

479

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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 enacting the criminal
street gang related crimes act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "criminal street gang related crimes act".

3 S 2. The penal law is amended by adding a new article 486 to read as
4 follows:

5 ARTICLE 486

6 CRIMINAL STREET GANG RELATED CRIMES

7 SECTION 486.00 LEGISLATIVE FINDINGS.

8 486.05 DEFINITIONS.

9 486.10 CRIMINAL STREET GANG RELATED CRIME.

10 486.15 SENTENCING.

11 S 486.00 LEGISLATIVE FINDINGS.

12 THE LEGISLATURE FINDS AND DETERMINES AS FOLLOWS: GANG RELATED CRIME
13 HAS CONTINUED TO INCREASE IN AMERICAN SOCIETY. IT IS NO LONGER UNCOMMON
14 FOR GANGS TO SOLICIT YOUNGSTERS IN THE ELEMENTARY SCHOOLS TO JOIN IN
15 THEIR CRIMINAL ACTIVITY. TOUGHER, NEW LAWS ARE REQUIRED TO BREAK THESE
16 GANGS. IT IS TIME TO START GOING AFTER GANGS AS WE DID WITH ORGANIZED
17 CRIME.

18 THIS ARTICLE INCREASES PENALTIES FOR VARIOUS VIOLENT CRIMES THAT ARE
19 PERPETRATED IN THE FURTHERANCE OF GANG ACTIVITY. THE CONCEPT IS SIMILAR
20 TO THE LAW THE STATE ENACTED TO DEAL WITH BIAS RELATED CRIMES. THE
21 PENALTY IS NOT ONLY GIVEN FOR THE UNDERLYING ASSAULT, BUT ALSO FOR THE
22 FACT THAT IT WAS BIAS RELATED. IN THIS CASE, FOR EXAMPLE, AN E FELONY IS
23 RAISED TO A D FELONY WHERE THE VIOLENT CRIME WAS COMMITTED IN THE FURTH-
24 ERANCE OF GANG ACTIVITY. THIS ARTICLE MIRRORS LEGISLATION THAT HAS BEEN

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

LBD03137-01-1

1 ENACTED IN MANY OTHER STATES INCLUDING THE STATES OF NEW JERSEY, CALI-
2 FORNIA AND FLORIDA.

3 S 486.05 DEFINITIONS.

4 FOR THE PURPOSES OF THIS ARTICLE:

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

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

13 (A) ADMITS TO CRIMINAL STREET GANG MEMBERSHIP;

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

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

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

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

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

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

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

29 3. "CRIMINAL STREET GANG ACTIVITY" MEANS THE COMMISSION OR ATTEMPTED
30 COMMISSION OF, OR SOLICITATION OR CONSPIRACY TO COMMIT, TWO OR MORE
31 FELONY ACTS THAT:

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

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

37 (C) FURTHER A CRIMINAL STREET GANG BY: (I) BEING RELATED TO ONE ANOTH-
38 ER THROUGH A COMMON SCHEME OR PLAN; OR (II) WERE COMMITTED, SOLICITED,
39 REQUESTED, IMPORTUNED OR INTENTIONALLY AIDED BY PERSONS ACTING WITH THE
40 MENTAL CULPABILITY REQUIRED FOR THE COMMISSION OF SUCH FELONY ACTS AND
41 SUCH PERSON IS A MEMBER OF SUCH CRIMINAL STREET GANG.

42 S 486.10 CRIMINAL STREET GANG RELATED CRIME.

43 1. A PERSON COMMITS A CRIMINAL STREET GANG RELATED CRIME WHEN HE OR
44 SHE COMMITS A SPECIFIED OFFENSE AND EITHER:

45 (A) SUCH PERSON IS A CRIMINAL STREET GANG MEMBER, OR

46 (B) SUCH PERSON'S CONDUCT IS IN RELATION TO INITIATION INTO A CRIMINAL
47 STREET GANG, OR

48 (C) SUCH PERSON'S CONDUCT IS IN RELATION TO CRIMINAL STREET GANG
49 ACTIVITY.

50 2. A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING
51 PROVISIONS OF THIS CHAPTER: SECTION 120.00 (ASSAULT IN THE THIRD
52 DEGREE); SECTION 120.05 (ASSAULT IN THE SECOND DEGREE); SECTION 120.10
53 (ASSAULT IN THE FIRST DEGREE); SECTION 120.12 (AGGRAVATED ASSAULT UPON A
54 PERSON LESS THAN ELEVEN YEARS OLD); SECTION 120.13 (MENACING IN THE
55 FIRST DEGREE); SECTION 120.14 (MENACING IN THE SECOND DEGREE); SECTION
56 120.15 (MENACING IN THE THIRD DEGREE); SECTION 120.20 (RECKLESS ENDAN-

1 GERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN
2 THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN
3 THE SECOND DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20
4 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION 125.25 (MURDER IN THE SECOND
5 DEGREE); SECTION 120.45 (STALKING IN THE FOURTH DEGREE); SECTION 120.50
6 (STALKING IN THE THIRD DEGREE); SECTION 120.55 (STALKING IN THE SECOND
7 DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE); SUBDIVISION ONE
8 OF SECTION 130.35 (RAPE IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION
9 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SUBDIVISION ONE OF
10 SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); PARAGRAPH (A) OF
11 SUBDIVISION ONE OF SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND
12 DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.70 (AGGRAVATED
13 SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 135.05 (UNLAWFUL IMPRISONMENT
14 IN THE SECOND DEGREE); SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE
15 FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND DEGREE); SECTION
16 135.25 (KIDNAPPING IN THE FIRST DEGREE); SECTION 135.60 (COERCION IN THE
17 SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST DEGREE); SECTION
18 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE); SECTION 140.15 (CRIMINAL
19 TRESPASS IN THE SECOND DEGREE); SECTION 140.17 (CRIMINAL TRESPASS IN THE
20 FIRST DEGREE); SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION
21 140.25 (BURGLARY IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE
22 FIRST DEGREE); SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE);
23 SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10
24 (CRIMINAL MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL
25 MISCHIEF IN THE FIRST DEGREE); SECTION 150.05 (ARSON IN THE FOURTH
26 DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION 150.15
27 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST
28 DEGREE); SECTION 155.25 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY
29 IN THE FOURTH DEGREE); SECTION 155.35 (GRAND LARCENY IN THE THIRD
30 DEGREE); SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION
31 155.42 (GRAND LARCENY IN THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN
32 THE THIRD DEGREE); SECTION 160.10 (ROBBERY IN THE SECOND DEGREE);
33 SECTION 160.15 (ROBBERY IN THE FIRST DEGREE); SECTION 240.25 (HARASSMENT
34 IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30
35 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); OR ANY ATTEMPT OR CONSPIR-
36 ACY TO COMMIT ANY OF THE FOREGOING OFFENSES.
37 S 486.15 SENTENCING.

38 1. WHEN A PERSON IS CONVICTED OF A CRIMINAL STREET GANG RELATED CRIME
39 PURSUANT TO THIS ARTICLE, AND THE SPECIFIED OFFENSE IS A VIOLENT FELONY
40 OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE CRIMINAL
41 STREET GANG RELATED CRIME SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

42 2. WHEN A PERSON IS CONVICTED OF A CRIMINAL STREET GANG RELATED CRIME
43 PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR OR A
44 CLASS C, D OR E FELONY, THE CRIMINAL STREET GANG RELATED CRIME SHALL BE
45 DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFEND-
46 ANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE
47 TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A
48 SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

49 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
50 CONVICTED OF A CRIMINAL STREET GANG RELATED CRIME PURSUANT TO THIS ARTI-
51 CLE AND THE SPECIFIED OFFENSE IS A CLASS B FELONY:

52 (A) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
53 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF
54 THIS CHAPTER;

55 (B) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
56 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

1 (C) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS
2 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS CHAPTER;

3 (D) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
4 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF
5 THIS CHAPTER; AND

6 (E) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE
7 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS
8 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

9 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS
10 CONVICTED OF A CRIMINAL STREET GANG RELATED CRIME PURSUANT TO THIS ARTI-
11 CLE AND THE SPECIFIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM PERIOD
12 OF THE INDETERMINATE SENTENCE SHALL BE NOT LESS THAN TWENTY YEARS.

13 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY WHERE THE COURT,
14 HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND THE
15 HISTORY AND CHARACTER OF THE DEFENDANT, FINDS ON THE RECORD THAT SUCH
16 ADDITIONAL TERM OR SENTENCE WOULD BE UNDULY HARSH AND THAT NOT IMPOSING
17 SUCH ADDITIONAL TERM OR SENTENCE WOULD BE CONSISTENT WITH THE PUBLIC
18 SAFETY AND WOULD NOT DEPRECATE THE SERIOUSNESS OF THE CRIME.

19 S 3. Local laws; preemption. Nothing in this act shall prevent a
20 local governing body from adopting and enforcing laws consistent with
21 this act relating to criminal street gang activity on school grounds and
22 criminal street gang violence. Where local laws duplicate or supplement
23 this act, this act shall be construed as providing alternative remedies
24 and not as preempting such local laws.

25 S 4. Severability. If any part or provision of this act, or the appli-
26 cation thereof to any person or circumstance, is held invalid, the
27 remainder of this act, including the application of the part or
28 provision to other persons or circumstances, shall not be affected
29 thereby and shall continue in full force and effect. To this end, the
30 provisions of this act are severable.

31 S 5. This act shall take effect on the first of November next succeed-
32 ing the date on which it shall have become a law.