang. However, it is worth noting that both had criminal records at the time that they were arrested for Carson’s murder. Posting of Jon Ham to Right Angles Blog, http://triangle.johnlocke.org/blog/?p=1831 (Mar. 12, 2008, 17:07 EST). Atwater’s record was particularly lengthy; it included, among other things, a 2007 guilty verdict for possession of a firearm by a felon and a 2008 conviction for felony breaking and entering and felony possession of stolen goods. Id. He received probation after each of these convictions, and it was during these probationary periods that he allegedly committed the Carson murder. Id. At the time of his arrest for the Carson murder, he also had charges pending against him for an arrest on November 7, 2007, including possession of a firearm by a felon, possession with intent to manufacture, sell or deliver marijuana, and possession of drug paraphernalia. Id. Considering the Act’s “test,” if the Act was retroactive, Atwater surely would have met its requirements. Lovette’s criminal record consisted of two misdemeanor convictions—one for larceny and the other for burglary. Id. Because Lovette was a juvenile at the time of the Carson murder, it is possible that under another provision of the Act, section 14-50.29, the judge could defer proceedings and place the defendant on probation for a minimum of one year. Given Lovette’s age and this provision, it is difficult to say whether he could have been convicted under the Act, assuming that it applied retroactively and some type of gang connection could be established. One would hope, however, that considering the heinous nature of the Carson murder that Lovette, if charged and prosecuted under that Act, would not have been granted such leniency had the Act been in effect at the time of the crime.

71. Compare N.C. GEN. STAT. § 14-50.17 (2009) (prohibiting the causing, encouraging, soliciting and coercing of individuals over sixteen years of age to participate in criminal street gang activity) with N.C. GEN. STAT. § 14-50.18 (criminalizing same with respect to individuals under sixteen years of age). Further, the solicitation of someone under sixteen years of age is a Class F felony, whereas the solicitation of someone sixteen years of age or older is a Class H Felony. Id.; see also supra note 61 (discussing punishment assigned to Class H and Class F felonies in North Carolina).

72. See N.C. GEN. STAT. §§ 14-50.19 to -50.20. Specifically, section 14.50.19 states that “[i]t 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.” Such an act would be a Class H felony. § 14-50.19. Section 14-50.20 says that “[i]t is unlawful for any person to
addresses property issues: property “used, intended for use in the
course of, derived from or realized through criminal street gang
activity” is subject to seizure or
forfeiture, 73 and real property which is
knowingly connected to criminal street gangs “shall constitute a
public nuisance.” 74

Further, the Act provides a high degree of leniency for juvenile
offenders. Section 14-50.28 contains a blanket statement that the Act
is inapplicable to those under the age of sixteen. 75 Section 14-50.29
provides considerable discretion to a judge in how he or she deals
with sixteen- and seventeen-year-old offenders. 76 Finally, section 14-

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73. Id. § 14-50.23. This section of the statute states that “[a]ll 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 . . . seizure and
forfeiture.” Id.

74. Id. § 14-50.24(a) (providing that “[a]ny 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”). Although real property connected with street gang use can be deemed a public
nuisance, section 14-50.24(b) provides a limitation. According to that section of the Act,
“[t]he 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.” § 14-50.24(b). In 2009, legislation was introduced to amend the North Carolina
anti-gang statute. Those amendments, part of Senate Bill No. 372 of the North Carolina
2009 General Assembly, would have amended sections 14-50.32 and 14-50.33 of the
available at http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl? Session
=2009&BillID=S+372. The Senate bill was referred to as the “Clarification of Nuisance
Abatement Laws.” Id. Most notably, the new statute would have added a provision
whereby a street gang itself would constitute a public nuisance if it regularly (defined as
five times within a 12 month period) “associate[d] in street gang activities.” Id. This new
provision would have provided the possibility of injunctive relief in the case of persons
who regularly engaged in street gang activity. See id. The legislation passed the North Carolina
Senate on May 13, 2009, but apparently died in committee in the House on July
It appears that use of injunctive relief is a relatively new weapon in the anti-gang arsenal.

75. See N.C. GEN. STAT. § 14-50.28 (2009). That section states that the Act “shall not
apply to juveniles under the age of 16.” Id. (emphasis added). However, section 14-50.22
does provide some teeth to the statute with respect to juvenile offenders when it states
that any juvenile fifteen-years-old or older who is convicted of a misdemeanor determined
to be related to criminal street gang activity will be charged with an offense that is one
class higher. See id. § 14-50.22. Thus a Class A1 misdemeanor will be “enhanced” under
this provision to a Class I felony.

76. See § 14-50.29. Under this provision of the Act, which is titled in pertinent part
“Conditional Discharge,” a judge can, with the consent of the defendant, “defer further
proceedings and place the defendant on probation upon such reasonable terms and
50.30 contains specific provisions and protective methodologies to be employed, all of which relate to the expunction of records for those who violate the Act before reaching the age of eighteen.\textsuperscript{77}

\textsuperscript{77} See N.C. GEN. STAT. § 14-50.30 (2008) (codified as amended at N.C. GEN. STAT. § 14-50.30 (2009)). Under the original statute, a person who had been convicted under the Act before reaching eighteen years of age could petition the court to have the conviction expunged from his or her record after a period of two years or completion of a period of probation, whichever was later. \textit{See id.} The petition for expunction required: (1) an affidavit that says that the petitioner “has been of good behavior” during the two years since the conviction and had not been convicted of any felonies or misdemeanors (other than traffic violations); (2) character references from at least two individuals not related to the petitioner; (3) an affidavit from the local authorities saying that the petitioner has not been convicted of any felonies or misdemeanors; and (4) an affidavit from the petitioner which says that there are no outstanding restitution orders which exist against the petitioner. \textit{See id.} During the 2009 and 2010 legislative sessions, several changes were made to these provisions. The changes were largely technical in nature to correct wording and procedural aspects of expunction and to effect a consolidation of all state statutes related to expunction of records into one article of the general statutes of the state. \textit{See Act of Sept. 10, 2009, ch. 577, § 4, 2009 N.C. Legis. Serv. 1624, 1630 (West); Act of Aug. 26, 2009, ch. 510, § 2, 2009 N.C. Legis. Serv. 1333, 1334 (West). Under the current version of the statute, expunction must proceed pursuant to N.C. GEN. STAT. § 15A-145.1 (2009), in cases under the anti-gang statute as well as other criminal cases in which expunction is sought. Thus, under the amended section 14-50.30, persons now convicted under the Act who were entitled to expunction by its provisions (namely, juveniles) would proceed in much the same fashion as under the old statute, requiring a similar petition as that outlined in the original 2008 law. One curiosity which remains, however, in both the old and new procedures is a statement which says that “[t]he judge to whom the petition [for expunction] 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.” \textit{Compare} § 14-50.30(a) (2008) with § 15A-145.1 (2009) (emphasis added).

The reason that this author finds this curious is because the judge in any expunction matter governed by these statutes, if he or she makes a finding that the petitioner has met the “good behavior” requirements of the statute, is required to expunge the record. § 15A-145.1(b)(2009) (explicitly stating that “[t]he court . . . shall order that such person be restored, in the contemplation of the law, to the status occupied by the
II. NECESSARY IMPROVEMENTS IN THE NORTH CAROLINA ANTI-GANG STATUTE

Although in many instances the statute follows guidance from other states and uses similar verbiage in similar sections, the statute lacks the prosecutorial teeth needed to make a definitive difference in North Carolina's gang problem. There are essentially three main areas where the North Carolina legislature could well take lessons from legislation recently passed or amended in other states to shore up what seems to be a rather weak anti-gang statute. By far, the most dramatic change needed is tightening up the provisions regarding juvenile participation in gang activity, including those involving expunction of records. This is the single most important change that the legislature should consider. Additionally, the state legislature should consider adding specific provisions regarding gang activity near schools. Many states have these types of provisions, and they have been in the public realm for a number of years in other contexts. Finally, the North Carolina General Assembly should consider strengthening and further defining the Act's provisions regarding solicitation of potential gang members. The current statute is too "bare bones" on this point, and reconsideration of language, plus another look at possible sentence enhancements, would go a long way toward improving the effectiveness of the Act in this regard.

petitioner before such arrest ... "). However, under the statutory language of both old and new statutes, there is no similar requirement that a judge communicate with a probation officer in making that "good behavior" determination. See § 14-50.30(a) (2008); § 15A-145.1 (2009). Thus, the process of rendering a decision about expunction seems to have little practical effect if all the judge consults is the written petition. This is one area where a change in the law could effect a change in the system and help to protect both sides, namely, the juvenile who seeks to have the record expunged and society, which seeks to protect itself from a criminal who is not rehabilitated.

78. See discussion infra Part II.B.

79. It is worthwhile to note that the state legislature, in the long run, may want to consider the overall and far-reaching implications of an increased level of punitive provisions in the state statute. As alluded to within this section of the Article, many states have incorporated sentence enhancements into their anti-gang legislation. Although sentence enhancement occurs sporadically within the North Carolina statute, it should be considered on a more measured basis to discourage, for example, gang solicitation and gang activity pitched to minors, in particular.

For example, the City of New York recently enacted, and Mayor Bloomberg signed into law, a bill which punishes criminal street gang initiation activity as a Class A misdemeanor, punishable by up to a year in jail and/or a fine up to $1,000. Mayor Makes 'Criminal' Street Activity 'A' Misdemeanor, BROOK. DAILY EAGLE (N.Y.), Mar. 3, 2010, http://www.brooklyn eagles.com/categories/category.php?category_id=4&id=33866. Moreover, the new law defines criminal street gang initiation activity to include, in the course of one's own or "another person's initiation or affiliation with a gang, ... intentionally and recklessly engag[ing] in activity that creates a substantial risk of physical
A. Juvenile Participation in Gang Activity and the North Carolina Street Gang Suppression Act: A Necessary Statutory Change

As noted above, the Act provides a relatively high degree of leniency to young offenders. Pursuant to section 14-50.28 of the Act, the anti-gang statute expressly does not apply to juveniles under the age of sixteen.\(^8\) Further, with respect to offenders between the ages of sixteen and eighteen, judges have a high degree of discretion in handling potential gang-related offenses. When a sixteen- or seventeen-year-old pleads or is found guilty under the Act, the court can defer the proceedings by placing the individual on probation; assuming that the youth meets the terms of probation, the judge, within certain parameters, can dismiss the charges within one year of the initial appearance.\(^8\) Additionally, the Act provides for expunction of records for sixteen- and seventeen-year-olds convicted under the statute, and this can occur two years after the conviction, per section 14-50.30.\(^8\)

Clearly, the provisions here seek to appease those who want to protect youthful offenders, while still having an anti-gang statute "on the books." The problem with these less stringent statutory provisions, though, is that by providing such lenient ways to dismiss proceedings and expunge records, the Act makes it much harder for prosecutors to establish two previous incidents of criminal street gang activity, a prerequisite for convicting offenders under section 14-50.16. In short, the Act specifically requires prior convictions for criminal street gang activity in order to obtain a conviction for a pattern of criminal street gang activity, and yet the Act provides two mechanisms by which youthful offenders can avoid conviction or have such convictions removed from their records.\(^8\) In order to enhance

\(^8\) Injury to another person, or causes another person to fear death or serious physical injury." \(^{Id.}\) Further, it may be time to consider the Act’s possible impact, or lack thereof, upon gangs within correctional facilities. According to the Institute for Intergovernmental Research, only ten percent of the states have enacted laws that address gangs within correctional facilities. Inst. for Intergovernmental Research, Highlights of Gang-Related Legislation: Spring 2008, \(http://www.iir.com/nygc/gang-legis/highlights-gang-related-legislation.htm\) (last visited Aug. 24, 2010). This may be an issue whose time has come.

\(^8\) See N.C. GEN. STAT. § 14-50.28 (2009); supra note 75 and accompanying text.

\(^8\) See id. § 14-50.29; supra note 76 and accompanying text.

\(^8\) See id. § 14-50.30; supra note 77 and accompanying text.

\(^8\) As noted previously, see supra note 65 and accompanying text, the Act specifically requires prior convictions for criminal street gang activity in order for a prosecutor to obtain a conviction for a pattern of criminal street gang activity. However, under the current statute, a seventeen-year-old could be guilty of two counts of soliciting participation in a gang, in violation of the Act, but have these charges dismissed by a judge a year later. See supra note 65 and accompanying text. Two years later, when this now
the enforcement and effectiveness of the statute, a more reasonable solution might be to extend the Act to individuals under sixteen and not to include the judicial discretion to dismiss proceedings, as discussed supra. Rather, the legislature could amend the statute to rely more on prosecutorial discretion to give juvenile offenders a second chance, if conditions warrant such, or to direct the court to punishments that consist of community service or participation in an anti-gang intervention or prevention program. Moreover, allowing such prosecutorial discretion would allow the prosecutors to establish convictions which could later be used to establish the requisite pattern of criminal street gang activities for conviction under the Act, should such a pattern of criminal activity emerge in a youngster's

nineteen-year-old commits another crime that violates the Act, those two previous convictions will not be available to the prosecutor seeking to establish a pattern of criminal street gang activity under the statute. See supra note 65 and accompanying text. Thus, it is unlikely that prosecutors would use this statute with much frequency, given its potential inapplicability in such circumstances.

This is a problem shared with other states, such as Maryland. In a recent challenge to that state's 2007 anti-gang legislation, a Baltimore City judge rejected an assertion of unconstitutional vagueness by defense counsel in a pending criminal gang case. Caryn Tamber, Maryland Legislators to Consider Amendments to Beef Up Gang Legislation, DAILY REC. (Baltimore, Md.), Jan. 26, 2010, available at 2010 WLNR 2310292. Within the context of that case, though, Maryland prosecutors stated that the 2007 Maryland anti-gang statute had not been utilized very much because its language is cumbersome. Id.

Anecdotally, this particular problem with the statute and its application is borne out by research done for this Article. In a series of phone calls in June 2009 to the North Carolina Attorney General's office, the North Carolina American Civil Liberties Union, various police departments in North Carolina, the office of the district attorney and the public defender, no one was able (or willing) to identify the number of people charged under this statute in Durham County (the home turf of Atwater and Lovette) or Orange County (where the Eve Carson murder occurred in Chapel Hill), or even in the entire state. That reluctance or inability to specify such information speaks volumes about the lack of effectiveness of the Act as it is currently written. Thus, the Act looks like a panacea to satisfy public opinion in the wake of the Carson and Mahato murders, but not an effective, forceful, and methodical way to combat gang proliferation and activity within the state.

Prosecutorial discretion could be used to give youthful, first-time offenders second chances. In fact, prosecutors could use that discretion to impose punishments that consisted of community service or participation in an anti-gang intervention program. If the Act were applicable to individuals under sixteen, and judges were not given discretion to dismiss proceedings, then prosecutors would have the chance to establish the requisite pattern of convictions while simultaneously providing the opportunity for lighter sentences and second chances, if warranted. It seems worth mentioning here that reliance on prosecutorial discretion is by no means a foreign concept; prosecutors must exercise sound judgment every time they receive a police report. There is no drawback evident here in incorporating such prosecutorial discretion into the statute, and, considering the statutory reliance upon a "pattern" of behaviors necessary, this seems to be the most logical and effective approach. Of course, on the other hand, some might regard prosecutors as detrimental in this process, characterizing them as only interested in prosecuting or incarcerating gang members.
future. This approach would most likely result in a better, more reasoned legislative solution to the problem of gang proliferation in the state.

Why is a change to these provisions so significant in a state like North Carolina? Given the parameters outlined above, arguably the Act could be inapplicable to approximately fifty or sixty percent of the offending population of gang members in the state. Currently, younger, first-time offenders could receive “wake-up” calls and second chances while still allowing prosecutors to establish requisite patterns under the statute, if need be, in the future. Furthermore, had the Act been made applicable to offenders of all ages, it would seem that the legislature could have written a statement of purpose addressing its desire to give younger, first-time offenders lighter sentences and second chances. On that note, it is curious that the North Carolina legislature did not even write a statement of purpose. In contrast, in its enactment of the STEP Act, the California legislature wrote an amazing statement of purpose to support its enactment of its anti-gang legislation, which provided in relevant part that

[the Legislature . . . finds that the State of California is in a state of crisis which 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. . . . It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

CAL. PENAL CODE § 186.21 (West 2009). It seems logical that a state would include a very pointed statement of purpose in its legislation, and yet, North Carolina failed to do so, leading one to wonder if fear of the acknowledgement of a gang problem in the state prevented such a statement in the Act.

86. See RICHARD HAYES, GANGS IN NORTH CAROLINA—A COMPARATIVE ANALYSIS BETWEEN 1999 & 2004, at 3 (2005), available at www.gcc.state.nc.us/PDFs/SystemStats/Spring05.pdf. According to Hayes, “unlike California or Chicago based gangs, North Carolina’s gangs have yet to mature to older and multiple generation cohorts.” Id. Thus, currently, the percentage of youth gang members in North Carolina exceeds national averages. So, while recent nationwide studies have indicated that juveniles comprise approximately forty-one percent of gang membership, see, e.g., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, JUVENILE OFFENDERS & VICTIMS: 2006 NATIONAL REPORT 83 (2006), available at http://www.ojjdp.ncjsrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf, it is not unreasonable to assert that well over fifty percent of the North Carolina gang population could be under the age of eighteen. And even if North Carolina more closely reflected the national average, forty-one percent is still a very large percentage of potential offenders.

In his 2005 study, Hayes also notes that while the highest levels of gang activity in North Carolina are being perpetrated by individuals between the ages of sixteen and twenty-four, there are significant numbers of thirteen-, fourteen-, and fifteen-year-olds entering gangs. See HAYES, supra, at 3. Hayes’ research has been confirmed in more recent studies. According to the 2008 Comprehensive Gang Assessment submitted to the
the percentage of youth gang members in North Carolina seems to exceed national averages. So, while recent nationwide studies have indicated that juveniles comprise approximately forty-one percent of gang membership, it is not unreasonable to assert that well over fifty percent of the North Carolina gang population could be under the age of eighteen. Even the research gathered by the state’s own 2008 Comprehensive Gang Assessment submitted to the state legislature by the Department of Crime Control and Public Safety noted that over thirty North Carolina gangs are solely comprised of youth offenders and significant numbers of gangs have individuals aged fifteen years or younger.

In addition to the prosecutorial discretion referenced above, there is another possible legislative solution to the problems presented by these sections of the statute. A good model for the North Carolina legislature may well be the New Jersey anti-gang

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North Carolina legislature by the Department of Crime Control and Public Safety, a significant number of juvenile offenders exist in North Carolina. See COMPREHENSIVE ASSESSMENT, supra note 21, at vii. More specifically, over thirty North Carolina gangs are solely comprised of youth offenders and significant numbers of gangs count among its members individuals aged fifteen years or younger. Id. The 2009 report to the General Assembly did not provide any additional age-related statistics, but did note that officials in North Carolina believe that there are more than 855 gangs with greater than 7,679 validated gang members within the state; approximately 1,185 gang affiliates; and in excess of 1,186 gang suspects in forty-eight counties of North Carolina. Id. Statistics in North Carolina are now being compiled through the use of the North Carolina GangNET, which is a “criminal justice gang intelligence database with information populated by trained and authorized users from law enforcement and correctional organizations.” Id. at 1. Interestingly, the focus of the 2009 report to the General Assembly was largely information about the GangNET process and program, plus a report on grant awards to social programs aimed at anti-gang efforts. Id. Thus, even though the North Carolina legislature appears to lack an acute awareness of increasing gang activity in the state, law enforcement groups within the state seem to understand that they must use new and more innovative methods to track and assess the gang threat throughout the state.

87. See HAYES, supra note 86, at 1–6 (analyzing the large numbers of youthful gang members in North Carolina).

88. See, e.g., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, supra note 86, at 83.

89. See HAYES, supra note 86, at 3, 7. Hayes’ observations were borne out as well in the Summer 2008 article published by the North Carolina Criminal Justice Analysis Center regarding gangs in North Carolina. See GOVERNOR’S CRIME COMM’N, GANGS IN NORTH CAROLINA: A SUMMARY OF THE LAW ENFORCEMENT SURVEY (2008), available at www.negced.org/pdfs/systemstats/summer08.pdf. Statistics published in that report stated that the average age of the youngest gang members in North Carolina was fifteen; the most frequently reported age of the youngest member was also fifteen. Id. at 7. That report also verified that about six percent of the gangs for which age data were available were exclusively youth gangs. Id.

90. See COMPREHENSIVE ASSESSMENT, supra note 21, at vii. This report bears out Hayes’ findings in a more contemporary report on the subject.
statute. The New Jersey anti-gang statute allows the prosecutor in a
case involving a juvenile to motion the court to waive jurisdiction
over an incidence of gang criminality and refer the case instead to the
regular court docket in certain prescribed circumstances.\textsuperscript{91} The
prescribed circumstances include: (1) if the juvenile was fourteen
years of age or older at the time of the charged act; and (2) if there
was probable cause that the juvenile committed certain acts,
including, inter alia, “gang criminality” in the commission of certain
crimes such as criminal homicide, carjacking, aggravated sexual
assault, sexual assault, certain other types of aggravated assaults,
kidnapping, or arson.\textsuperscript{92} To protect youthful offenders, the statute also
allows a juvenile offender who can show the probability of
rehabilitation prior to reaching age nineteen to overcome the waiver
of jurisdiction.\textsuperscript{93} However, such an opportunity is not available to
those juveniles convicted under certain statutory elements, including
a commission of gang criminality as enumerated above, if the juvenile
is sixteen years of age or older.\textsuperscript{94}

Thus, under the New Jersey statute, the criminal cases of those
juveniles age fourteen and above who participate in the worst
criminal offenses as part of gang activity could be transferred out of
juvenile court, upon motion of the prosecutor and the acquiescence of

\textsuperscript{91} N.J. STAT. ANN. § 2A:4A-26 (West 2009).
\textsuperscript{92} Id. The act states, in relevant part:

On motion of the prosecutor, the court shall, without the consent of the juvenile,
waive jurisdiction over a case and refer that case from the Superior Court,
Chancery Division, Family Part, to the appropriate court ... if it finds, after
hearing, that:

(1) The juvenile was 14 years of age or older at the time of the charged delinquent
act; and

(2) There is probable cause to believe that the juvenile committed a delinquent act
or acts which if committed by an adult would constitute (a) ... gang criminality ...
where the under-lying crime is enumerated in this subparagraph or promotion of
organized street crime ... ."

\textsuperscript{93} Id.; see infra note 94 for actual text.
\textsuperscript{94} Id. The applicable section reads as follows:

If the juvenile can show that the probability of his rehabilitation by the use of the
procedures, services and facilities available to the court prior to the juvenile
reaching the age of 19 substantially outweighs the reasons for waiver, waiver shall
not be granted. This sub-section shall not apply with respect to a juvenile 16 years
of age or older who is charged with committing any of the acts enumerated in
subparagraph (a) [which includes gang criminality under the N.J. statute].

\textsuperscript{Id.}
a judge after a hearing. The New Jersey plan, however, would also allow those juveniles between the ages of fourteen and sixteen to petition to show that they could be rehabilitated before the age of nineteen, thus avoiding mandatory transfers of their cases to adult court. But if a juvenile is sixteen or above, that opportunity would not be available, and it would be a matter of prosecutorial discretion whether or not the motion would be brought to transfer the case out of juvenile court in the first place, recognizing that such transfer could only be achieved if coupled with the findings of a judge at a hearing. This would be one way that the North Carolina legislature could amend the current statute to extend its reach to younger participants in gang activity. It would still allow some prosecutorial discretion in making the motion to transfer in the first place. It would also allow the youngest offenders, those under the age of sixteen, an opportunity to prove that they can be rehabilitated before the age of nineteen. However, it would more appropriately protect society from those juveniles who clearly participate in gang-related activity and who participate in the most heinous of crimes. This change clearly could strengthen the effectiveness of the current North Carolina statute and would address the issue of juveniles in a reasonable manner.

B. Gang Activity near Schools: An Easy Fix to the Current Statute Through Sentence Enhancements and Greater Specificity in Language

The second change that the North Carolina statute needs to focus on is the relationship of gang activity to the schoolyard. As noted above, the North Carolina statute lacks a specific section regulating possible gang activity at or near schools. In contrast, a number of states have passed school-related anti-gang legislation. In fact, according to the National Youth Gang Center, twenty-one states have some type of school-related anti-gang measure on their books.
Some of the more common types of legislative approaches regarding schools include sentence enhancements for gang activity occurring on or around school property,\textsuperscript{100} public school dress code requirements,\textsuperscript{101} educational mandates for faculty and students, including specific educational programming regarding gang identification,\textsuperscript{102} and reporting of criminal youth gang activity.\textsuperscript{103} All of these types of measures were in effect in other states while North Carolina moved to enact its anti-gang legislation; however, North Carolina legislators ignored their potential benefit and chose to exclude them from the Act.\textsuperscript{104}

Two particular types of amendments to the current North Carolina statute should be considered by the legislature with respect to gang activity near schools. The first would be to change the current statute to provide for sentence enhancement if criminal gang activity

\textsuperscript{100} See, e.g., VA. CODE ANN. § 18.2-46.3:3 (2009). The Virginia statute, entitled “Enhanced punishment for gang activity taking place in a school zone; penalties,” provides a mandatory minimum sentence of two years for gang activity in certain restricted spaces such as school areas. \textit{id.}

\textsuperscript{101} With regard to dress codes, Tennessee permits local education boards to promulgate rules regarding dress, including regulations which forbid the “[w]earing, while on school property, [of] any type of clothing, apparel or accessory ... that denotes the students’ membership in or affiliation with any criminal gang.” TENN. CODE ANN. § 49-6-4215 (2009). Nevada has a similar (recently amended) statutory provision, which states that “each school district shall establish a policy that prohibits the activities of criminal gangs on school property.” NEV. REV. STAT. § 392.4635 (2009). The policy may include, without limitation provisions which prohibit “a pupil from wearing any clothing or carrying any symbol on school property that denotes membership in or an affiliation with a criminal gang.” \textit{id.} Iowa similarly established legislation in 1995 as a result of its finding that “[g]ang-related apparel worn at school draws attention away from the school’s learning environment and directs it toward thoughts or expressions of violence, bigotry, hate, and abuse.” IOWA CODE ANN. § 279.58 (West 2010). Therefore, the legislature determined that “[t]he board of directors of a school district may adopt ... a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of students and staff ... .” \textit{id.}

\textsuperscript{102} See, e.g., DEL. CODE ANN. tit. 14, § 4123A (2008). This statutory section requires combined training each year for gang identification and bullying by every school district and charter school in the state. See \textit{id.} § 4123A(a).

\textsuperscript{103} See infra note 112 and accompanying text.

\textsuperscript{104} See OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, supra note 54, at 8. That report, from the U.S. Department of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, states that the leading advantages to implementing school district involvement in the gang problem include such things as “buy-in from school administrators to ensure local school participation [in the effort] ... access to educational data [and] ... access to financial and business management support.” \textit{id.}

On the downside, though, the report notes that the school districts may not be willing to provide services to youth not enrolled in the schools in that district, and that the particular district’s hiring practices may prove to be an impediment to employment of necessary outreach staff. \textit{id.}
is proven to occur within a certain area near or in a school zone. One example of this type of statutory provision is set forth in the current version of the California STEP Act.\textsuperscript{105} To discourage criminal street gang activity within school areas, California law provides that in the event of any statutorily proscribed criminal street gang activity on the grounds or within 1,000 feet of any school facility, either during the regular school hours or whenever minors are using the facility for any purpose, that fact will be considered by the court as a "circumstance in aggravation of the crime" in imposing a sentence.\textsuperscript{106} This type of "sentence enhancement" is a common theme in legislative provisions relating to gang activity near schools. In fact, some states go beyond simply legislating activity on the school grounds and extend to other areas such as school buses, school bus stops, public property in the vicinity of a school, or places where students would be waiting to board or exit school vehicles.\textsuperscript{107} This category of prohibition is similar

\textsuperscript{105} See CAL. PENAL CODE § 186.22(b)(2) (West 2009).

\textsuperscript{106} Id. The statute provides, in relevant part that

[i]f the underlying felony described in paragraph (1) [which consists of criminal street gang activity] is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

\textsuperscript{107} See, e.g., ARIZ. REV. STAT. ANN. § 13-709 (2009). The Arizona statute permits a five-year sentence enhancement for a "criminal street gang member" who commits a felony in "a school safety zone." See id. (defining a school as "any public or nonpublic kindergarten program, common school or high school" and a school safety zone as "(a) [t]he area within three hundred feet of a school or its accompanying grounds[,] (b) [a]ny public property within one thousand feet of a school or its accompanying grounds[,] (c) [a]ny school bus[,] (d) [a] bus contracted to transport pupils to any school during the time when the contracted vehicle is transporting pupils on behalf of the school[,] (e) [a] school bus stop[,] or (f) [a]ny bus stop where school children are awaiting, boarding or exiting a bus contracted to transport pupils to any school"); see also VA. CODE ANN. § 18.2-46.3:3 (2009), amended by Act of Apr. 10, 2010, ch. 364 (Westlaw through 2010 Reg. Sess.) (extending further than some other statutes by proscribing criminal gang activity not only on the grounds of elementary and secondary schools and school bus stops, but also on the grounds of any postsecondary school or any public or private two- or four-year institution of higher education as well as any public property within 1,000 feet of any of those institutions). Recently amended, the Virginia statute also prohibits criminal gang activity
to the "drug free zones" set up throughout the nation in the vicinity of schools. Like the enhancements in the anti-gang statutes for those states which include these provisions, if an individual is convicted of drug activity within the proscribed zones, the judge may enhance the sentence. This type of legislative proscription sends a powerful message to those who would seek to pursue or encourage gang activity in the vicinity of our schools. Again, this would be an easy fix for the North Carolina anti-gang legislation and one which should be seriously considered for incorporation.

The second change to the North Carolina statute with respect to gang activity near and in schools would be a provision within the statute itself, or in the state's education statutes, requiring some type of mandatory educational programming related to gang awareness. Enactment of this type of provision within the statute would not only increase awareness of the gang problem within the state, thus increasing its enforcement efficacy, but would also perhaps quiet those persons who may feel that the statute as it is currently written is too punitive in nature and does not foster societal awareness of the problems leading to gang formation. Several states have enacted measures designed to increase training for public school employees in both the identification and reporting of criminal youth gang activity. For example, school districts within the State of Delaware are required to ensure that "public school employees receive . . . training each year . . . in the identification and reporting of criminal youth gang activity . . ." The State of California, long a forerunner in anti-gang legislation, as noted previously, has enacted within its education code a provision that requires the State Department of

in publicly owned or operated recreation facilities, parks, hospitals or libraries. Id. Another interesting feature of this provision of Virginia law is its sentence enhancement structure, which not only provides a mandatory minimum term of imprisonment of two years for any criminal activity within a school zone but also has separate sentence enhancements for perpetrators who are eighteen years of age or older and who commit such acts against juveniles. See id. (emphasis added).

108. See, e.g., ARIZ. REV. STAT. ANN. § 13-3411 (2009) ("Possession, use, sale or transfer of marijuana, peyote, prescription drugs, dangerous drugs or narcotic drugs or manufacture of dangerous drugs in a drug free school zone . . ."). The Arizona statute provides a sentence enhancement for certain proscribed actions taken within an identified and marked "drug free school zone." See id. Under Arizona law, a "drug free school zone" includes the area "within three hundred feet of a school or its accompanying grounds, any public property within one thousand feet of a school or its accompanying ground, a school bus stop or on any school bus or bus contracted to transport pupils to any school." § 13-3411(I)(1).


Education to prepare and distribute to school districts in-service training guidelines which, among other topics, address gang violence prevention. Both of these types of provisions could easily be included within the North Carolina anti-gang statute, or within the state's educational code, and enhance the substance of the North Carolina anti-gang effort in a meaningful way.

C. Solicitation Provisions: Cleaning up the North Carolina Provisions Related to Recruiting and Retaining Gang Members, Especially Solicitation of Minors

The third area in which the North Carolina legislature should consider changing the current statute pertains to solicitation of gang members. The North Carolina anti-gang statute addresses solicitation in several short provisions of the statute. Generally, the statute provides that it is unlawful to solicit the participation of any person sixteen years of age or older in criminal street gang activity, to

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111. CAL. EDUC. CODE § 51264(a) (West 2009). The California statute provides in relevant part that “[t]he State Department of Education shall prepare and distribute to school districts . . . guidelines for incorporating in-service training in gang violence and drug and alcohol abuse prevention for teachers, counselors, athletic directors, school board members, and other educational personnel . . . .” Id. Clearly, this provision helps to solidify a more universal anti-gang strategy and message from the state legislature. Other states have similar provisions. See, e.g., N.J. STAT. ANN § 52:17B-4.7 (West Supp. 2009) (requiring the state Attorney General to develop and annually present gang education seminars to educate both public and nonpublic school administrators on recognizing signs of gang involvement or activity within their schools). In addition to educating the educators about gangs, it is equally helpful to educate parents and children. The Virginia Gang Investigators Association, along with local police, participates in such awareness sessions, which some participants view as extremely helpful. See, e.g., Heather Kays, Combating Gangs With Education: Informational Session Details Local Groups, NEWSLEADER (Va.), May 18, 2010, available at http://www.newsleader.com/article/20100518/NEWS01/5180314/combating-gangs-with-education-Informational-session-details-local-groups.

112. Two other types of legislative enactments deserve mention here for consideration by the North Carolina legislature. The state of Utah has an in-school gang prevention and intervention program that is designed to help students who are at risk for gang involvement stay in school and continue their studies. See UTAH CODE ANN. § 53A-15-601 (2009). The state legislature mandates not only that this program counsel these students in many ways, but also that school personnel notify law enforcement if a problem cannot be solved under the auspices of the program. Id. Another program, enacted only within the state of Georgia to date, requires that schools with campus police report gang-related activity to local law enforcement officials. GA. CODE ANN. § 20-8-6 (2009) (requiring campus police to report to the Georgia Bureau of Investigation and to local law enforcement agencies “incidents of criminal gang activity” occurring on or near the facilities).

113. N.C. GEN. STAT. § 14-50.17 (2009) (“[s]oliciting; encouraging participation”). Violation of this provision is a Class H felony. Id. A Class H felony in North Carolina is a
solicit the participation of any person under sixteen years of age to participate in criminal street gang activity,\textsuperscript{114} and to either deter someone from gang withdrawal\textsuperscript{115} or punish or retaliate against someone who has withdrawn from a criminal street gang.\textsuperscript{116} In this instance, at least with respect to the felony classifications for conviction, the legislature “got it right” by providing for a higher class of felony, and therefore a stronger sentence, for solicitation of minors to participate in gang activity. But the statute is “bare bones” beyond this one little wrinkle of the assignment of a higher class of felony which provides a longer range of possible punishment.

Here, too, the North Carolina General Assembly might want to “tweak” the rather bare-bones statutory provisions in the Act to increase its effectiveness. One addition that could be made to the present statutory sections regarding solicitation can be found in the current California Code.\textsuperscript{117} The relevant language, which could easily be incorporated into the General Statutes of North Carolina, deals with the use or threat of physical violence to coerce, induce or solicit another to actively participate in a street gang.\textsuperscript{118} In contrast to the very specific language of the California STEP Act, the North Carolina solicitation provisions do not define solicitation, nor do they provide any contextual clues as to what could constitute solicitation. Again, this seemingly could produce a conundrum for prosecutors attempting to prosecute for a violation under these sections of the statute. How would a prosecutor establish solicitation or coercion under the North Carolina statute? In contrast, the language in the California statute prohibits solicitation in very specific statutory sections, including those regarding physical violence or threats of

\begin{itemize}
  \item[$\text{114.}$] \textit{Id.} § 14-50.18 (2009) (“soliciting; encouraging participation; minor”). Violation of this provision is a Class F felony. \textit{Id.}
  \item[$\text{115.}$] \textit{Id.} § 14-50.19 (2009) (“threats to deter from gang withdrawal”). Violation of this provision is a Class H felony. \textit{Id.}
  \item[$\text{116.}$] \textit{Id.} § 14-50.20 (2009) (“threats of punishment or retaliation”). Violation of this provision is a Class H felony. \textit{Id.}
  \item[$\text{117.}$] See \textit{CAL. PENAL CODE} § 186.26 (West Supp. 2010).
  \item[$\text{118.}$] \textit{Id.} The relevant language regarding use of threats states as follows: “[A]ny person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang... shall be punished by imprisonment...” \textit{Id.} The relevant language regarding use of physical violence states as follows: “[A]ny person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang... or to prevent the person from leaving a criminal street gang, shall be punished by imprisonment...” \textit{Id.}
physical violence to coerce membership in gangs, which seems to be a common way of intimidating young people to join gangs. On its face, the wording of the California statute seems more likely to encourage prosecutions based on solicitation and provides less “lip service” to the notion of solicitation and more substance.

The applicable section of the California Code also provides significant sentence enhancement in one very critical area that, as noted supra, is barely defined in the North Carolina statute: solicitation or recruitment activities or threats against a minor. The California statute explicitly notes that in the case of solicitation of a minor, an additional sentence of three years will be imposed. This enhancement makes sound sense for the North Carolina Act, since it more specifically identifies one of the most common ways in which solicitation could occur—physical violence—and also provides more specificity regarding threats of physical violence as an instrument of solicitation. Most importantly, the California statute contains something that is clearly not stated in the North Carolina statute for

119. Id. ("[A]ny person who solicits or recruits another to actively participate in a criminal street gang . . . shall be punished by imprisonment in the state prison for 16 months, or two or three years.").

120. See id. (referring to threats and use of physical violence to “coerce, induce or solicit” participation in a street gang).

121. Id. That section also imposes a three-year term in addition and consecutive to the penalty for the violation itself. Id. That California statutory section is an impressive one that should be looked at closely by the North Carolina legislature because of its additional sentence enhancement for solicitation of minors. If the North Carolina General Assembly wants to protect minors in its anti-gang legislation, as it obviously did when it enacted the 2008 statute, then it should carefully consider this sentence enhancement for older gang members attempting to solicit youth members. There is no better way to discourage older gang members from solicitation, and encourage youth to both avoid and report such solicitation, than a sentence enhancement that not only adds three years to the term imposed but also requires that those three years be served consecutive to the original sentence. Another recently enacted enhancement statute that deserves attention and demonstrates seriousness of purpose by a state legislature is that enacted by the Michigan legislature in its 2008 legislative session. See MICH. COMP. LAWS ANN. § 750.411u (West Supp. 2009). That statute states in relevant part that

[i]f a person who is an associate or a member of a gang commits a felony or attempts to commit a felony and the person’s association or membership in the gang provides the motive, means, or opportunity to commit the felony, the person is guilty of a felony punishable by imprisonment for not more than 20 years.

Id. Further, this sentence is “in addition to the sentence imposed for the conviction of the underlying felony . . . and [may be] served consecutively with and preceding any term of imprisonment imposed for the conviction of the [underlying] felony.” Id. (emphasis added).

122. See supra note 121 (providing a more detailed explanation of the California sentence enhancement).
such activity in furtherance of solicitation: the imposition in certain instances of consecutive sentences. Under the California statutory provisions dealing with solicitation, the perpetrator, if proceeding against a minor, will not only receive an enhanced sentence but that sentence must also be served consecutively. That is a real deterrent to solicitation of minors that is missing from the pages of the current North Carolina statute, and again, something that should be considered by the North Carolina General Assembly.

CONCLUSION

Even though the state and federal charges against Demario Atwater and the state charges against Laurence Lovette do not implicate the provisions of the state's anti-gang statute, and despite the fact that no gang activity has yet been proven in the Eve Carson murder, it is important to understand the place of that statute in North Carolina's anti-gang efforts. Clearly, the Act was passed in the summer of 2008 as an apparent knee-jerk reaction to the Carson murder. Considering the current state of the statute, even after the attempted amendment in the 2009 legislative session, as well as the probable level of gang activity throughout North Carolina, the reality is that the legislature has not finished its work. Revolutionary as it may be for the State of North Carolina—a state which was initially reticent to pass any such legislation—for there to actually be anti-gang legislation on the books, the statute is too lenient in many instances and has too many holes in others to be truly effective in combating the state's gang issue. Unless these problems are fixed, the gang problem will not abate in North Carolina.

It is not unreasonable to suggest that the North Carolina legislature reevaluate some of its 2008 anti-gang measures. Specifically, the North Carolina legislature should amend the Act to make it applicable to juvenile offenders. Furthermore, the North Carolina legislature should incorporate into the Act some of the more common or innovative anti-gang measures discussed above and

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124. See supra note 121. "Gang cases range from vandalism to multiple murder, and gang offenders can be inexperienced youths in their early teens to hard-core, violent adult gang member recidivists. Appropriate sentencing in gang cases requires factoring the aggravating and mitigating circumstances of the offense and the offender." OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEPT OF JUSTICE, GANG PROSECUTION MANUAL 106 (2009), available at http://www.nationalgangcenter.gov/content/Documents/gang-prosecution-manual.pdf. Solicitation should be considered in this vein. Through stronger sentences and sentence enhancements, it is probable that those gang members who seek to solicit others may be less likely to do so.
utilized in other states. This would include addition of more stringent provisions regarding gang activity near schools and clearer delineation of the statutory provisions regarding solicitation of potential gang members. While additional legislative action will not necessarily prevent the tragic loss of more Eye Carsons, it will most certainly help avoid at least some future acts of gang violence as well as improve the lives of the citizens of North Carolina. And for that reason, it behooves the North Carolina General Assembly to go back to the proverbial drawing board and get the thing right, once and for all.