

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

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Introduced by M. of A. PERALTA, WEISENBERG, BOYLAND, CHRISTENSEN, BENEDETTO, FIELDS, ESPAILLAT, PHEFFER -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, CARROZZA, CONTE, COOK, DelMONTE, DIAZ, ERRIGO, FARRELL, FINCH, GALEF, WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to disposition of forfeiture moneys where the person against whom a forfeiture action is commenced is a "criminal street gang member" or "street gang associate"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 1310 of the civil practice law and rules is amended  
2 by adding four new subdivisions 15, 16, 17 and 18 to read as follows:  
3 15. "CRIMINAL STREET GANG" MEANS ANY ONGOING ORGANIZATION, ASSOCIATION  
4 OR GROUP OF THREE OR MORE PERSONS, WHETHER FORMAL OR INFORMAL, HAVING AS  
5 ONE OF ITS PRIMARY ACTIVITIES THE COMMISSION OF ONE OR MORE CRIMINAL  
6 ACTS, WHICH HAS AN IDENTIFIABLE NAME OR IDENTIFYING SIGN OR SYMBOL, AND  
7 WHOSE MEMBERS INDIVIDUALLY OR COLLECTIVELY ENGAGE IN OR HAVE ENGAGED IN  
8 CRIMINAL STREET GANG ACTIVITY.  
9 16. "CRIMINAL STREET GANG MEMBER" MEANS A PERSON TO WHOM TWO OR MORE  
10 OF THE FOLLOWING CRITERIA APPLY:  
11 (A) ADMITS TO CRIMINAL STREET GANG MEMBERSHIP;  
12 (B) IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY A DOCUMENTED  
13 RELIABLE INFORMANT;  
14 (C) RESIDES IN OR FREQUENTS A PARTICULAR CRIMINAL STREET GANG'S AREA  
15 AND ADOPTS ITS STYLE OF DRESS, ITS USE OF HAND SIGNALS OR ITS TATTOOS  
16 AND ASSOCIATES WITH KNOWN CRIMINAL STREET GANG MEMBERS;  
17 (D) HAS BEEN ARRESTED MORE THAN ONCE IN THE COMPANY OF KNOWN CRIMINAL  
18 STREET GANG MEMBERS FOR OFFENSES WHICH ARE CONSISTENT WITH USUAL CRIMI-  
19 NAL STREET GANG ACTIVITY;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

1 (E) IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY PHYSICAL  
2 EVIDENCE, SUCH AS PHOTOGRAPHS OR OTHER DOCUMENTATION;

3 (F) HAS BEEN STOPPED IN THE COMPANY OF KNOWN CRIMINAL STREET GANG  
4 MEMBERS FOUR OR MORE TIMES;

5 (G) HAS BEEN IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY OTHER LAW  
6 ENFORCEMENT AGENCIES; OR

7 (H) IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY A FAMILY MEMBER.

8 17. "STREET GANG ASSOCIATE" MEANS A PERSON WHO:

9 (A) ADMITS TO STREET GANG ASSOCIATION; OR

10 (B) MEETS ANY SINGLE DEFINING CRITERION FOR STREET GANG MEMBERSHIP  
11 DESCRIBED IN SUBDIVISION SIXTEEN OF THIS SECTION.

12 18. "CRIMINAL STREET GANG ACTIVITY" MEANS THE COMMISSION OR ATTEMPTED  
13 COMMISSION OF, OR SOLICITATION OR CONSPIRACY TO COMMIT, TWO OR MORE  
14 FELONY ACTS THAT:

15 (A) WERE COMMITTED ON SEPARATE OCCASIONS WITHIN A FIVE YEAR PERIOD;

16 (B) ARE NEITHER ISOLATED INCIDENTS, NOR SO CLOSELY RELATED AND  
17 CONNECTED IN POINT OF TIME OR CIRCUMSTANCE OF COMMISSION AS TO CONSTI-  
18 TUTE A CRIMINAL OFFENSE OR CRIMINAL TRANSACTION, AS SUCH TERMS ARE  
19 DEFINED IN SECTION 40.10 OF THE CRIMINAL PROCEDURE LAW; AND

20 (C) FURTHER A CRIMINAL STREET GANG BY: (I) BEING RELATED TO ONE  
21 ANOTHER THROUGH A COMMON SCHEME OR PLAN; OR (II) WERE COMMITTED, SOLIC-  
22 ITED, REQUESTED, IMPORTUNED OR INTENTIONALLY AIDED BY PERSONS ACTING  
23 WITH THE MENTAL CULPABILITY REQUIRED FOR THE COMMISSION OF SUCH FELONY  
24 ACTS AND SUCH PERSON IS A MEMBER OF SUCH CRIMINAL STREET GANG.

25 S 2. Paragraph (h) of subdivision 2 of section 1349 of the civil prac-  
26 tice law and rules, as added by chapter 655 of the laws of 1990, is  
27 amended to read as follows:

28 (h) [All] EXCEPT WITH RESPECT TO A CIRCUMSTANCE TO WHICH PARAGRAPH (I)  
29 OF THIS SUBDIVISION APPLIES, ALL moneys remaining after distributions  
30 pursuant to paragraphs (a) through (g) of this subdivision shall be  
31 distributed as follows:

32 (i) seventy-five percent of such moneys shall be deposited to a law  
33 enforcement purposes subaccount of the general fund of the state where  
34 the claiming agent is an agency of the state or the political subdivi-  
35 sion or public authority of which the claiming agent is a part, to be  
36 used for law enforcement use in the investigation of penal law offenses;

37 (ii) the remaining twenty-five percent of such moneys shall be depos-  
38 ited to a prosecution services subaccount of the general fund of the  
39 state where the claiming authority is the attorney general or the poli-  
40 tical subdivision of which the claiming authority is a part, to be used  
41 for the prosecution of penal law offenses.

42 Where multiple claiming agents participated in the forfeiture action,  
43 funds available pursuant to subparagraph (i) of this paragraph shall be  
44 disbursed to the appropriate law enforcement purposes subaccounts in  
45 accordance with the terms of a written agreement reflecting the partic-  
46 ipation of each claiming agent entered into by the participating claim-  
47 ing agents.

48 S 3. Subdivision 2 of section 1349 of the civil practice law and rules  
49 is amended by adding a new paragraph (i) to read as follows:

50 (I) IF THE DEFENDANT AGAINST WHOM A FORFEITURE ACTION IS COMMENCED IS  
51 IDENTIFIED AS, OR IS DECLARED OR ADJUDGED BY THE COURT TO BE, A CRIMINAL  
52 STREET GANG MEMBER OR A STREET GANG ASSOCIATE, ALL MONEYS REMAINING  
53 AFTER DISTRIBUTIONS PURSUANT TO PARAGRAPHS (A) THROUGH (G) OF THIS  
54 SUBDIVISION SHALL BE DISTRIBUTED AS FOLLOWS:

55 (1) SEVENTY-FIVE PERCENT OF SUCH MONEYS SHALL BE DEPOSITED TO A SEPA-  
56 RATE ACCOUNT OF THE SCHOOL DISTRICT WHEREIN SUCH DEFENDANT RESIDES,

1 WHICH THE SUPERINTENDENT OF SUCH DISTRICT SHALL ESTABLISH FOR THE  
2 RECEIPT OF ALL SUCH MONEYS, AND SAID MONEYS SHALL BE UTILIZED BY THE  
3 SUPERINTENDENT EXCLUSIVELY TO DEVELOP, IMPLEMENT AND/OR MAINTAIN  
4 INSTRUCTIONAL PROGRAMS DESIGNED TO DETER OR PREVENT YOUTHS FROM ASSOCI-  
5 ATING WITH OR BECOMING MEMBERS OF CRIMINAL STREET GANGS, INCLUDING BUT  
6 NOT LIMITED TO, (A) AFTER-SCHOOL SPORTS OR RECREATIONAL PROGRAMS, AND/OR  
7 (B) AFTER-SCHOOL SCHOLASTIC OR ACADEMIC PROGRAMS;

8 (2) FIFTEEN PERCENT OF SUCH MONEYS SHALL BE DEPOSITED TO A LAW  
9 ENFORCEMENT PURPOSES SUBACCOUNT OF THE GENERAL FUND OF THE STATE WHERE  
10 THE CLAIMING AGENT IS AN AGENCY OF THE STATE OR THE POLITICAL SUBDIVI-  
11 SION OR PUBLIC AUTHORITY OF WHICH THE CLAIMING AGENT IS A PART, TO BE  
12 USED FOR LAW ENFORCEMENT USE IN THE INVESTIGATION OF PENAL LAW OFFENSES;  
13 AND

14 (3) THE REMAINING TEN PERCENT OF SUCH MONEYS SHALL BE DEPOSITED TO A  
15 PROSECUTION SERVICES SUBACCOUNT OF THE GENERAL FUND OF THE STATE WHERE  
16 THE CLAIMING AUTHORITY IS THE ATTORNEY GENERAL OR THE POLITICAL SUBDIVI-  
17 SION OF WHICH THE CLAIMING AUTHORITY IS A PART, TO BE USED FOR THE PROS-  
18 ECUTION OF PENAL LAW OFFENSES.

19 WHERE MULTIPLE CLAIMING AGENTS PARTICIPATED IN THE FORFEITURE ACTION,  
20 FUNDS AVAILABLE PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH SHALL BE  
21 DISBURSED TO THE APPROPRIATE LAW ENFORCEMENT PURPOSES SUBACCOUNTS IN  
22 ACCORDANCE WITH THE TERMS OF A WRITTEN AGREEMENT REFLECTING THE PARTICI-  
23 IPATION OF EACH CLAIMING AGENT ENTERED INTO BY THE PARTICIPATING CLAIM-  
24 ING AGENTS.

25 S 4. This act shall take effect on the first of November next succeed-  
26 ing the date on which it shall have become a law.