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

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Introduced by Sens. C. JOHNSON, BRESLIN, DIAZ, KLEIN, ONORATO, SAMPSON, SAVINO, THOMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal street gang activity on school grounds

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

Section 1. Section 460.10 of the penal law is amended by adding four new subdivisions 5, 6, 7 and 8 to read as follows:

5. "CRIMINAL STREET GANG" MEANS ANY ONGOING ORGANIZATION, ASSOCIATION, OR GROUP OF THREE OR MORE PERSONS, WHETHER FORMAL OR INFORMAL, HAVING AS ONE OF ITS PRIMARY ACTIVITIES THE COMMISSION OF ONE OR MORE CRIMINAL ACTS, WHICH HAS AN IDENTIFIABLE NAME OR IDENTIFYING SIGN OR SYMBOL, AND WHOSE MEMBERS INDIVIDUALLY OR COLLECTIVELY ENGAGE IN OR HAVE ENGAGED IN CRIMINAL STREET GANG ACTIVITY.

6. "CRIMINAL STREET GANG MEMBER" MEANS A PERSON TO WHOM TWO OR MORE OF THE FOLLOWING CRITERIA APPLY:

(A) ADMITS TO CRIMINAL STREET GANG MEMBERSHIP;

(B) IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY A DOCUMENTED RELIABLE INFORMANT;

(C) RESIDES IN OR FREQUENTS A PARTICULAR CRIMINAL STREET GANG'S AREA AND ADOPTS ITS STYLE OF DRESS, ITS USE OF HAND SIGNALS OR ITS TATTOOS AND ASSOCIATES WITH KNOWN CRIMINAL STREET GANG MEMBERS;

(D) HAS BEEN ARRESTED MORE THAN ONCE IN THE COMPANY OF KNOWN CRIMINAL STREET GANG MEMBERS FOR OFFENSES WHICH ARE CONSISTENT WITH USUAL CRIMINAL STREET GANG ACTIVITY;

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

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

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

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

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

7. "CRIMINAL STREET GANG ACTIVITY" MEANS THE COMMISSION OR ATTEMPTED COMMISSION OF, OR SOLICITATION OR CONSPIRACY TO COMMIT, TWO 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 BY: (I) BEING 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 FOR THE COMMISSION OF SUCH CRIMINAL ACTS AND SUCH PERSON IS A MEMBER OF SUCH CRIMINAL STREET GANG.

8. "SCHOOL GROUNDS" MEANS (A) IN OR ON OR WITHIN ANY BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC OR PRIVATE ELEMENTARY, PAROCHIAL, INTERMEDIATE, JUNIOR HIGH, VOCATIONAL, OR HIGH SCHOOL, OR (B) ANY AREA ACCESSIBLE TO THE PUBLIC LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH SCHOOL OR ANY PARKED AUTOMOBILE OR OTHER PARKED VEHICLE LOCATED WITHIN ONE THOUSAND FEET OF THE REAL PROPERTY BOUNDARY LINE COMPRISING ANY SUCH SCHOOL. FOR THE PURPOSE OF THIS SUBDIVISION, AN "ACCESSIBLE AREA TO THE PUBLIC" SHALL MEAN SIDEWALKS, STREETS, PARKING LOTS, PARKS, PLAYGROUNDS, STORES AND RESTAURANTS.

S 2. The penal law is amended by adding three new sections 460.65, 460.66 and 460.67 to read as follows:

S 460.65 CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE SECOND DEGREE.

A PERSON IS GUILTY OF CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE SECOND DEGREE WHEN, ON SCHOOL GROUNDS, HE OR SHE COERCES, SOLICITS, RECRUITS, OR INDUCES ANOTHER PERSON TO JOIN OR REMAIN A MEMBER OF A CRIMINAL STREET GANG, OR CONSPIRES TO DO SO.

CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE SECOND DEGREE IS A CLASS E FELONY.

S 460.66 CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE FIRST DEGREE.

A PERSON IS GUILTY OF CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE FIRST DEGREE WHEN, ON SCHOOL GROUNDS, HE OR SHE USES OR THREATENS THE USE OF PHYSICAL FORCE TO COERCE, SOLICIT, RECRUIT, OR INDUCE ANOTHER PERSON TO JOIN OR REMAIN A MEMBER OF A CRIMINAL STREET GANG, OR CONSPIRES TO DO SO, AND WHEN SUCH RECRUITMENT TAKES PLACE ON SCHOOL GROUNDS.

CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS IN THE FIRST DEGREE IS A CLASS D FELONY.

S 460.67 CRIMINAL STREET GANG RECRUITMENT ON SCHOOL GROUNDS; SUBSEQUENT VIOLATIONS.

1. ANY PERSON WHO VIOLATES SECTION 460.65 OR 460.66 OF THIS ARTICLE AFTER HAVING BEEN CONVICTED OF A VIOLATION OF SECTION 460.65 OR 460.66 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS SHALL BE GUILTY OF A CLASS C FELONY.

2. ANY PERSON WHO VIOLATES SECTION 460.65 OR 460.66 OF THIS ARTICLE AFTER HAVING TWICE BEEN CONVICTED OF A VIOLATION OF SECTION 460.65 OR

460.66 OF THIS ARTICLE WITHIN THE PRECEDING TEN YEARS SHALL BE GUILTY OF A CLASS B FELONY.

S 3. Section 70.40 of the penal law is amended by adding a new subdivision 4 to read as follows:

4. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF THIS SECTION OR ANY OTHER PROVISION OF LAW, ANY PERSON SENTENCED TO A PERIOD OF INCARCERATION FOR A VIOLATION OF SECTION 460.65 OR 460.66 OF THIS CHAPTER MAY, AS A CONDITION OF RELEASE ON PAROLE, BE PROHIBITED FROM ASSOCIATING WITH THE MEMBERS OF A CRIMINAL STREET GANG. FOR THE PURPOSES OF THIS SECTION, "CRIMINAL STREET GANG" SHALL BE DEFINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 460.10 OF THIS CHAPTER.

S 4. Local laws; preemption. Nothing in this act shall prevent a local governing body from adopting and enforcing laws consistent with this act relating to criminal street gang activity on school grounds and criminal street gang violence. Where local laws duplicate or supplement this act, this act shall be construed as providing alternative remedies and not as preempting such local laws.

S 5. Severability. If any part or provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act, including the application of the part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this act are severable.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.