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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

ARTICLE 486

CRIMINAL STREET GANG RELATED CRIMES

SECTION 486.00 LEGISLATIVE FINDINGS.
486.05 DEFINITIONS.
486.10 CRIMINAL STREET GANG RELATED CRIME.
486.15 SENTENCING.

S 486.00 LEGISLATIVE FINDINGS.

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

THIS ARTICLE INCREASES PENALTIES FOR VARIOUS VIOLENT CRIMES THAT ARE PERPETRATED IN THE FURTHERANCE OF GANG ACTIVITY. THE CONCEPT IS SIMILAR TO THE LAW THE STATE ENACTED TO DEAL WITH BIAS RELATED CRIMES. THE PENALTY IS NOT ONLY GIVEN FOR THE UNDERLYING ASSAULT, BUT ALSO FOR THE FACT THAT IT WAS BIAS RELATED. IN THIS CASE, FOR EXAMPLE, AN E FELONY IS RAISED TO A D FELONY WHERE THE VIOLENT CRIME WAS COMMITTED IN THE FURTHERANCE 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.

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ENACTED IN MANY OTHER STATES INCLUDING THE STATES OF NEW JERSEY, CALIFORNIA AND FLORIDA.

S 486.05 DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE:

1. "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.

2. "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;

(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.

3. "CRIMINAL STREET GANG ACTIVITY" MEANS THE COMMISSION OR ATTEMPTED COMMISSION OF, OR SOLICITATION OR CONSPIRACY TO COMMIT, TWO OR MORE FELONY 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 FELONY ACTS AND SUCH PERSON IS A MEMBER OF SUCH CRIMINAL STREET GANG.

S 486.10 CRIMINAL STREET GANG RELATED CRIME.

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

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

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

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

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

GERMENT IN THE SECOND DEGREE); SECTION 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION 125.25 (MURDER IN THE SECOND DEGREE); SECTION 120.45 (STALKING IN THE FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD DEGREE); SECTION 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60 (STALKING IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.35 (RAPE IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.67 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE); SECTION 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE); SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION 135.20 (KIDNAPPING IN THE SECOND DEGREE); SECTION 135.25 (KIDNAPPING IN THE FIRST DEGREE); SECTION 135.60 (COERCION IN THE SECOND DEGREE); SECTION 135.65 (COERCION IN THE FIRST DEGREE); SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD DEGREE); SECTION 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE); SECTION 140.17 (CRIMINAL TRESPASS IN THE FIRST DEGREE); SECTION 140.20 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY IN THE SECOND DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE); SECTION 145.00 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05 (CRIMINAL MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL MISCHIEF IN THE SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE FIRST DEGREE); SECTION 150.05 (ARSON IN THE FOURTH DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION 150.15 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST DEGREE); SECTION 155.25 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY IN THE FOURTH DEGREE); SECTION 155.35 (GRAND LARCENY IN THE THIRD DEGREE); SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION 155.42 (GRAND LARCENY IN THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN THE THIRD DEGREE); SECTION 160.10 (ROBBERY IN THE SECOND DEGREE); SECTION 160.15 (ROBBERY IN THE FIRST DEGREE); SECTION 240.25 (HARASSMENT IN THE FIRST DEGREE); SUBDIVISION ONE, TWO OR FOUR OF SECTION 240.30 (AGGRAVATED HARASSMENT IN THE SECOND DEGREE); OR ANY ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

S 486.15 SENTENCING.

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

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

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

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

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

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

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

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

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

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

S 3. 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 4. 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 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.