S T A T E O F N E W Y O R K

267--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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, ERRIGO, FARRELL, FINCH, GALEF, SALADINO, WALKER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 member of a criminal street gang enterprise

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

Section 1. Section 1310 of the civil practice law and rules is amended by adding three new subdivisions 15, 16 and 17 to read as follows:

15. "CRIMINAL STREET GANG ENTERPRISE" MEANS A GROUP OF PERSONS SHARING A COMMON PURPOSE OF ENGAGING IN CRIMINAL CONDUCT, ASSOCIATED IN AN ASCERTAINABLE STRUCTURE DISTINCT FROM A PATTERN OF STREET GANG CRIMINAL ACTIVITY, AND WITH A CONTINUITY OF EXISTENCE, STRUCTURE AND CRIMINAL PURPOSE BEYOND THE SCOPE OF INDIVIDUAL CRIMINAL ACTS.

16. "PATTERN OF STREET GANG CRIMINAL ACTIVITY" MEANS CONDUCT ENGAGED IN BY PERSONS CHARGED IN A CRIMINAL STREET GANG ENTERPRISE CONSTITUTING THREE OR MORE CRIMINAL ACTS THAT:

(A) WERE COMMITTED WITHIN TEN YEARS OF THE COMMENCEMENT OF THE CRIMINAL ACTION;

(B) ARE NEITHER ISOLATED INCIDENTS, NOR SO CLOSELY RELATED AND CONNECTED IN POINT OF TIME OR CIRCUMSTANCES OF COMMISSION AS TO CONSTITUTE A CRIMINAL OFFENSE OR CRIMINAL TRANSACTION, AS THOSE TERMS ARE DEFINED IN SECTION 40.10 OF THE CRIMINAL PROCEDURE LAW; AND

(C) ARE EITHER: (I) RELATED TO ONE ANOTHER THROUGH A COMMON SCHEME OR PLAN OR (II) WERE COMMITTED, SOLICITED, REQUESTED, IMPORTUNED OR INTENTIONALLY AIDED BY PERSONS ACTING WITH THE MENTAL CULPABILITY REQUIRED

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

LBD00070-02-9

FOR THE COMMISSION THEREOF AND ASSOCIATED WITH OR IN THE CRIMINAL STREET GANG ENTERPRISE.

17. "CRIMINAL STREET GANG ACTIVITY" MEANS THE COMMISSION OR ATTEMPTED COMMISSION OF, OR SOLICITATION OR CONSPIRACY TO COMMIT, THREE OR MORE CRIMINAL ACTS THAT:

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

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

(C) FURTHER A CRIMINAL STREET GANG ENTERPRISE BY: (I) BEING RELATED TO ONE ANOTHER THROUGH A COMMON SCHEME OR PLAN; OR (II) HAVING BEEN COMMITTED, SOLICITED, REQUESTED, IMPORTUNED OR INTENTIONALLY AIDED BY PERSONS ACTING WITH THE MENTAL CULPABILITY REQUIRED FOR THE COMMISSION OF SUCH CRIMINAL ACTS AND SUCH PERSON IS A MEMBER OF SUCH CRIMINAL STREET GANG ENTERPRISE.

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

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

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

(ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (i) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

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

(I) IF THE DEFENDANT AGAINST WHOM A FORFEITURE ACTION IS COMMENCED IS CONVICTED OF A CRIMINAL STREET GANG ENTERPRISE OFFENSE DEFINED IN ARTICLE TWO HUNDRED EIGHTY OF THE PENAL LAW, ALL MONEYS REMAINING AFTER DISTRIBUTIONS PURSUANT TO PARAGRAPHS (A) THROUGH (G) OF THIS SUBDIVISION SHALL BE DISTRIBUTED AS FOLLOWS:

(1) SEVENTY-FIVE PERCENT OF SUCH MONEYS SHALL BE DEPOSITED TO A SEPARATE ACCOUNT OF THE SCHOOL DISTRICT WHEREIN SUCH DEFENDANT RESIDES, WHICH THE SUPERINTENDENT OF SUCH DISTRICT SHALL ESTABLISH FOR THE RECEIPT OF ALL SUCH MONEYS, AND SAID MONEYS SHALL BE UTILIZED BY THE SUPERINTENDENT EXCLUSIVELY TO DEVELOP, IMPLEMENT AND/OR MAINTAIN INSTRUCTIONAL PROGRAMS DESIGNED TO DETER OR PREVENT YOUTHS FROM ASSOCIATING WITH OR BECOMING MEMBERS OF CRIMINAL STREET GANG ENTERPRISES, INCLUDING BUT NOT LIMITED TO, (A) AFTER-SCHOOL SPORTS OR RECREATIONAL PROGRAMS, AND/OR (B) AFTER-SCHOOL SCHOLASTIC OR ACADEMIC PROGRAMS;

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

(3) THE REMAINING TEN PERCENT OF SUCH MONEYS SHALL BE DEPOSITED TO A PROSECUTION SERVICES SUBACCOUNT OF THE GENERAL FUND OF THE STATE WHERE THE CLAIMING AUTHORITY IS THE ATTORNEY GENERAL OR THE POLITICAL SUBDIVISION OF WHICH THE CLAIMING AUTHORITY IS A PART, TO BE USED FOR THE PROSECUTION OF PENAL LAW OFFENSES.

WHERE MULTIPLE CLAIMING AGENTS PARTICIPATED IN THE FORFEITURE ACTION, FUNDS AVAILABLE PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH SHALL BE DISBURSED TO THE APPROPRIATE LAW ENFORCEMENT PURPOSES SUBACCOUNTS IN ACCORDANCE WITH THE TERMS OF A WRITTEN AGREEMENT REFLECTING THE PARTICIPATION OF EACH CLAIMING AGENT ENTERED INTO BY THE PARTICIPATING CLAIMING AGENTS.

S 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2009, amending the penal law relating to establishing criminal street gang enterprise offenses and the abatement of premises used for criminal street gang enterprise activity, as proposed in legislative bills numbers S.2213-A and A.265-A, takes effect.