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

5384

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the civil practice law and rules, the state finance law, the correction law, the education law, and the mental hygiene law, in relation to defining offenses involving criminal street gangs, creating the criminal street gang prevention fund, and providing for gang prevention services in schools; and to repeal sections 120.06 and 120.07 of the penal law, relating to offenses of gang assault

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

Section 1. Legislative findings and purpose. The legislature hereby finds that New York laws are insufficient regarding the prosecution of criminal street gangs and the protection of public order and individual safety against gang-related violence, because of the lack of programs and activities specifically designed to prevent the growth of criminal street gangs, facilitate prosecution and punishment of members of criminal street gangs, and punish those who solicit others to participate in criminal street gangs and in acts of gang-related violence or who provide support or resources to those who commit or encourage the commission of such acts.

The legislature further finds that the threat of violence and the disruption of public order and safety presented by criminal street gangs have reached a crisis point that threatens the right of residents of this state to be secure and protected from fear, intimidation, and physical harm.

The legislature therefore finds and declares that it is in every sense in the public interest to establish a comprehensive approach to the protection of public order and individual safety against criminal street gangs and gang-related violence, by severely criminalizing such activities, by creating anti-crime programs that focus on patterns of crimi-

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

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nal gang activity and organization, and by expanding education and intervention to prevent the growth of criminal street gangs as provided in this legislation.

S 2. Paragraph (a) of subdivision 2 of section 60.07 of the penal law, as added by chapter 148 of the laws of 2000, is amended to read as follows:

(a) the term "specified offense" shall mean an attempt to commit murder in the second degree as defined in section 125.25 of this chapter, gang assault in the first degree as defined in section [120.07] 495.06 of this chapter, gang assault in the second degree as defined in section [120.06] 495.05 of this chapter, assault in the first degree as defined in section 120.10 of this chapter, manslaughter in the first degree as defined in section 125.20 of this chapter, manslaughter in the second degree as defined in section 125.15 of this chapter, robbery in the first degree as defined in section 160.15 of this chapter, robbery in the second degree as defined in section 160.10 of this chapter, or the attempted commission of any of the following offenses: gang assault in the first degree as defined in section [120.07] 495.06, assault in the first degree as defined in section 120.10, manslaughter in the first degree as defined in section 125.20 or robbery in the first degree as defined in section 160.15;

S 3. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 320 of the laws of 2006 and paragraph (b) as amended by chapter 1 of the laws of 2013, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section [120.07] 495.06, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21,

aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section [120.06] 495.05, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 4. Sections 120.06 and 120.07 of the penal law are REPEALED.

S 5. Subdivision 2 of section 130.91 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section [120.06] 495.05, gang assault in the first degree as defined in section [120.07] 495.06, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

S 6. The penal law is amended by adding a new title Y-2 to read as follows:

TITLE Y-2
OFFENSES INVOLVING CRIMINAL STREET GANGS

ARTICLE 495
CRIMINAL STREET GANGS ENFORCEMENT AND PREVENTION ACT

SECTION 495.01 DEFINITIONS.
495.02 PARTICIPATION IN A CRIMINAL STREET GANG.
495.03 PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE.
495.04 SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG.
495.05 GANG ASSAULT IN THE SECOND DEGREE.
495.06 GANG ASSAULT IN THE FIRST DEGREE.
495.07 ABATEMENT OF PREMISES USED BY A CRIMINAL STREET GANG.
495.08 PREEMPTION.

S 495.01 DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "CRIMINAL STREET GANG MEMBER" SHALL MEAN AN INDIVIDUAL WHO IS IN POSSESSION OF OR EXHIBITS CRIMINAL STREET GANG PARAPHERNALIA, CRIMINAL STREET GANG AFFILIATED TATTOOS, CRIMINAL STREET GANG CLOTHING OR COLORS, OR ANY OTHER INDICIA OF CRIMINAL STREET GANG MEMBERSHIP, AND

A. PROCLAIMS TO BE A CRIMINAL STREET GANG MEMBER;

B. IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY A DOCUMENTED RELIABLE WITNESS OR INFORMANT;

C. IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY A WITNESS OR INFORMANT OF PREVIOUSLY UNTESTED RELIABILITY IF SUCH IDENTIFICATION IS CORROBORATED BY INDEPENDENT INFORMATION;

D. HAS BEEN ARRESTED MORE THAN ONCE IN THE COMPANY OF IDENTIFIED CRIMINAL STREET GANG MEMBERS FOR OFFENSES THAT ARE CONSISTENT WITH USUAL CRIMINAL STREET GANG ACTIVITY; OR

E. IS IDENTIFIED AS A CRIMINAL STREET GANG MEMBER BY PHYSICAL EVIDENCE SUCH AS PHOTOGRAPHS OR OTHER WRITTEN OR ELECTRONIC DOCUMENTATION.

2. "CRIMINAL STREET GANG" SHALL MEAN AN ONGOING FORMAL OR INFORMAL ASSOCIATION OF PERSONS IN WHICH MEMBERS OR ASSOCIATES INDIVIDUALLY OR COLLECTIVELY ENGAGE IN THE COMMISSION, ATTEMPTED COMMISSION, FACILITATION, SOLICITATION, OR CONSPIRE TO COMMIT ANY SPECIFIED OFFENSE AND HAVE AT LEAST ONE INDIVIDUAL WHO IS A CRIMINAL STREET GANG MEMBER.

3. "CRIMINAL STREET GANG RELATED OFFENSE" SHALL MEAN ANY SPECIFIED OFFENSE, THAT IS COMMITTED FOR ANY OF THE FOLLOWING REASONS:

A. FOR THE BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH ANY CRIMINAL STREET GANG, OR IS COMMITTED WITH THE INTENT TO PROMOTE, FURTHER, OR ASSIST IN ANY CRIMINAL CONDUCT BY THE GANG;

B. TO GAIN ADMISSION, PRESTIGE, OR PROMOTION WITHIN THE GANG;

C. TO INCREASE OR MAINTAIN THE GANG'S SIZE, MEMBERSHIP, PRESTIGE, DOMINANCE, OR CONTROL IN A GEOGRAPHICAL AREA;

D. TO EXACT REVENGE OR RETRIBUTION FOR THE GANG OR ANY MEMBER OF THE GANG;

E. TO OBSTRUCT JUSTICE, OR INTIMIDATE, OR ELIMINATE ANY WITNESS AGAINST THE GANG OR ANY MEMBER OF THE GANG;

F. TO DIRECTLY OR INDIRECTLY KNOWINGLY CAUSE ANY BENEFIT, AGGRANDIZEMENT, GAIN, PROFIT OR OTHER ADVANTAGE FOR A GANG, ITS REPUTATION, INFLUENCE, OR MEMBERSHIP.

4. "SPECIFIED OFFENSE" SHALL MEAN ANY OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: OFFENSES CONSTITUTING A SPECIFIED OFFENSE AS DEFINED IN SUBDIVISION THREE OF SECTION 485.05 (HATE CRIMES), ARTICLE ONE HUNDRED FIFTEEN (CRIMINAL FACILITATION), ONE HUNDRED THIRTY-FIVE (KIDNAPPING, COERCION AND RELATED OFFENSES), ONE HUNDRED SEVENTY (FORGERY AND RELATED OFFENSES), ONE HUNDRED SEVENTY-EIGHT (CRIMINAL DIVERSION OF PRESCRIPTION MEDICATIONS AND PRESCRIPTIONS), TWO HUNDRED TWENTY-FIVE (GAMBLING OFFENSES), TWO HUNDRED THIRTY (PROSTITUTION

OFFENSES), TWO HUNDRED THIRTY-FIVE (OBSCENITY AND RELATED OFFENSES), TWO HUNDRED SIXTY-FIVE (FIREARMS AND OTHER DANGEROUS WEAPONS), TWO HUNDRED SEVENTY (OTHER OFFENSES RELATING TO PUBLIC SAFETY), FOUR HUNDRED (LICENSING AND OTHER PROVISIONS RELATED TO FIREARMS), OR FOUR HUNDRED SEVENTY (MONEY LAUNDERING).

S 495.02 PARTICIPATION IN A CRIMINAL STREET GANG.

A PERSON IS GUILTY OF PARTICIPATION IN A CRIMINAL STREET GANG IF SUCH PERSON IS A CRIMINAL STREET GANG MEMBER AND HAS KNOWLEDGE THAT OTHER MEMBERS ENGAGE IN OR HAVE ENGAGED IN CRIMINAL STREET GANG RELATED OFFENSES.

PARTICIPATION IN A CRIMINAL STREET GANG IS A CLASS A MISDEMEANOR.

S 495.03 PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE.

1. A PERSON IS GUILTY OF PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE WHEN HE OR SHE WILLFULLY AND KNOWINGLY PROMOTES, FURTHERS, ASSISTS IN, CONDUCTS, OR PARTICIPATES IN THE AFFAIRS OF A CRIMINAL STREET GANG BY PARTICIPATING IN A CRIMINAL STREET GANG RELATED OFFENSE.

2. WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A MISDEMEANOR, CLASS C, D, OR E FELONY, THE CRIME OF PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE 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 THE CRIME OF PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE 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 OF IMPRISONMENT 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 OF IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

C. THE TERM OF DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS OF IMPRISONMENT 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 OF IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF THIS CHAPTER; OR

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

4. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECIFIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE SHALL NOT BE LESS THAN TWENTY YEARS OF IMPRISONMENT. NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY STRIKE THE ADDITIONAL PUNISHMENT FOR THE ENHANCEMENTS PROVIDED IN SUBDIVISIONS TWO THROUGH FIVE OF THIS SECTION OR REFUSE TO IMPOSE THE MINIMUM JAIL SENTENCE FOR MISDEMEANORS IN AN UNUSUAL CASE WHERE THE INTERESTS OF JUSTICE WOULD BEST BE SERVED, IF THE COURT SPECIFIES ON THE RECORD AND ENTERS INTO THE MINUTES THE CIRCUMSTANCES INDICATING THE MANNER IN WHICH THE INTERESTS OF JUSTICE WOULD BE SERVED BY SUCH DISPOSITION. NOTWITHSTANDING THE

FOREGOING, IN THE CASE OF A MINOR FOUND TO BE GUILTY OF AN OFFENSE DESCRIBED IN THIS ARTICLE WHO IS A FIRST TIME OFFENDER, THE COURT MAY ORDER THAT A PARENT OR GUARDIAN RETAIN CUSTODY OF THAT MINOR, AND MAY ORDER THE PARENT OR GUARDIAN TO ATTEND ANTI-GANG VIOLENCE PARENTING CLASSES ESTABLISHED PURSUANT TO STANDARDS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE FATHER, MOTHER, SPOUSE OR OTHER PERSON LIABLE FOR THE SUPPORT OF THE MINOR, THE ESTATE OF THAT PERSON, AND THE ESTATE OF THE MINOR SHALL BE LIABLE FOR THE COST OF CLASSES ORDERED PURSUANT TO THIS SECTION, UNLESS THE COURT FINDS THAT THE PERSON OR ESTATE DOES NOT HAVE THE FINANCIAL ABILITY TO PAY. IN EVALUATING FINANCIAL ABILITY TO PAY, THE COURT SHALL TAKE INTO CONSIDERATION THE COMBINED HOUSEHOLD INCOME, THE NECESSARY OBLIGATIONS OF THE HOUSEHOLD, THE NUMBER OF PERSONS DEPENDENT ON THIS INCOME, AND WHETHER REDUCED MONTHLY PAYMENTS WOULD OBVIATE THE NEED TO WAIVE LIABILITY FOR THE FULL COSTS.

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

S 495.04 SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG.

A PERSON IS GUILTY OF SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG IF SUCH PERSON:

1. SOLICITS OR RECRUITS ANOTHER TO ACTIVELY PARTICIPATE IN A CRIMINAL STREET GANG WITH THE INTENT THAT THE PERSON SOLICITED OR RECRUITED PARTICIPATE IN A PATTERN OF CRIMINAL STREET GANG RELATED OFFENSES, OR WITH THE INTENT THAT SUCH PERSON PROMOTE, FURTHER, CONDUCT, OR ASSIST IN ANY PATTERN OF CRIMINAL STREET GANG RELATED OFFENSES BY MEMBERS OF THE CRIMINAL STREET GANG; OR

2. THREATENS A PERSON WITH PHYSICAL VIOLENCE WITH THE INTENT TO COERCE, INDUCE, OR SOLICIT SUCH PERSON OR ANOTHER TO PARTICIPATE IN A CRIMINAL STREET GANG; OR

3. USES PHYSICAL VIOLENCE TO COERCE, INDUCE, OR SOLICIT ANOTHER PERSON TO PARTICIPATE IN A CRIMINAL STREET GANG.

SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG IS A CLASS E FELONY.

S 495.05 GANG ASSAULT IN THE SECOND DEGREE.

A PERSON IS GUILTY OF GANG ASSAULT IN THE SECOND DEGREE WHEN, WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON AND WHEN AIDED BY TWO OR MORE OTHER PERSONS ACTUALLY PRESENT, HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO SUCH PERSON OR TO A THIRD PERSON.

GANG ASSAULT IN THE SECOND DEGREE IS A CLASS C FELONY.

S 495.06 GANG ASSAULT IN THE FIRST DEGREE.

A PERSON IS GUILTY OF GANG ASSAULT IN THE FIRST DEGREE WHEN, WITH INTENT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON AND WHEN AIDED BY TWO OR MORE OTHER PERSONS ACTUALLY PRESENT, HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO SUCH PERSON OR TO A THIRD PERSON.

GANG ASSAULT IN THE FIRST DEGREE IS A CLASS B FELONY.

S 495.07 ABATEMENT OF PREMISES USED BY A CRIMINAL STREET GANG.

1. A BUILDING OR PLACE USED BY MEMBERS OF A CRIMINAL STREET GANG FOR THE PURPOSE OF ENGAGING IN A PATTERN OF CRIMINAL GANG ACTIVITY IS A NUISANCE WHICH SHALL BE ENJOINED, ABATED, AND PREVENTED, AND FOR WHICH DAMAGES MAY BE RECOVERED, IRRESPECTIVE OF WHETHER IT CONSTITUTES A PUBLIC OR PRIVATE NUISANCE.

2. ANY ACTION FOR AN INJUNCTION OR ABATEMENT FILED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL PROCEED ACCORDING TO THE PROVISIONS OF

THE CIVIL PRACTICE LAW AND RULES, EXCEPT THAT ALL OF THE FOLLOWING SHALL APPLY:

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

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

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

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

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

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

5. WHEN AN INJUNCTION IS ISSUED PURSUANT TO THIS SECTION FOR THE ABATEMENT OF PREMISES USED FOR CRIMINAL STREET GANG ACTIVITIES, THE ATTORNEY GENERAL OR ANY DISTRICT ATTORNEY OR ANY PROSECUTING CITY ATTORNEY MAY MAINTAIN AN ACTION FOR MONEY DAMAGES ON BEHALF OF THE COMMUNITY OR NEIGHBORHOOD INJURED BY THE NUISANCE. ANY MONEY DAMAGES AWARDED SHALL BE PAID BY OR COLLECTED FROM ASSETS OF THE CRIMINAL STREET GANG OR ITS MEMBERS THAT WERE DERIVED FROM THE PATTERN OF CRIMINAL STREET GANG ACTIVITY BEING ABATED OR ENJOINED. ONLY PERSONS WHO KNEW OR SHOULD HAVE KNOWN OF THE UNLAWFUL ACTS SHALL BE PERSONALLY LIABLE FOR THE PAYMENT OF THE DAMAGES AWARDED. IN A CIVIL ACTION FOR DAMAGES BROUGHT PURSUANT TO THIS SUBDIVISION, THE ATTORNEY GENERAL, DISTRICT ATTORNEY, OR CITY ATTORNEY MAY USE, BUT IS NOT LIMITED TO THE USE OF, THE TESTIMONY OF EXPERTS TO ESTABLISH DAMAGES SUFFERED BY THE COMMUNITY OR NEIGHBORHOOD INJURED BY THE NUISANCE. DAMAGES RECOVERED PURSUANT TO THIS SUBDIVISION SHALL BE DEPOSITED INTO A SEPARATE SEGREGATED FUND FOR PAYMENT TO THE GOVERNING BODY OF THE CITY OR COUNTY IN WHOSE POLITICAL SUBDIVISION THE COMMUNITY OR NEIGHBORHOOD IS LOCATED, AND THAT GOVERNING BODY SHALL USE THOSE ASSETS FOR THE BENEFIT OF THE COMMUNITY OR NEIGHBORHOOD INJURED BY THE NUISANCE.

S 495.08 PREEMPTION.

NOTHING IN THIS ARTICLE SHALL PREEMPT AN APPROPRIATE ALTERNATIVE OR ADDITIONAL CHARGE PURSUANT TO THIS CHAPTER.

S 7. The opening paragraph of paragraph (h) of subdivision 2 of section 1349 of the civil practice law and rules, as added by chapter 655 of the laws of 1990, is amended to read as follows:

[All] EXCEPT WITH RESPECT TO A CIRCUMSTANCE TO WHICH PARAGRAPH (I) OF THIS SUBDIVISION APPLIES, ALL moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:

S 8. Subdivision 2 of section 1349 of the civil practice law and rules is amended by adding a new paragraph (i) to read as follows:

(I) IF THE DEFENDANT AGAINST WHOM A FORFEITURE ACTION IS COMMENCED IS CONVICTED OF AN OFFENSE LISTED IN ARTICLE FOUR HUNDRED NINETY-FIVE OF THE PENAL LAW, ALL MONEYS REMAINING AFTER DISTRIBUTIONS PURSUANT TO PARAGRAPHS (A) THROUGH (G) OF THIS SUBDIVISION SHALL BE DISTRIBUTED TO THE CRIMINAL STREET GANG PREVENTION FUND, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW.

S 9. The state finance law is amended by adding a new section 97-llll to read as follows:

S 97-LLLL. CRIMINAL STREET GANG PREVENTION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE CRIMINAL STREET GANG PREVENTION FUND.

2. THE COMPTROLLER IS AUTHORIZED AND DIRECTED TO RECEIVE FOR DEPOSIT TO THE CREDIT OF THE CULTURAL EDUCATION ACCOUNT REVENUES DESIGNATED FOR SUCH DEPOSIT BY LAW OR APPROPRIATION.

3. MONEYS OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, SHALL BE AVAILABLE TO SUPPORT THE CRIMINAL STREET GANG AND VIOLENCE PREVENTION PARTNERSHIP PROGRAM ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED THIRTEEN OF THE EDUCATION LAW.

S 10. The opening paragraph of section 15-b of the correction law, is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. THE COMMISSIONER OF EDUCATION SHALL BE EMPOWERED TO DEVELOP AND IMPLEMENT AN EDUCATIONAL PROGRAM, TO BE KNOWN AS THE DEPARTMENT OF CORRECTIONS GANG EDUCATION AND PREVENTION PROGRAM, WHEREBY INMATES CAN RECEIVE INSTRUCTION CONCERNING THE IMPACT OF, AND RISKS ASSOCIATED WITH, GANG AFFILIATION AND RECEIVE SUPPORT SERVICES IN RELATION TO THE CESSATION OF GANG MEMBERSHIP. THE COMMISSIONER SHALL BE EMPOWERED TO PROMULGATE RULES AND REGULATIONS NECESSARY TO EFFECTUATE THIS PROGRAM.

S 11. The education law is amended by adding a new article 25 to read as follows:

ARTICLE 25
GANG PREVENTION

SECTION 1210. GANG PREVENTION.
1211. MODEL GANG VIOLENCE CURRICULUM; PREVENTION ACTIVITIES.
1212. DRESS CODE CONCERNING GANG-RELATED APPAREL.
1213. CRIMINAL STREET GANG AND VIOLENCE PREVENTION PARTNERSHIP PROGRAM.

S 1210. GANG PREVENTION. THE DEPARTMENT SHALL PREPARE AND DISTRIBUTE TO SCHOOLS GUIDELINES FOR INCORPORATING IN-SERVICE TRAINING IN GANG VIOLENCE FOR TEACHERS, COUNSELORS, ATHLETIC DIRECTORS, SCHOOL BOARD MEMBERS, AND OTHER EDUCATIONAL PERSONNEL INTO THE STAFF DEVELOPMENT PLANS, AND SHALL, UPON REQUEST, ASSIST ANY SCHOOL IN DEVELOPING COMPREHENSIVE GANG VIOLENCE IN-SERVICE TRAINING PROGRAMS. SUCH INFORMATION AND GUIDELINES, TO THE MAXIMUM EXTENT POSSIBLE, SHALL ENCOURAGE SCHOOLS TO AVOID DUPLICATION OF EFFORT BY SHARING RESOURCES; ADAPTING OR ADOPTING MODEL IN-SERVICE TRAINING PROGRAMS; DEVELOPING JOINT AND COLLABORATIVE PROGRAMS; AND COORDINATING EFFORTS WITH EXISTING STATE AND LOCAL GANG VIOLENCE STAFF DEVELOPMENT PROGRAMS, COUNTY AND CITY LAW ENFORCEMENT AGENCIES, AND OTHER PUBLIC AND PRIVATE AGENCIES PROVIDING GANG VIOLENCE PREVENTION, OR OTHER RELATED SERVICES AT THE LOCAL LEVEL.

THE DEPARTMENT SHALL ADDITIONALLY ASSIST SCHOOLS IN QUALIFYING FOR THE RECEIPT OF FEDERAL AND STATE FUNDS TO SUPPORT THEIR GANG VIOLENCE PREVENTION IN-SERVICE TRAINING PROGRAMS. THE DEPARTMENT SHALL CONSULT WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING GANG VIOLENCE.

THE TERM "GANG VIOLENCE PREVENTION IN-SERVICE TRAINING" AS USED IN THIS SECTION MEANS THE PRESENTATION OF PROGRAMS, INSTRUCTION, AND CURRICULA THAT WILL HELP EDUCATORS DEVELOP COMPETENCIES IN INTERACTING IN A POSITIVE MANNER WITH CHILDREN AND YOUTH TO ASSIST THEM IN DEVELOPING THE POSITIVE VALUES, SELF-ESTEEM, KNOWLEDGE, AND SKILLS TO LEAD PRODUCTIVE, GANG-FREE, AND DRUG-FREE LIVES, INCLUDING THE DEVELOPMENT OF

KNOWLEDGE OF THE CAUSES OF GANG VIOLENCE AND TRAINING REGARDING AVAILABLE INFORMATION AND RESOURCES CONCERNING GANG VIOLENCE. IT SHALL ALSO INCLUDE METHODS THAT WILL HELP EDUCATORS INTERACT WITH AND EDUCATE PARENTS OF AT-RISK YOUTH CONCERNING THE RISKS ASSOCIATED WITH, AND WARNING SIGNS OF, GANG AFFILIATION.

S 1211. MODEL GANG VIOLENCE CURRICULUM; PREVENTION ACTIVITIES. 1. THE DEPARTMENT, IN COLLABORATION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, SHALL DEVELOP A MODEL GANG VIOLENCE PREVENTION CURRICULUM FOR USE IN SCHOOLS, AND SHALL PROVIDE FOR AN INDEPENDENT BIENNIAL EVALUATION OF THE CURRICULUM AND OF PUPIL OUTCOMES.

2. IN DEVELOPING THE CURRICULUM, THE DEPARTMENT, IN CONJUNCTION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, SHALL ASSESS THE CURRENT STATUS OF SCHOOL CRIME COMMITTED ON SCHOOL CAMPUSES AND AT SCHOOL-RELATED FUNCTIONS, AND IDENTIFY APPROPRIATE STRATEGIES AND PROGRAMS THAT WILL PROVIDE OR MAINTAIN A HIGH LEVEL OF SCHOOL SAFETY AND ADDRESS THE SCHOOL'S PROCEDURES FOR COMPLYING WITH EXISTING LAWS RELATED TO SCHOOL SAFETY.

3. UPON REQUEST, THE DEPARTMENT SHALL ASSIST SCHOOL DISTRICTS IN DEVELOPING COMPREHENSIVE GANG VIOLENCE AND DRUG AND ALCOHOL ABUSE PREVENTION IN-SERVICE TRAINING PROGRAMS. SUCH GUIDELINES SHALL TO THE MAXIMUM EXTENT POSSIBLE ENCOURAGE SCHOOL DISTRICTS TO SHARE RESOURCES, DEVELOP JOINT AND COLLABORATIVE PROGRAMS, AND COORDINATE EFFORTS WITH OTHER EXISTING STATE AND LOCAL PROGRAMS.

4. THE DEPARTMENT SHALL PREPARE AND DISTRIBUTE TO SCHOOL DISTRICTS GUIDELINES FOR INCORPORATING IN-SERVICE TRAINING IN GANG VIOLENCE AND DRUG AND ALCOHOL ABUSE PREVENTION FOR TEACHERS, COUNSELORS, ATHLETIC DIRECTORS, SCHOOL BOARD MEMBERS, AND OTHER EDUCATIONAL PERSONNEL INTO THE STAFF DEVELOPMENT PLANS OF ALL SCHOOL DISTRICTS AND COUNTY OFFICES OF EDUCATION. SUCH TRAINING SHALL INCLUDE INSTRUCTION TO TEACHERS AND ADMINISTRATORS ON THE SUBTLETIES OF IDENTIFYING CONSTANTLY CHANGING GANG REGALIA AND GANG AFFILIATION.

S 1212. DRESS CODE CONCERNING GANG-RELATED APPAREL. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, THE GOVERNING BOARD OF ANY SCHOOL DISTRICT MAY ADOPT OR RESCIND A REASONABLE DRESS CODE POLICY THAT REQUIRES PUPILS TO WEAR A SCHOOLWIDE UNIFORM OR PROHIBITS PUPILS FROM WEARING "GANG-RELATED APPAREL" IF THE GOVERNING BOARD OF THE SCHOOL DISTRICT APPROVES A PLAN THAT MAY BE INITIATED BY AN INDIVIDUAL SCHOOL'S PRINCIPAL, STAFF, AND PARENTS AND DETERMINES THAT THE POLICY IS NECESSARY FOR THE HEALTH AND SAFETY OF THE SCHOOL ENVIRONMENT. INDIVIDUAL SCHOOLS MAY INCLUDE THE REASONABLE DRESS CODE POLICY. THE GOVERNING BOARD SHALL PROVIDE A METHOD WHEREBY PARENTS MAY CHOOSE NOT TO HAVE THEIR CHILDREN COMPLY WITH AN ADOPTED SCHOOL UNIFORM POLICY. NO PUPIL SHALL BE PENALIZED ACADEMICALLY OR OTHERWISE DISCRIMINATED AGAINST NOR DENIED ATTENDANCE TO SCHOOL IF THE PUPIL'S PARENTS CHOSE NOT TO HAVE THE PUPIL COMPLY WITH THE SCHOOL UNIFORM POLICY. THE GOVERNING BOARD SHALL CONTINUE TO HAVE RESPONSIBILITY FOR THE APPROPRIATE EDUCATION OF SUCH PUPILS. THE COMMISSIONER SHALL ADOPT RULES AND REGULATIONS TO CARRY OUT THE INTENT AND PURPOSES OF THIS SECTION.

S 1213. CRIMINAL STREET GANG AND VIOLENCE PREVENTION PARTNERSHIP PROGRAM. 1. THE DEPARTMENT, IN COLLABORATION WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, SHALL EVALUATE REQUESTS FOR FUNDING FOR PROGRAMS FROM THE CRIMINAL STREET GANG PREVENTION FUND, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-LLLL OF THE STATE FINANCE LAW. ALL SUCH FUNDS SHALL BE DISBURSED TO NON-PROFIT AGENCIES THAT COMPLY WITH THE PROGRAM REQUIREMENTS AND WHO MEET FUNDING CRITERIA.

2. GRANTS DISBURSED PURSUANT TO THIS SECTION MAY ENHANCE BUT SHALL NOT SUPPLANT LOCAL, STATE, OR FEDERAL FUNDS THAT WOULD OTHERWISE BE AVAILABLE FOR THE PREVENTION OR INTERVENTION OF YOUTH INVOLVEMENT IN GANGS, CRIME, OR VIOLENCE. GRANTS SHALL BE AWARDED PURSUANT TO A REQUEST FOR PROPOSALS THAT INFORMS APPLICANTS OF THE PURPOSES AND AVAILABILITY OF FUNDS TO BE AWARDED AND SOLICITS PROPOSALS TO PROVIDE SERVICES CONSISTENT WITH THIS ARTICLE. AGENCIES RECEIVING FUNDS PURSUANT TO THIS SECTION SHALL UTILIZE THE FUNDS TO PROVIDE SERVICES AND ACTIVITIES DESIGNED TO PREVENT OR DETER AT-RISK YOUTH FROM PARTICIPATING IN GANGS, CRIMINAL ACTIVITY, OR VIOLENT BEHAVIOR. SUCH FUNDS MAY NOT BE USED FOR SERVICES OR ACTIVITIES RELATED TO SUPPRESSION, LAW ENFORCEMENT, INCARCERATION, OR OTHER PURPOSES NOT RELATED TO THE PREVENTION AND DETERRENCE OF GANGS, CRIME, AND VIOLENCE. NOTHING IN THIS SUBDIVISION SHALL PREVENT FUNDS FROM BEING USED FOR VIOLENCE PREVENTION AND GANG CRIME DETERRENCE SERVICES PROVIDED BY NONPROFIT AGENCIES TO YOUTHS INCARCERATED IN JUVENILE DETENTION FACILITIES. SERVICES AND ACTIVITIES PROVIDED WITH FUNDS UNDER THIS SECTION SHALL BE USED FOR AT-RISK YOUTH WHO ARE DEFINED AS PERSONS FROM AGE FIVE TO TWENTY YEARS OF AGE AND WHO ARE CURRENT OR FORMER GANG MEMBERS, OR WHO HAVE ONE OR MORE FAMILY MEMBERS LIVING AT HOME WHO ARE CURRENT OR FORMER MEMBERS OF A GANG.

3. THE DEPARTMENT SHALL CONDUCT AN EVALUATION OF THE CRIMINAL STREET GANG AND VIOLENCE PREVENTION PARTNERSHIP PROGRAM AFTER TWO YEARS OF PROGRAM OPERATION AND EACH YEAR THEREAFTER, TO ASSESS THE EFFECTIVENESS AND RESULTS OF THE PROGRAM. THE EVALUATION SHALL BE CONDUCTED BY STAFF OR AN INDEPENDENT BODY THAT HAS EXPERIENCE IN EVALUATING PROGRAMS OPERATED BY COMMUNITY-BASED ORGANIZATIONS OR NONPROFIT AGENCIES. AFTER TWO YEARS OF PROGRAM OPERATION, AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL PREPARE AND SUBMIT AN ANNUAL REPORT TO THE LEGISLATURE DESCRIBING IN DETAIL THE OPERATION OF THE PROGRAM AND THE RESULTS OBTAINED.

S 12. Subdivision (f) of section 10.03 of the mental hygiene law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(f) "Designated felony" means any felony offense defined by any of the following provisions of the penal law: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section [120.06] 495.05, gang assault in the first degree as defined in section [120.07] 495.06, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, dissem-

inating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

S 13. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.