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2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. DIAZ -- 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 establishing criminal street gang enterprise offenses and the abatement of premises used for criminal street gang enterprise activity

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

1     Section 1. The penal law is amended by adding a new article 280 to  
2     read as follows:

3                                 ARTICLE 280  
4                                 CRIMINAL STREET GANG  
5                                 ENTERPRISE OFFENSES

6     SECTION 280.00 DEFINITIONS.

7             280.05 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT  
8                                 OR RETENTION.

9             280.10 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT  
10                                 OR RETENTION OF MINORS.

11            280.15 COERCION OF A MINOR INTO A CRIMINAL STREET GANG ENTER-  
12                                 PRISE CONSPIRACY.

13            280.20 CRIMINAL STREET GANG ENTERPRISE LEADERSHIP.

14            280.25 ABATEMENT OF PREMISES USED FOR CRIMINAL STREET GANG  
15                                 ENTERPRISE ACTIVITY.

16            280.30 PREEMPTION.

17     S 280.00 DEFINITIONS.

18            THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

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

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

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1 2. "GANG CRIME" MEANS CONDUCT CONSTITUTING ANY OF THE FOLLOWING FELO-  
2 NIES, OR CONSPIRACY OR ATTEMPT TO COMMIT ANY OF THE FOLLOWING FELONIES:  
3 SECTIONS 120.05, 120.10 AND 120.11 RELATING TO ASSAULT; SECTIONS 125.10  
4 TO 125.27 RELATING TO HOMICIDE; SECTIONS 130.25, 130.30 AND 130.35  
5 RELATING TO RAPE; SECTIONS 135.20 AND 135.25 RELATING TO KIDNAPPING;  
6 SECTION 135.35 RELATING TO LABOR TRAFFICKING; SECTION 135.65 RELATING TO  
7 COERCION; SECTIONS 140.20, 140.25 AND 140.30 RELATING TO BURGLARY;  
8 SECTIONS 145.05, 145.10 AND 145.12 RELATING TO CRIMINAL MISCHIEF; ARTI-  
9 CLE ONE HUNDRED FIFTY RELATING TO ARSON; SECTIONS 155.30, 155.35, 155.40  
10 AND 155.42 RELATING TO GRAND LARCENY; SECTIONS 177.10, 177.15, 177.20  
11 AND 177.25 RELATING TO HEALTH CARE FRAUD; ARTICLE ONE HUNDRED SIXTY  
12 RELATING TO ROBBERY; SECTIONS 165.45, 165.50, 165.52 AND 165.54 RELATING  
13 TO CRIMINAL POSSESSION OF STOLEN PROPERTY; SECTIONS 165.72 AND 165.73  
14 RELATING TO TRADEMARK COUNTERFEITING; SECTIONS 170.10, 170.15, 170.25,  
15 170.30, 170.40, 170.65 AND 170.70 RELATING TO FORGERY; SECTIONS 175.10,  
16 175.25, 175.35, 175.40 AND 210.40 RELATING TO FALSE STATEMENTS; SECTIONS  
17 176.15, 176.20, 176.25 AND 176.30 RELATING TO INSURANCE FRAUD; SECTIONS  
18 178.20 AND 178.25 RELATING TO CRIMINAL DIVERSION OF PRESCRIPTION MEDICA-  
19 TIONS AND PRESCRIPTIONS; SECTIONS 180.03, 180.08, 180.15, 180.25,  
20 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20,  
21 200.22, 200.25, 200.27, 215.00, 215.05 AND 215.19 RELATING TO BRIBERY;  
22 SECTIONS 187.10, 187.15, 187.20 AND 187.25 RELATING TO RESIDENTIAL MORT-  
23 GAGE FRAUD; SECTIONS 190.40 AND 190.42 RELATING TO CRIMINAL USURY;  
24 SECTION 190.65 RELATING TO SCHEMES TO DEFRAUD; SECTIONS 205.60 AND  
25 205.65 RELATING TO HINDERING PROSECUTION; SECTIONS 210.10, 210.15, AND  
26 215.51 RELATING TO PERJURY AND CONTEMPT; SECTION 215.40 RELATING TO  
27 TAMPERING WITH PHYSICAL EVIDENCE; SECTIONS 220.06, 220.09, 220.16,  
28 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55,  
29 220.60 AND 220.77 RELATING TO CONTROLLED SUBSTANCES; SECTIONS 225.10 AND  
30 225.20 RELATING TO GAMBLING; SECTIONS 230.25, 230.30, AND 230.32 RELAT-  
31 ING TO PROMOTING PROSTITUTION; SECTION 230.34 RELATING TO SEX TRAFFICK-  
32 ING; SECTIONS 235.06, 235.07, 235.21 AND 235.22 RELATING TO OBSCENITY;  
33 SECTIONS 263.10 AND 263.15 RELATING TO PROMOTING A SEXUAL PERFORMANCE BY  
34 A CHILD; SECTIONS 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 AND THE  
35 PROVISIONS OF SECTION 265.10 WHICH CONSTITUTE A FELONY RELATING TO  
36 FIREARMS AND OTHER DANGEROUS WEAPONS; AND SECTIONS 265.14 AND 265.16  
37 RELATING TO CRIMINAL SALE OF A FIREARM; AND SECTION 275.10, 275.20,  
38 275.30, OR 275.40 RELATING TO UNAUTHORIZED RECORDINGS; AND SECTIONS  
39 470.05, 470.10, 470.15 AND 470.20 RELATING TO MONEY LAUNDERING, OF THIS  
40 CHAPTER.

41 3. "PATTERN OF STREET GANG CRIMINAL ACTIVITY" MEANS CONDUCT ENGAGED IN  
42 BY PERSONS CHARGED IN A CRIMINAL STREET GANG ENTERPRISE OFFENSE DEFINED  
43 IN THIS ARTICLE CONSTITUTING THREE OR MORE GANG CRIMES THAT:

44 (A) WERE COMMITTED WITHIN TEN YEARS OF THE COMMENCEMENT OF THE CRIMI-  
45 NAL ACTION;

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

50 (C) ARE EITHER: (I) RELATED TO ONE ANOTHER THROUGH A COMMON SCHEME OR  
51 PLAN OR (II) WERE COMMITTED, SOLICITED, REQUESTED, IMPORTUNED OR INTEN-  
52 TIONALLY AIDED BY PERSONS ACTING WITH THE MENTAL CULPABILITY REQUIRED  
53 FOR THE COMMISSION THEREOF AND ASSOCIATED WITH OR IN THE CRIMINAL STREET  
54 GANG ENTERPRISE.

55 S 280.05 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT OR  
56 RETENTION.

1 A PERSON IS GUILTY OF CRIMINAL STREET GANG ENTERPRISE SOLICITATION,  
2 RECRUITMENT OR RETENTION WHEN HE OR SHE:

3 1. INTENTIONALLY SOLICITS, RECRUITS, EMPLOYS, CAUSES, ENCOURAGES, OR  
4 CONSPIRES TO CAUSE ANOTHER PERSON TO BE OR REMAIN AS A MEMBER OF A CRIM-  
5 INAL STREET GANG ENTERPRISE THAT REQUIRES AS A CONDITION OF MEMBERSHIP  
6 OR CONTINUED MEMBERSHIP THE COMMISSION OF OR PARTICIPATION IN GANG  
7 CRIMES; OR

8 2. INTENTIONALLY MAKES ANY COMMUNICATION, DIRECT OR INDIRECT, CONSTI-  
9 TUTING A THREAT TO PERSON OR PROPERTY OR TO ANY ASSOCIATE OR RELATIVE OF  
10 THE PERSON BEING SOLICITED, RECRUITED OR RETAINED AS A MEMBER OF A CRIM-  
11 INAL STREET GANG ENTERPRISE THAT REQUIRES AS A CONDITION OF MEMBERSHIP  
12 OR CONTINUED MEMBERSHIP THE COMMISSION OF OR PARTICIPATION IN GANG  
13 CRIMES.

14 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT OR RETENTION  
15 IS A CLASS E FELONY.

16 S 280.10 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT OR  
17 RETENTION OF MINORS.

18 A PERSON IS GUILTY OF CRIMINAL STREET GANG ENTERPRISE SOLICITATION,  
19 RECRUITMENT OR RETENTION OF MINORS WHEN HE OR SHE:

20 1. INTENTIONALLY SOLICITS, RECRUITS, EMPLOYS, CAUSES, ENCOURAGES, OR  
21 CONSPIRES TO CAUSE ANOTHER PERSON UNDER EIGHTEEN YEARS OF AGE TO BE OR  
22 REMAIN AS A MEMBER OF A CRIMINAL STREET GANG ENTERPRISE THAT REQUIRES AS  
23 A CONDITION OF MEMBERSHIP OR CONTINUED MEMBERSHIP THE COMMISSION OF OR  
24 PARTICIPATION IN GANG CRIMES; OR

25 2. INTENTIONALLY MAKES ANY COMMUNICATION, DIRECT OR INDIRECT, CONSTI-  
26 TUTING A THREAT TO A PERSON UNDER EIGHTEEN YEARS OF AGE, TO PROPERTY, OR  
27 TO ANY ASSOCIATE OR RELATIVE OF THE MINOR BEING SOLICITED, RECRUITED OR  
28 RETAINED AS A MEMBER OF A CRIMINAL STREET GANG ENTERPRISE THAT REQUIRES  
29 AS A CONDITION OF MEMBERSHIP OR CONTINUED MEMBERSHIP THE COMMISSION OF  
30 OR PARTICIPATION IN GANG CRIMES.

31 CRIMINAL STREET GANG ENTERPRISE SOLICITATION, RECRUITMENT OR RETENTION  
32 OF MINORS IS A CLASS D FELONY.

33 S 280.15 COERCION OF A MINOR INTO A CRIMINAL STREET GANG ENTERPRISE  
34 CONSPIRACY.

35 A PERSON IS GUILTY OF COERCION OF A MINOR INTO A CRIMINAL STREET GANG  
36 ENTERPRISE CONSPIRACY WHEN, WITH THE INTENT TO CAUSE PHYSICAL INJURY TO  
37 A PERSON UNDER EIGHTEEN YEARS OF AGE, HE OR SHE CAUSES SUCH PHYSICAL  
38 INJURY TO SUCH PERSON OR ANOTHER PERSON UNDER EIGHTEEN YEARS OF AGE FOR  
39 THE PURPOSE OF CAUSING OR COERCING SUCH PERSON TO JOIN OR PARTICIPATE IN  
40 A CRIMINAL CONSPIRACY TO BENEFIT A CRIMINAL STREET GANG ENTERPRISE OR  
41 OTHER ORGANIZATION OF THREE OR MORE PERSONS WHICH HAS A COMMON NAME,  
42 IDENTIFYING SIGN OR SYMBOL AND WHOSE MEMBERS INDIVIDUALLY OR COLLECTIVE-  
43 LY ENGAGE IN GANG CRIMES.

44 COERCION OF A MINOR INTO A CRIMINAL STREET GANG ENTERPRISE CONSPIRACY  
45 IS A CLASS D FELONY.

46 S 280.20 CRIMINAL STREET GANG ENTERPRISE LEADERSHIP.

47 A PERSON IS GUILTY OF CRIMINAL STREET GANG ENTERPRISE LEADERSHIP WHEN,  
48 AS A MEMBER OF A CRIMINAL STREET GANG ENTERPRISE, HE OR SHE COMMANDS,  
49 COUNSELS, PERSUADES, INDUCES, ENTICES OR COERCES ANY INDIVIDUAL TO  
50 COMMIT A CRIME WHERE THE PURPOSE OF SUCH CRIME IS THE FURTHERANCE OF THE  
51 CRIMINAL OBJECTIVES OF SUCH CRIMINAL STREET GANG ENTERPRISE.

52 CRIMINAL STREET GANG ENTERPRISE LEADERSHIP IS A CLASS D FELONY.

53 S 280.25 ABATEMENT OF PREMISES USED FOR CRIMINAL STREET GANG ENTERPRISE  
54 ACTIVITY.

55 1. ANY PLACE OR PREMISES THAT HAS BEEN USED ON MORE THAN TWO OCCA-  
56 SIONS, WITHIN A SIX MONTH PERIOD OF TIME, FOR THE PURPOSE OF CONDUCTING

1 A PATTERN OF STREET GANG CRIMINAL ACTIVITY, OR ANY REAL PROPERTY THAT IS  
2 ERECTED, ESTABLISHED, MAINTAINED, OWNED, LEASED, OR USED BY ANY CRIMINAL  
3 STREET GANG ENTERPRISE FOR THE PURPOSE OF CONDUCTING CRIMINAL STREET  
4 GANG ENTERPRISE ACTIVITY CONSTITUTES A NUISANCE, THAT SHALL BE ENJOINED,  
5 ABATED, AND PREVENTED, AND FOR WHICH DAMAGES MAY BE RECOVERED, WHETHER  
6 IT IS A PUBLIC OR PRIVATE NUISANCE.

7 2. ANY ACTION FOR AN INJUNCTION OR ABATEMENT FILED PURSUANT TO SUBDI-  
8 VISION ONE OF THIS SECTION SHALL PROCEED ACCORDING TO THE PROVISIONS OF  
9 THE CIVIL PRACTICE LAW AND RULES, EXCEPT THAT ALL OF THE FOLLOWING SHALL  
10 APPLY:

11 (A) THE COURT SHALL NOT ASSESS A CIVIL PENALTY AGAINST ANY PERSON  
12 UNLESS THAT PERSON KNEW OR SHOULD HAVE KNOWN OF THE UNLAWFUL ACTS  
13 COMMITTED ON OR IN THE PREMISES;

14 (B) NO ORDER OF EVICTION OR CLOSURE MAY BE ENTERED;

15 (C) ALL INJUNCTIONS ISSUED SHALL BE LIMITED TO THOSE NECESSARY TO  
16 PROTECT THE HEALTH AND SAFETY OF THE RESIDENTS OR THE PUBLIC OR THOSE  
17 NECESSARY TO PREVENT FURTHER CRIMINAL ACTIVITY; AND

18 (D) SUIT MAY NOT BE FILED UNTIL A THIRTY-DAY NOTICE PERIOD OF THE  
19 UNLAWFUL USE OR CRIMINAL CONDUCT HAS BEEN PROVIDED TO THE OWNER BY MAIL,  
20 RETURN RECEIPT REQUESTED, POSTAGE PREPAID, TO THE LAST KNOWN ADDRESS.

21 3. NO NOT-FOR-PROFIT OR CHARITABLE ORGANIZATION WHICH IS CONDUCTING  
22 ITS AFFAIRS WITH ORDINARY CARE AND SKILL, AND NO GOVERNMENTAL ENTITY,  
23 SHALL BE ABATED PURSUANT TO THE PROVISIONS OF SUBDIVISIONS ONE AND TWO  
24 OF THIS SECTION.

25 4. NOTHING IN THIS SECTION SHALL PRECLUDE ANY AGGRIEVED PERSON FROM  
26 SEEKING ANY OTHER REMEDY PROVIDED BY LAW.

27 S 280.30 PREEMPTION.

28 NOTHING IN THIS ARTICLE SHALL PREEMPT AN APPROPRIATE ALTERNATIVE OR  
29 ADDITIONAL CHARGE PURSUANT TO THIS CHAPTER, INCLUDING BUT NOT LIMITED  
30 TO, A CHARGE PURSUANT TO SECTION 120.06 (GANG ASSAULT IN THE SECOND  
31 DEGREE), OR SECTION 120.07 (GANG ASSAULT IN THE FIRST DEGREE); OR  
32 PREVENT A LOCAL GOVERNMENT FROM ADOPTING AND ENFORCING LAWS CONSISTENT  
33 WITH THIS ARTICLE RELATING TO CRIMINAL STREET GANG ENTERPRISE ACTIVITY  
34 AND CRIMINAL STREET GANG ENTERPRISE VIOLENCE. WHERE LOCAL LAWS DUPLICATE  
35 OR SUPPLEMENT THIS ARTICLE, THE PROVISIONS OF THIS ARTICLE SHALL BE  
36 CONSTRUED AS PROVIDING ALTERNATIVE REMEDIES AND NOT AS PREEMPTING SUCH  
37 LOCAL LAWS.

38 S 2. Severability. If any provision of this act, or the application  
39 thereof to any person or circumstance, shall be adjudged by any court of  
40 competent jurisdiction to be invalid or unconstitutional, such judgment  
41 shall not affect, impair or invalidate the remainder thereof, but shall  
42 be confined in its operation to the provision of this act, or in its  
43 application to the person or circumstance, directly involved in the  
44 controversy in which such judgment shall have been rendered.

45 S 3. This act shall take effect on the first of November next succeed-  
46 ing the date on which it shall have become a law.