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

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I N S E N A T E

February 2, 2010

Introduced by Sens. HANNON, BONACIC, LARKIN, MORAHAN, PADAVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to street gang crimes

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

Section 1. The penal law is amended by adding a new article 475 to read as follows:

ARTICLE 475

STREET GANG CRIME

SECTION 475.00 STREET GANG CRIMES.

475.05 SENTENCING.

S 475.00 STREET GANG CRIMES.

1. A PERSON COMMITS A STREET GANG CRIME WHEN HE OR SHE COMMITS A FELONY FOR THE BENEFIT OF, AT THE DIRECTION OF OR IN ASSOCIATION WITH A STREET GANG.

2. A "STREET GANG" MEANS TWO OR MORE PERSONS ASSOCIATED IN FACT. PERSONS ARE "ASSOCIATED IN FACT" WHEN:

(A) THEY HAVE IN COMMON A GROUP NAME OR IDENTIFYING SIGN, SYMBOL, TATTOO OR OTHER PHYSICAL MARKING, STYLE OF DRESS, OR OTHER USE OF HAND SIGNS, OR OTHER INDICIA OF ASSOCIATION OR COMMON LEADERSHIP; AND

(B) INDIVIDUALLY OR IN COMBINATION WITH OTHER MEMBERS OF A STREET GANG, WHILE ENGAGING IN GANG RELATED ACTIVITY, HAVE COMMITTED, CONSPIRED, FACILITATED OR ATTEMPTED TO COMMIT TWO OR MORE OFFENSES DEFINED IN ARTICLE ONE HUNDRED TWENTY (ASSAULT AND RELATED OFFENSES), ONE HUNDRED TWENTY-FIVE (HOMICIDE, ABORTION AND RELATED OFFENSES), ONE HUNDRED THIRTY (SEX OFFENSES), ONE HUNDRED THIRTY-FIVE (KIDNAPPING, COERCION AND RELATED OFFENSES), ONE HUNDRED FORTY (BURGLARY AND RELATED OFFENSES), ONE HUNDRED FIFTY (ARSON), ONE HUNDRED FIFTY-FIVE (LARCENY), ONE HUNDRED SIXTY (ROBBERY), TWO HUNDRED TWENTY (CONTROLLED SUBSTANCE OFFENSES) OR TWO HUNDRED TWENTY-ONE (OFFENSES INVOLVING MARIHUANA) OF THIS CHAPTER.

S 475.05 SENTENCING.

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

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WHEN A PERSON IS CONVICTED OF A STREET GANG CRIME PURSUANT TO THIS ARTICLE, HE OR SHE SHALL BE SENTENCED TO A DETERMINATE SENTENCE OF IMPRISONMENT OF NOT LESS THAN TWO YEARS, NOR MORE THAN FIVE YEARS, WHICH SHALL BE SERVED IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR THE CONVICTION OF THE FELONY OR FELONIES WHICH THE DEFENDANT COMMITTED IN THE COURSE OF THE STREET GANG CRIME, AND SUCH DETERMINATE SENTENCE SHALL RUN CONSECUTIVELY TO ANY OTHER SENTENCE OF IMPRISONMENT IMPOSED UPON THE CONVICTION OF SUCH FELONY OR FELONIES; PROVIDED, HOWEVER THAT THE DETERMINATE SENTENCE OF IMPRISONMENT IMPOSED UPON A PERSON CONVICTED OF A STREET GANG CRIME SHALL BE TEN YEARS WHEN ANY FELONY COMMITTED IN THE COURSE OF THE STREET GANG CRIME IS A VIOLENT FELONY OFFENSE OR A CLASS A FELONY OFFENSE, AS DEFINED IN SUBDIVISION ONE OF SECTION 70.02 OF THIS CHAPTER.

S 2. Subdivision 7 of section 200.50 of the criminal procedure law is amended by adding a new paragraph (f) to read as follows:

(F) IN THE CASE OF ANY STREET GANG CRIME, AS DEFINED IN SECTION 475.00 OF THE PENAL LAW, SPECIFIES, AS APPLICABLE, THAT THE DEFENDANT, WHILE AIDED BY TWO OR MORE PERSONS ACTUALLY PRESENT, COMMITTED A FELONY FOR THE BENEFIT OF, OR AT THE DIRECTION OF OR IN ASSOCIATION WITH A STREET GANG, AS DEFINED IN SUBDIVISION TWO OF SECTION 475.00 OF THE PENAL LAW; AND

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.