

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:

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

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

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

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

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

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

7 (a) the term "specified offense" shall mean an attempt to commit
8 murder in the second degree as defined in section 125.25 of this chap-
9 ter, gang assault in the first degree as defined in section [120.07]
10 495.06 of this chapter, gang assault in the second degree as defined in
11 section [120.06] 495.05 of this chapter, assault in the first degree as
12 defined in section 120.10 of this chapter, manslaughter in the first
13 degree as defined in section 125.20 of this chapter, manslaughter in the
14 second degree as defined in section 125.15 of this chapter, robbery in
15 the first degree as defined in section 160.15 of this chapter, robbery
16 in the second degree as defined in section 160.10 of this chapter, or
17 the attempted commission of any of the following offenses: gang assault
18 in the first degree as defined in section [120.07] 495.06, assault in
19 the first degree as defined in section 120.10, manslaughter in the first
20 degree as defined in section 125.20 or robbery in the first degree as
21 defined in section 160.15;

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

26 (a) Class B violent felony offenses: an attempt to commit the class
27 A-I felonies of murder in the second degree as defined in section
28 125.25, kidnapping in the first degree as defined in section 135.25, and
29 arson in the first degree as defined in section 150.20; manslaughter in
30 the first degree as defined in section 125.20, aggravated manslaughter
31 in the first degree as defined in section 125.22, rape in the first
32 degree as defined in section 130.35, criminal sexual act in the first
33 degree as defined in section 130.50, aggravated sexual abuse in the
34 first degree as defined in section 130.70, course of sexual conduct
35 against a child in the first degree as defined in section 130.75;
36 assault in the first degree as defined in section 120.10, kidnapping in
37 the second degree as defined in section 135.20, burglary in the first
38 degree as defined in section 140.30, arson in the second degree as
39 defined in section 150.15, robbery in the first degree as defined in
40 section 160.15, incest in the first degree as defined in section 255.27,
41 criminal possession of a weapon in the first degree as defined in
42 section 265.04, criminal use of a firearm in the first degree as defined
43 in section 265.09, criminal sale of a firearm in the first degree as
44 defined in section 265.13, aggravated assault upon a police officer or a
45 peace officer as defined in section 120.11, gang assault in the first
46 degree as defined in section [120.07] 495.06, intimidating a victim or
47 witness in the first degree as defined in section 215.17, hindering
48 prosecution of terrorism in the first degree as defined in section
49 490.35, criminal possession of a chemical weapon or biological weapon in
50 the second degree as defined in section 490.40, and criminal use of a
51 chemical weapon or biological weapon in the third degree as defined in
52 section 490.47.

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

1 aggravated sexual abuse in the second degree as defined in section
2 130.67, assault on a peace officer, police officer, fireman or emergency
3 medical services professional as defined in section 120.08, assault on a
4 judge as defined in section 120.09, gang assault in the second degree as
5 defined in section [120.06] 495.05, strangulation in the first degree as
6 defined in section 121.13, burglary in the second degree as defined in
7 section 140.25, robbery in the second degree as defined in section
8 160.10, criminal possession of a weapon in the second degree as defined
9 in section 265.03, criminal use of a firearm in the second degree as
10 defined in section 265.08, criminal sale of a firearm in the second
11 degree as defined in section 265.12, criminal sale of a firearm with the
12 aid of a minor as defined in section 265.14, aggravated criminal
13 possession of a weapon as defined in section 265.19, soliciting or
14 providing support for an act of terrorism in the first degree as defined
15 in section 490.15, hindering prosecution of terrorism in the second
16 degree as defined in section 490.30, and criminal possession of a chemi-
17 cal weapon or biological weapon in the third degree as defined in
18 section 490.37.

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

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

22 2. A "specified offense" is a felony offense defined by any of the
23 following provisions of this chapter: assault in the second degree as
24 defined in section 120.05, assault in the first degree as defined in
25 section 120.10, gang assault in the second degree as defined in section
26 [120.06] 495.05, gang assault in the first degree as defined in section
27 [120.07] 495.06, stalking in the first degree as defined in section
28 120.60, strangulation in the second degree as defined in section 121.12,
29 strangulation in the first degree as defined in section 121.13,
30 manslaughter in the second degree as defined in subdivision one of
31 section 125.15, manslaughter in the first degree as defined in section
32 125.20, murder in the second degree as defined in section 125.25, aggra-
33 vated murder as defined in section 125.26, murder in the first degree as
34 defined in section 125.27, kidnapping in the second degree as defined in
35 section 135.20, kidnapping in the first degree as defined in section
36 135.25, burglary in the third degree as defined in section 140.20,
37 burglary in the second degree as defined in section 140.25, burglary in
38 the first degree as defined in section 140.30, arson in the second
39 degree as defined in section 150.15, arson in the first degree as
40 defined in section 150.20, robbery in the third degree as defined in
41 section 160.05, robbery in the second degree as defined in section
42 160.10, robbery in the first degree as defined in section 160.15,
43 promoting prostitution in the second degree as defined in section
44 230.30, promoting prostitution in the first degree as defined in section
45 230.32, compelling prostitution as defined in section 230.33, dissem-
46 inating indecent material to minors in the first degree as defined in
47 section 235.22, use of a child in a sexual performance as defined in
48 section 263.05, promoting an obscene sexual performance by a child as
49 defined in section 263.10, promoting a sexual performance by a child as
50 defined in section 263.15, or any felony attempt or conspiracy to commit
51 any of the foregoing offenses.

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

54 TITLE Y-2
55 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

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

6 S 495.02 PARTICIPATION IN A CRIMINAL STREET GANG.

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

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

12 S 495.03 PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE.

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

18 2. WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN A CRIM-
19 INAL STREET GANG RELATED OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECI-
20 FIED OFFENSE IS A MISDEMEANOR, CLASS C, D, OR E FELONY, THE CRIME OF
21 PARTICIPATION IN A CRIMINAL STREET GANG RELATED OFFENSE SHALL BE DEEMED
22 TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT
23 COMMITTED, OR ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO
24 THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A
25 SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

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

30 A. THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST SIX
31 YEARS OF IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION
32 70.00 OF THIS CHAPTER;

33 B. THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS
34 OF IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02
35 OF THIS CHAPTER;

36 C. THE TERM OF DETERMINATE SENTENCE MUST BE AT LEAST TWELVE YEARS OF
37 IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF
38 THIS CHAPTER;

39 D. THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST
40 FOUR YEARS OF IMPRISONMENT IF THE DEFENDANT IS SENTENCED PURSUANT TO
41 SECTION 70.05 OF THIS CHAPTER; OR

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

45 4. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTAND-
46 ING, WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN A CRIM-
47 INAL STREET GANG RELATED OFFENSE PURSUANT TO THIS ARTICLE AND THE SPECI-
48 FIED OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM PERIOD OF THE
49 INDETERMINATE SENTENCE SHALL NOT BE LESS THAN TWENTY YEARS OF IMPRISON-
50 MENT. NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY STRIKE THE ADDITIONAL
51 PUNISHMENT FOR THE ENHANCEMENTS PROVIDED IN SUBDIVISIONS TWO THROUGH
52 FIVE OF THIS SECTION OR REFUSE TO IMPOSE THE MINIMUM JAIL SENTENCE FOR
53 MISDEMEANORS IN AN UNUSUAL CASE WHERE THE INTERESTS OF JUSTICE WOULD
54 BEST BE SERVED, IF THE COURT SPECIFIES ON THE RECORD AND ENTERS INTO THE
55 MINUTES THE CIRCUMSTANCES INDICATING THE MANNER IN WHICH THE INTERESTS
56 OF JUSTICE WOULD BE SERVED BY SUCH DISPOSITION. NOTWITHSTANDING THE

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

15 5. WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN A CRIM-
16 INAL STREET GANG RELATED OFFENSE PURSUANT TO THIS SECTION, AND THE SPEC-
17 IFIED CRIME IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF
18 THIS CHAPTER, THE CRIME OF PARTICIPATION IN A CRIMINAL STREET GANG
19 RELATED OFFENSE SHALL BE DEEMED A VIOLENT FELONY OFFENSE.

20 S 495.04 SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG.

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

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

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

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

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

36 S 495.05 GANG ASSAULT IN THE SECOND DEGREE.

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

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

42 S 495.06 GANG ASSAULT IN THE FIRST DEGREE.

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

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

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

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

54 2. ANY ACTION FOR AN INJUNCTION OR ABATEMENT FILED PURSUANT TO SUBDI-
55 VISION ONE OF THIS SECTION SHALL PROCEED ACCORDING TO THE PROVISIONS OF

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

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

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

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

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

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

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

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

38 S 495.08 PREEMPTION.

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

41 S 7. The opening paragraph of paragraph (h) of subdivision 2 of
42 section 1349 of the civil practice law and rules, as added by chapter
43 655 of the laws of 1990, is amended to read as follows:

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

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

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

1 S 9. The state finance law is amended by adding a new section 97-1111
2 to read as follows:

3 S 97-1111. CRIMINAL STREET GANG PREVENTION FUND. 1. THERE IS HEREBY
4 ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
5 COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS
6 SPECIAL REVENUE FUND TO BE KNOWN AS THE CRIMINAL STREET GANG PREVENTION
7 FUND.

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

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

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

18 2. THE COMMISSIONER OF EDUCATION SHALL BE EMPOWERED TO DEVELOP AND
19 IMPLEMENT AN EDUCATIONAL PROGRAM, TO BE KNOWN AS THE DEPARTMENT OF
20 CORRECTIONS GANG EDUCATION AND PREVENTION PROGRAM, WHEREBY INMATES CAN
21 RECEIVE INSTRUCTION CONCERNING THE IMPACT OF, AND RISKS ASSOCIATED WITH,
22 GANG AFFILIATION AND RECEIVE SUPPORT SERVICES IN RELATION TO THE CESSA-
23 TION OF GANG MEMBERSHIP. THE COMMISSIONER SHALL BE EMPOWERED TO PROMUL-
24 GATE RULES AND REGULATIONS NECESSARY TO EFFECTUATE THIS PROGRAM.

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

27 ARTICLE 25
28 GANG PREVENTION

29 SECTION 1210. GANG PREVENTION.

30 1211. MODEL GANG VIOLENCE CURRICULUM; PREVENTION ACTIVITIES.

31 1212. DRESS CODE CONCERNING GANG-RELATED APPAREL.

32 1213. CRIMINAL STREET GANG AND VIOLENCE PREVENTION PARTNERSHIP
33 PROGRAM.

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

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

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

1 KNOWLEDGE OF THE CAUSES OF GANG VIOLENCE AND TRAINING REGARDING AVAIL-
2 ABLE INFORMATION AND RESOURCES CONCERNING GANG VIOLENCE. IT SHALL ALSO
3 INCLUDE METHODS THAT WILL HELP EDUCATORS INTERACT WITH AND EDUCATE
4 PARENTS OF AT-RISK YOUTH CONCERNING THE RISKS ASSOCIATED WITH, AND WARN-
5 ING SIGNS OF, GANG AFFILIATION.

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

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

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

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

32 S 1212. DRESS CODE CONCERNING GANG-RELATED APPAREL. ANY OTHER
33 PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTANDING, THE GOVERN-
34 ING BOARD OF ANY SCHOOL DISTRICT MAY ADOPT OR RESCIND A REASONABLE DRESS
35 CODE POLICY THAT REQUIRES PUPILS TO WEAR A SCHOOLWIDE UNIFORM OR PROHIB-
36 ITS PUPILS FROM WEARING "GANG-RELATED APPAREL" IF THE GOVERNING BOARD OF
37 THE SCHOOL DISTRICT APPROVES A PLAN THAT MAY BE INITIATED BY AN INDIVID-
38 UAL SCHOOL'S PRINCIPAL, STAFF, AND PARENTS AND DETERMINES THAT THE POLI-
39 CY IS NECESSARY FOR THE HEALTH AND SAFETY OF THE SCHOOL ENVIRONMENT.
40 INDIVIDUAL SCHOOLS MAY INCLUDE THE REASONABLE DRESS CODE POLICY. THE
41 GOVERNING BOARD SHALL PROVIDE A METHOD WHEREBY PARENTS MAY CHOOSE NOT TO
42 HAVE THEIR CHILDREN COMPLY WITH AN ADOPTED SCHOOL UNIFORM POLICY. NO
43 PUPIL SHALL BE PENALIZED ACADEMICALLY OR OTHERWISE DISCRIMINATED AGAINST
44 NOR DENIED ATTENDANCE TO SCHOOL IF THE PUPIL'S PARENTS CHOSE NOT TO HAVE
45 THE PUPIL COMPLY WITH THE SCHOOL UNIFORM POLICY. THE GOVERNING BOARD
46 SHALL CONTINUE TO HAVE RESPONSIBILITY FOR THE APPROPRIATE EDUCATION OF
47 SUCH PUPILS. THE COMMISSIONER SHALL ADOPT RULES AND REGULATIONS TO CARRY
48 OUT THE INTENT AND PURPOSES OF THIS SECTION.

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

1 2. GRANTS DISBURSED PURSUANT TO THIS SECTION MAY ENHANCE BUT SHALL NOT
2 SUPPLANT LOCAL, STATE, OR FEDERAL FUNDS THAT WOULD OTHERWISE BE AVAIL-
3 ABLE FOR THE PREVENTION OR INTERVENTION OF YOUTH INVOLVEMENT IN GANGS,
4 CRIME, OR VIOLENCE. GRANTS SHALL BE AWARDED PURSUANT TO A REQUEST FOR
5 PROPOSALS THAT INFORMS APPLICANTS OF THE PURPOSES AND AVAILABILITY OF
6 FUNDS TO BE AWARDED AND SOLICITS PROPOSALS TO PROVIDE SERVICES CONSIST-
7 ENT WITH THIS ARTICLE. AGENCIES RECEIVING FUNDS PURSUANT TO THIS SECTION
8 SHALL UTILIZE THE FUNDS TO PROVIDE SERVICES AND ACTIVITIES DESIGNED TO
9 PREVENT OR DETER AT-RISK YOUTH FROM PARTICIPATING IN GANGS, CRIMINAL
10 ACTIVITY, OR VIOLENT BEHAVIOR. SUCH FUNDS MAY NOT BE USED FOR SERVICES
11 OR ACTIVITIES RELATED TO SUPPRESSION, LAW ENFORCEMENT, INCARCERATION, OR
12 OTHER PURPOSES NOT RELATED TO THE PREVENTION AND DETERRENCE OF GANGS,
13 CRIME, AND VIOLENCE. NOTHING IN THIS SUBDIVISION SHALL PREVENT FUNDS
14 FROM BEING USED FOR VIOLENCE PREVENTION AND GANG CRIME DETERRENCE
15 SERVICES PROVIDED BY NONPROFIT AGENCIES TO YOUTHS INCARCERATED IN JUVE-
16 NILE DETENTION FACILITIES. SERVICES AND ACTIVITIES PROVIDED WITH FUNDS
17 UNDER THIS SECTION SHALL BE USED FOR AT-RISK YOUTH WHO ARE DEFINED AS
18 PERSONS FROM AGE FIVE TO TWENTY YEARS OF AGE AND WHO ARE CURRENT OR
19 FORMER GANG MEMBERS, OR WHO HAVE ONE OR MORE FAMILY MEMBERS LIVING AT
20 HOME WHO ARE CURRENT OR FORMER MEMBERS OF A GANG.

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

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

33 (f) "Designated felony" means any felony offense defined by any of the
34 following provisions of the penal law: assault in the second degree as
35 defined in section 120.05, assault in the first degree as defined in
36 section 120.10, gang assault in the second degree as defined in section
37 [120.06] 495.05, gang assault in the first degree as defined in section
38 [120.07] 495.06, stalking in the first degree as defined in section
39 120.60, strangulation in the second degree as defined in section 121.12,
40 strangulation in the first degree as defined in section 121.13,
41 manslaughter in the second degree as defined in subdivision one of
42 section 125.15, manslaughter in the first degree as defined in section
43 125.20, murder in the second degree as defined in section 125.25, aggra-
44 vated murder as defined in section 125.26, murder in the first degree as
45 defined in section 125.27, kidnapping in the second degree as defined in
46 section 135.20, kidnapping in the first degree as defined in section
47 135.25, burglary in the third degree as defined in section 140.20,
48 burglary in the second degree as defined in section 140.25, burglary in
49 the first degree as defined in section 140.30, arson in the second
50 degree as defined in section 150.15, arson in the first degree as
51 defined in section 150.20, robbery in the third degree as defined in
52 section 160.05, robbery in the second degree as defined in section
53 160.10, robbery in the first degree as defined in section 160.15,
54 promoting prostitution in the second degree as defined in section
55 230.30, promoting prostitution in the first degree as defined in section
56 230.32, compelling prostitution as defined in section 230.33, dissem-

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

7 S 13. This act shall take effect on the first of January next succeed-
8 ing the date on which it shall have become a law.