

4444

2013-2014 Regular Sessions

I N S E N A T E

April 1, 2013

Introduced by Sen. GOLDEN -- 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 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 insufficiently targeted to the prosecution
3 of criminal street gangs and the protection of public order and individ-
4 ual safety against gang-related violence, because they lack programs and
5 activities specifically designed to prevent the growth of criminal
6 street gangs, facilitate prosecution and punishment of members of crimi-
7 nal 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 has reached a crisis point that threatens the right of residents of this
14 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 activ-
20 ities, by creating anti-crime programs that focus on patterns of crimi-
21 nal gang activity and organization, and by expanding education and

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

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1 intervention to prevent the growth of criminal street gangs as provided
2 in this legislation.

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

6 (a) the term "specified offense" shall mean an attempt to commit
7 murder in the second degree as defined in section 125.25 of this chap-
8 ter, gang assault in the first degree as defined in section [120.07]
9 495.08 of this chapter, gang assault in the second degree as defined in
10 section [120.06] 495.07 of this chapter, assault in the first degree as
11 defined in section 120.10 of this chapter, manslaughter in the first
12 degree as defined in section 125.20 of this chapter, manslaughter in the
13 second degree as defined in section 125.15 of this chapter, robbery in
14 the first degree as defined in section 160.15 of this chapter, robbery
15 in the second degree as defined in section 160.10 of this chapter, or
16 the attempted commission of any of the following offenses: gang assault
17 in the first degree as defined in section [120.07] 495.08, assault in
18 the first degree as defined in section 120.10, manslaughter in the first
19 degree as defined in section 125.20 or robbery in the first degree as
20 defined in section 160.15;

21 S 3. Paragraph (a) of subdivision 1 of section 70.02 of the penal law,
22 as amended by chapter 320 of the laws of 2006, is amended to read as
23 follows:

24 (a) Class B violent felony offenses: an attempt to commit the class
25 A-I felonies of murder in the second degree as defined in section
26 125.25, kidnapping in the first degree as defined in section 135.25, and
27 arson in the first degree as defined in section 150.20; manslaughter in
28 the first degree as defined in section 125.20, aggravated manslaughter
29 in the first degree as defined in section 125.22, rape in the first
30 degree as defined in section 130.35, criminal sexual act in the first
31 degree as defined in section 130.50, aggravated sexual abuse in the
32 first degree as defined in section 130.70, course of sexual conduct
33 against a child in the first degree as defined in section 130.75;
34 assault in the first degree as defined in section 120.10, kidnapping in
35 the second degree as defined in section 135.20, burglary in the first
36 degree as defined in section 140.30, arson in the second degree as
37 defined in section 150.15, robbery in the first degree as defined in
38 section 160.15, incest in the first degree as defined in section 255.27,
39 criminal possession of a weapon in the first degree as defined in
40 section 265.04, criminal use of a firearm in the first degree as defined
41 in section 265.09, criminal sale of a firearm in the first degree as
42 defined in section 265.13, aggravated assault upon a police officer or a
43 peace officer as defined in section 120.11, gang assault in the first
44 degree as defined in section [120.07] 495.08, intimidating a victim or
45 witness in the first degree as defined in section 215.17, hindering
46 prosecution of terrorism in the first degree as defined in section
47 490.35, criminal possession of a chemical weapon or biological weapon in
48 the second degree as defined in section 490.40, and criminal use of a
49 chemical weapon or biological weapon in the third degree as defined in
50 section 490.47.

51 S 4. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,
52 as amended by chapter 1 of the laws of 2013, is amended to read as
53 follows:

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

1 vated manslaughter in the second degree as defined in section 125.21,
2 aggravated sexual abuse in the second degree as defined in section
3 130.67, assault on a peace officer, police officer, fireman or emergency
4 medical services professional as defined in section 120.08, assault on a
5 judge as defined in section 120.09, gang assault in the second degree as
6 defined in section [120.06] 495.07, strangulation in the first degree as
7 defined in section 121.13, burglary in the second degree as defined in
8 section 140.25, robbery in the second degree as defined in section
9 160.10, criminal possession of a weapon in the second degree as defined
10 in section 265.03, criminal use of a firearm in the second degree as
11 defined in section 265.08, criminal sale of a firearm in the second
12 degree as defined in section 265.12, criminal sale of a firearm with the
13 aid of a minor as defined in section 265.14, aggravated criminal
14 possession of a weapon as defined in section 265.19, soliciting or
15 providing support for an act of terrorism in the first degree as defined
16 in section 490.15, hindering prosecution of terrorism in the second
17 degree as defined in section 490.30, and criminal possession of a chemi-
18 cal weapon or biological weapon in the third degree as defined in
19 section 490.37.

20 S 5. Sections 120.06 and 120.07 of the penal law are REPEALED.

21 S 6. Subdivision 2 of section 130.91 of the penal law, as amended by
22 chapter 405 of the laws of 2010, is amended to read as follows:

23 2. A "specified offense" is a felony offense defined by any of the
24 following provisions of this chapter: assault in the second degree as
25 defined in section 120.05, assault in the first degree as defined in
26 section 120.10, gang assault in the second degree as defined in section
27 [120.06] 495.07, gang assault in the first degree as defined in section
28 [120.07] 495.08, stalking in the first degree as defined in section
29 120.60, strangulation in the second degree as defined in section 121.12,
30 strangulation in the first degree as defined in section 121.13,
31 manslaughter in the second degree as defined in subdivision one of
32 section 125.15, manslaughter in the first degree as defined in section
33 125.20, murder in the second degree as defined in section 125.25, aggra-
34 vated murder as defined in section 125.26, murder in the first degree as
35 defined in section 125.27, kidnapping in the second degree as defined in
36 section 135.20, kidnapping in the first degree as defined in section
37 135.25, burglary in the third degree as defined in section 140.20,
38 burglary in the second degree as defined in section 140.25, burglary in
39 the first degree as defined in section 140.30, arson in the second
40 degree as defined in section 150.15, arson in the first degree as
41 defined in section 150.20, robbery in the third degree as defined in
42 section 160.05, robbery in the second degree as defined in section
43 160.10, robbery in the first degree as defined in section 160.15,
44 promoting prostitution in the second degree as defined in section
45 230.30, promoting prostitution in the first degree as defined in section
46 230.32, compelling prostitution as defined in section 230.33, dissem-
47 inating indecent material to minors in the first degree as defined in
48 section 235.22, use of a child in a sexual performance as defined in
49 section 263.05, promoting an obscene sexual performance by a child as
50 defined in section 263.10, promoting a sexual performance by a child as
51 defined in section 263.15, or any felony attempt or conspiracy to commit
52 any of the foregoing offenses.

53 S 7. The penal law is amended by adding a new title Y-2 to read as
54 follows:

55 TITLE Y-2

56 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 CRIMINAL STREET GANG ACTIVITY.

495.04 SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG.

495.05 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION
IN A CRIMINAL STREET GANG.495.06 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION
IN A CRIMINAL STREET GANG ON SCHOOL GROUNDS.

495.07 GANG ASSAULT IN THE SECOND DEGREE.

495.08 GANG ASSAULT IN THE FIRST DEGREE.

495.09 ABATEMENT OF PREMISES USED FOR CRIMINAL STREET GANG
ACTIVITY.

495.10 PREEMPTION.

495.11 SENTENCING.

S 495.01 DEFINITIONS.

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

1. "CRIMINAL STREET GANG" MEANS ANY FORMAL OR INFORMAL ORGANIZATION,
ASSOCIATION, OR GROUP OF THREE OR MORE PERSONS HAVING A COMMON NAME OR
IDENTIFYING SIGN OR SYMBOL WHOSE MEMBERS INDIVIDUALLY OR COLLECTIVELY
ENGAGE IN OR HAVE ENGAGED IN A PATTERN OF CRIMINAL GANG ACTIVITY.

2. "PATTERN OF CRIMINAL GANG ACTIVITY" MEANS THE COMMISSION OF,
ATTEMPTED COMMISSION OF, CONSPIRACY TO COMMIT, SOLICITATION OF,
SUSTAINED JUVENILE PETITION FOR, OR CONVICTION OF ANY TWO OR MORE OF ANY
SPECIFIED OFFENSES LISTED IN SUBDIVISION THREE OF THIS SECTION BY A
PARTICIPANT OR PARTICIPANTS IN A CRIMINAL STREET GANG, PROVIDED THAT THE
OFFENSES SHALL HAVE OCCURRED ON SEPARATE OCCASIONS WITHIN THREE YEARS OF
EACH OTHER, OR BY TWO OR MORE PERSONS WHO ARE PARTICIPANTS IN A CRIMINAL
STREET GANG, AND THAT AT LEAST ONE SUCH OFFENSE SHALL HAVE OCCURRED
AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

3. "SPECIFIED OFFENSE" MEANS ANY OFFENSE DEFINED BY ANY OF THE FOLLOW-
ING 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 THIR-
TY-FIVE (KIDNAPPING, COERCION AND RELATED OFFENSE), ONE HUNDRED SEVENTY
(FORGERY AND RELATED OFFENSES), ONE HUNDRED SEVENTY-EIGHT (CRIMINAL
DIVERSION OF PRESCRIPTION MEDICATIONS AND PRESCRIPTIONS), TWO HUNDRED
TWENTY (CONTROLLED SUBSTANCES OFFENSES), TWO HUNDRED TWENTY-ONE
(OFFENSES INVOLVING MARIHUANA), TWO HUNDRED TWENTY-FIVE (GAMBLING
OFFENSES), TWO HUNDRED THIRTY (PROSTITUTION OFFENSES), TWO HUNDRED THIR-
TY-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 RELATING TO FIREARMS) OR FOUR HUNDRED SEVENTY (MONEY LAUNDER-
ING).

S 495.02 PARTICIPATION IN A CRIMINAL STREET GANG.

A PERSON IS GUILTY OF PARTICIPATION IN A CRIMINAL STREET GANG IF SUCH
PERSON PARTICIPATES IN A CRIMINAL STREET GANG WITH KNOWLEDGE THAT ITS
MEMBERS ENGAGE IN OR HAVE ENGAGED IN A PATTERN OF CRIMINAL GANG ACTIV-
ITY.

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

S 495.03 PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY.

A PERSON IS GUILTY OF PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY
WHEN HE OR SHE WILLFULLY AND KNOWINGLY PROMOTES, FURTHERS, ASSISTS IN,

1 CONDUCTS, OR PARTICIPATES IN THE AFFAIRS OF A CRIMINAL STREET GANG BY
2 PARTICIPATING IN A PATTERN OF CRIMINAL STREET GANG ACTIVITY, OR KNOWING-
3 LY INVESTS PROCEEDS DERIVED FROM CRIMINAL STREET GANG ACTIVITY, OR
4 PROCEEDS DERIVED FROM THE INVESTMENT OR USE OF THOSE PROCEEDS, IN AN
5 ENTERPRISE. A PERSON MAY BE A PARTICIPANT IN A CRIMINAL STREET GANG
6 IRRESPECTIVE OF THE AMOUNT OF TIME HE OR SHE DEVOTES TO THE CRIMINAL
7 STREET GANG, AS LONG AS SUCH PERSON SHALL HAVE PARTICIPATED IN COMMIT-
8 TING ACTS CONSTITUTING CRIMINAL STREET GANG ACTIVITY WITH ONE OR MORE
9 MEMBERS OF A CRIMINAL STREET GANG.

10 PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY IS A CLASS E FELONY.

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

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

14 1. SOLICITS OR RECRUITS ANOTHER TO ACTIVELY PARTICIPATE IN A CRIMINAL
15 STREET GANG WITH THE INTENT THAT THE PERSON SOLICITED OR RECRUITED
16 PARTICIPATE IN A PATTERN OF CRIMINAL STREET GANG ACTIVITY, OR WITH THE
17 INTENT THAT SUCH PERSON PROMOTE, FURTHER, CONDUCT, OR ASSIST IN ANY
18 PATTERN OF CRIMINAL STREET GANG ACTIVITY BY MEMBERS OF THE CRIMINAL
19 STREET GANG; OR

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

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

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

27 S 495.05 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION IN A
28 CRIMINAL STREET GANG.

29 A PERSON IS GUILTY OF SOLICITATION OR RECRUITMENT OF MINORS FOR
30 PARTICIPATION IN A CRIMINAL STREET GANG WHEN HE OR SHE COMMITS THE CRIME
31 OF SOLICITATION FOR PARTICIPATION IN A CRIMINAL STREET GANG AND THE
32 PERSON SOLICITED OR RECRUITED IS LESS THAN EIGHTEEN YEARS OF AGE.

33 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION IN A CRIMINAL
34 STREET GANG IS A CLASS D FELONY.

35 S 495.06 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION IN A
36 CRIMINAL STREET GANG ON SCHOOL GROUNDS.

37 A PERSON IS GUILTY OF SOLICITATION OR RECRUITMENT OF MINORS FOR
38 PARTICIPATION IN A CRIMINAL STREET GANG ON SCHOOL GROUNDS WHEN HE OR SHE
39 COMMITS THE CRIME OF SOLICITATION OR RECRUITMENT OF MINORS FOR PARTIC-
40 IPATION IN A CRIMINAL STREET GANG WHILE ON SCHOOL GROUNDS. FOR PURPOSES
41 OF THIS SECTION, THE TERM "SCHOOL GROUNDS" MEANS "SCHOOL GROUNDS" AS
42 DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THIS CHAPTER.

43 SOLICITATION OR RECRUITMENT OF MINORS FOR PARTICIPATION IN A CRIMINAL
44 STREET GANG ON SCHOOL GROUNDS IS A CLASS C FELONY.

45 S 495.07 GANG ASSAULT IN THE SECOND DEGREE.

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

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

51 S 495.08 GANG ASSAULT IN THE FIRST DEGREE.

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

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

S 495.09 ABATEMENT OF PREMISES USED FOR CRIMINAL STREET GANG ACTIVITY.

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 495.10 PREEMPTION.

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

S 495.11 SENTENCING.

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

2. WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY PURSUANT TO THIS ARTICLE AND THE SPECIFIED

1 OFFENSE IS A MISDEMEANOR OR A CLASS C, D OR E FELONY, THE CRIME OF
2 PARTICIPATION IN CRIMINAL STREET GANG ACTIVITY SHALL BE DEEMED TO BE ONE
3 CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR
4 ONE CATEGORY HIGHER THAN THE OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S
5 CONVICTION FOR AN ATTEMPT OR CONSPIRACY TO COMMIT A SPECIFIED OFFENSE,
6 WHICHEVER IS APPLICABLE.

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

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

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

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

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

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

25 4. ANY OTHER PROVISION OF ANY OTHER LAW TO THE CONTRARY NOTWITHSTAND-
26 ING, WHEN A PERSON IS CONVICTED OF THE CRIME OF PARTICIPATION IN CRIMI-
27 NAL STREET GANG ACTIVITY PURSUANT TO THIS ARTICLE AND THE SPECIFIED
28 OFFENSE IS A CLASS A-1 FELONY, THE MINIMUM PERIOD OF THE INDETERMINATE
29 SENTENCE SHALL BE NOT LESS THAN TWENTY YEARS OF IMPRISONMENT.

30 NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY STRIKE THE ADDITIONAL
31 PUNISHMENT FOR THE ENHANCEMENTS PROVIDED IN SUBDIVISIONS ONE THROUGH
32 FOUR OF THIS SECTION OR REFUSE TO IMPOSE THE MINIMUM JAIL SENTENCE FOR
33 MISDEMEANORS IN AN UNUSUAL CASE WHERE THE INTERESTS OF JUSTICE WOULD
34 BEST BE SERVED, IF THE COURT SPECIFIES ON THE RECORD AND ENTERS INTO THE
35 MINUTES THE CIRCUMSTANCES INDICATING THE MANNER IN WHICH THE INTERESTS
36 OF JUSTICE WOULD BEST BE SERVED BY SUCH DISPOSITION.

37 NOTWITHSTANDING THE FOREGOING, IN THE CASE OF A MINOR FOUND TO BE
38 GUILTY OF AN OFFENSE DESCRIBED IN THIS ARTICLE WHO IS A FIRST-TIME
39 OFFENDER, THE COURT MAY ORDER THAT A PARENT OR GUARDIAN RETAIN CUSTODY
40 OF THAT MINOR, AND MAY ORDER THE PARENT OR GUARDIAN TO ATTEND ANTI-GANG
41 VIOLENCE PARENTING CLASSES ESTABLISHED PURSUANT TO STANDARDS OF THE
42 DIVISION OF CRIMINAL JUSTICE SERVICES. THE FATHER, MOTHER, SPOUSE, OR
43 OTHER PERSON LIABLE FOR THE SUPPORT OF THE MINOR, THE ESTATE OF THAT
44 PERSON, AND THE ESTATE OF THE MINOR SHALL BE LIABLE FOR THE COST OF
45 CLASSES ORDERED PURSUANT TO THIS SECTION, UNLESS THE COURT FINDS THAT
46 THE PERSON OR ESTATE DOES NOT HAVE THE FINANCIAL ABILITY TO PAY. IN
47 EVALUATING FINANCIAL ABILITY TO PAY, THE COURT SHALL TAKE INTO CONSIDER-
48 ATION THE COMBINED HOUSEHOLD INCOME, THE NECESSARY OBLIGATIONS OF THE
49 HOUSEHOLD, THE NUMBER OF PERSONS DEPENDENT UPON THIS INCOME, AND WHETHER
50 REDUCED MONTHLY PAYMENTS WOULD OBTAIN THE NEED TO WAIVE LIABILITY FOR
51 THE FULL COSTS.

52 S 8. The opening paragraph of paragraph (h) of subdivision 2 of
53 section 1349 of the civil practice law and rules, as added by chapter
54 655 of the laws of 1990, is amended to read as follows:

55 [All] EXCEPT WITH RESPECT TO A CIRCUMSTANCE TO WHICH PARAGRAPH (I) OF
56 THIS SUBDIVISION APPLIES, ALL moneys remaining after distributions

pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:

S 9. 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 10. 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 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 AND DRUG AND ALCOHOL ABUSE PREVENTION IN-SERVICE TRAINING PROGRAMS. THE DEPARTMENT SHALL CONSULT WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING GANG VIOLENCE.

THE TERM "GANG VIOLENCE AND DRUG AND ALCOHOL ABUSE 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, KNOW-

LEDGE, AND SKILLS TO LEAD PRODUCTIVE, GANG-FREE, AND DRUG-FREE LIVES, INCLUDING THE DEVELOPMENT OF KNOWLEDGE OF THE CAUSES OF GANG VIOLENCE AND SUBSTANCE ABUSE, AND TRAINING REGARDING AVAILABLE INFORMATION AND RESOURCES CONCERNING GANG VIOLENCE.

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 AVAIL-

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

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

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

31 (f) "Designated felony" means any felony offense defined by any of the
32 following provisions of the penal law: assault in the second degree as
33 defined in section 120.05, assault in the first degree as defined in
34 section 120.10, gang assault in the second degree as defined in section
35 [120.06] 495.07, gang assault in the first degree as defined in section
36 [120.07] 495.08, stalking in the first degree as defined in section
37 120.60, strangulation in the second degree as defined in section 121.12,
38 strangulation in the first degree as defined in section 121.13,
39 manslaughter in the second degree as defined in subdivision one of
40 section 125.15, manslaughter in the first degree as defined in section
41 125.20, murder in the second degree as defined in section 125.25, aggra-
42 vated murder as defined in section 125.26, murder in the first degree as
43 defined in section 125.27, kidnapping in the second degree as defined in
44 section 135.20, kidnapping in the first degree as defined in section
45 135.25, burglary in the third degree as defined in section 140.20,
46 burglary in the second degree as defined in section 140.25, burglary in
47 the first degree as defined in section 140.30, arson in the second
48 degree as defined in section 150.15, arson in the first degree as
49 defined in section 150.20, robbery in the third degree as defined in
50 section 160.05, robbery in the second degree as defined in section
51 160.10, robbery in the first degree as defined in section 160.15,
52 promoting prostitution in the second degree as defined in section
53 230.30, promoting prostitution in the first degree as defined in section
54 230.32, compelling prostitution as defined in section 230.33, dissem-
55 inating indecent material to minors in the first degree as defined in
56 section 235.22, use of a child in a sexual performance as defined in

1 section 263.05, promoting an obscene sexual performance by a child as
2 defined in section 263.10, promoting a sexual performance by a child as
3 defined in section 263.15, or any felony attempt or conspiracy to commit
4 any of the foregoing offenses.

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