

STATE OF NEW YORK

7296

2017-2018 Regular Sessions

IN ASSEMBLY

April 21, 2017

Introduced by M. of A. TITONE, COLTON, FINCH -- Multi-Sponsored by -- M. of A. MOYA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing criminal street gang enterprise offenses and the abatement of premises used for criminal street gang enterprise activity; and to amend the civil practice law and rules, in relation to disposition of forfeiture moneys where the person against whom a forfeiture action is commenced is a member of a criminal street gang enterprise

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new article 280 to
2 read as follows:

ARTICLE 280

CRIMINAL STREET GANG

ENTERPRISE OFFENSES

Section 280.00 Definitions.

7 280.05 Criminal street gang enterprise solicitation, recruitment
8 or retention.

9 280.10 Criminal street gang enterprise solicitation, recruitment
10 or retention of minors.

11 280.15 Coercion of a minor into a criminal street gang enter-
12 prise conspiracy.

13 280.20 Criminal street gang enterprise leadership.

14 280.25 Abatement of premises used for criminal street gang
15 enterprise activity.

16 280.30 Preemption.

§ 280.00 Definitions.

18 The following definitions are applicable to this article:

19 1. "Criminal street gang enterprise" means a group of persons sharing
20 a common purpose of engaging in criminal conduct, associated in an
21 ascertainable structure distinct from a pattern of street gang criminal

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

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1 activity, and with a continuity of existence, structure and criminal
2 purpose beyond the scope of individual criminal acts.

3 2. "Gang crime" means conduct constituting any of the following felo-
4 nies, or conspiracy or attempt to commit any of the following felonies:
5 sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10
6 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35
7 relating to rape; sections 135.20 and 135.25 relating to kidnapping;
8 section 135.35 relating to labor trafficking; section 135.65 relating to
9 coercion; sections 140.20, 140.25 and 140.30 relating to burglary;
10 sections 145.05, 145.10 and 145.12 relating to criminal mischief; arti-
11 cle one hundred fifty relating to arson; sections 155.30, 155.35, 155.40
12 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20
13 and 177.25 relating to health care fraud; article one hundred sixty
14 relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating
15 to criminal possession of stolen property; sections 165.72 and 165.73
16 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25,
17 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10,
18 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections
19 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections
20 178.20 and 178.25 relating to criminal diversion of prescription medica-
21 tions and prescriptions; sections 180.03, 180.08, 180.15, 180.25,
22 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20,
23 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery;
24 sections 187.10, 187.15, 187.20 and 187.25 relating to residential mort-
25 gage fraud; sections 190.40 and 190.42 relating to criminal usury;
26 section 190.65 relating to schemes to defraud; sections 205.60 and
27 205.65 relating to hindering prosecution; sections 210.10, 210.15, and
28 215.51 relating to perjury and contempt; section 215.40 relating to
29 tampering with physical evidence; sections 220.06, 220.09, 220.16,
30 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55,
31 220.60 and 220.77 relating to controlled substances; sections 225.10 and
32 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relat-
33 ing to promoting prostitution; section 230.34 relating to sex traffick-
34 ing; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;
35 sections 263.10 and 263.15 relating to promoting a sexual performance by
36 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the
37 provisions of section 265.10 which constitute a felony relating to
38 firearms and other dangerous weapons; and sections 265.14 and 265.16
39 relating to criminal sale of a firearm; and section 275.10, 275.20,
40 275.30, or 275.40 relating to unauthorized recordings; and sections
41 470.05, 470.10, 470.15 and 470.20 relating to money laundering, of this
42 chapter.

43 3. "Pattern of street gang criminal activity" means conduct engaged in
44 by persons charged in a criminal street gang enterprise offense defined
45 in this article constituting three or more gang crimes that:

46 (a) were committed within ten years of the commencement of the crimi-
47 nal action;

48 (b) are neither isolated incidents, nor so closely related and
49 connected in point of time or circumstances of commission as to consti-
50 tute a criminal offense or criminal transaction, as those terms are
51 defined in section 40.10 of the criminal procedure law; and

52 (c) are either: (i) related to one another through a common scheme or
53 plan or (ii) were committed, solicited, requested, importuned or inten-
54 tionally aided by persons acting with the mental culpability required
55 for the commission thereof and associated with or in the criminal street
56 gang enterprise.

1 § 280.05 Criminal street gang enterprise solicitation, recruitment or
2 retention.

3 A person is guilty of criminal street gang enterprise solicitation,
4 recruitment or retention when he or she:

5 1. intentionally solicits, recruits, employs, causes, encourages, or
6 conspires to cause another person to be or remain as a member of a crim-
7 inal street gang enterprise that requires as a condition of membership
8 or continued membership the commission of or participation in gang
9 crimes; or

10 2. intentionally makes any communication, direct or indirect, consti-
11 tuting a threat to person or property or to any associate or relative of
12 the person being solicited, recruited or retained as a member of a crim-
13 inal street gang enterprise that requires as a condition of membership
14 or continued membership the commission of or participation in gang
15 crimes.

16 Criminal street gang enterprise solicitation, recruitment or retention
17 is a class E felony.

18 § 280.10 Criminal street gang enterprise solicitation, recruitment or
19 retention of minors.

20 A person is guilty of criminal street gang enterprise solicitation,
21 recruitment or retention of minors when he or she:

22 1. intentionally solicits, recruits, employs, causes, encourages, or
23 conspires to cause another person under eighteen years of age to be or
24 remain as a member of a criminal street gang enterprise that requires as
25 a condition of membership or continued membership the commission of or
26 participation in gang crimes; or

27 2. intentionally makes any communication, direct or indirect, consti-
28 tuting a threat to a person under eighteen years of age, to property, or
29 to any associate or relative of the minor being solicited, recruited or
30 retained as a member of a criminal street gang enterprise that requires
31 as a condition of membership or continued membership the commission of
32 or participation in gang crimes.

33 Criminal street gang enterprise solicitation, recruitment or retention
34 of minors is a class D felony.

35 § 280.15 Coercion of a minor into a criminal street gang enterprise
36 conspiracy.

37 A person is guilty of coercion of a minor into a criminal street gang
38 enterprise conspiracy when, with the intent to cause physical injury to
39 a person under eighteen years of age, he or she causes such physical
40 injury to such person or another person under eighteen years of age for
41 the purpose of causing or coercing such person to join or participate in
42 a criminal conspiracy to benefit a criminal street gang enterprise or
43 other organization of three or more persons which has a common name,
44 identifying sign or symbol and whose members individually or collective-
45 ly engage in gang crimes.

46 Coercion of a minor into a criminal street gang enterprise conspiracy
47 is a class D felony.

48 § 280.20 Criminal street gang enterprise leadership.

49 A person is guilty of criminal street gang enterprise leadership when,
50 as a member of a criminal street gang enterprise, he or she commands,
51 counsels, persuades, induces, entices or coerces any individual to
52 commit a crime where the purpose of such crime is the furtherance of the
53 criminal objectives of such criminal street gang enterprise.

54 Criminal street gang enterprise leadership is a class D felony.

55 § 280.25 Abatement of premises used for criminal street gang enterprise
56 activity.

1 1. Any place or premises that has been used on more than two occa-
2 sions, within a six month period of time, for the purpose of conducting
3 a pattern of street gang criminal activity, or any real property that is
4 erected, established, maintained, owned, leased, or used by any criminal
5 street gang enterprise for the purpose of conducting criminal street
6 gang enterprise activity constitutes a nuisance, that shall be enjoined,
7 abated, and prevented, and for which damages may be recovered, whether
8 it is a public or private nuisance.

9 2. Any action for an injunction or abatement filed pursuant to subdi-
10 vision one of this section shall proceed according to the provisions of
11 the civil practice law and rules, except that all of the following shall
12 apply:

13 (a) the court shall not assess a civil penalty against any person
14 unless that person knew or should have known of the unlawful acts
15 committed on or in the premises;

16 (b) no order of eviction or closure may be entered;

17 (c) all injunctions issued shall be limited to those necessary to
18 protect the health and safety of the residents or the public or those
19 necessary to prevent further criminal activity; and

20 (d) suit may not be filed until a thirty-day notice period of the
21 unlawful use or criminal conduct has been provided to the owner by mail,
22 return receipt requested, postage prepaid, to the last known address.

23 3. No not-for-profit or charitable organization which is conducting
24 its affairs with ordinary care and skill, and no governmental entity,
25 shall be abated pursuant to the provisions of subdivisions one and two
26 of this section.

27 4. Nothing in this section shall preclude any aggrieved person from
28 seeking any other remedy provided by law.

29 § 280.30 Preemption.

30 Nothing in this article shall preempt an appropriate alternative or
31 additional charge pursuant to this chapter, including but not limited
32 to, a charge pursuant to section 120.06 (gang assault in the second
33 degree), or section 120.07 (gang assault in the first degree); or
34 prevent a local government from adopting and enforcing laws consistent
35 with this article relating to criminal street gang enterprise activity
36 and criminal street gang enterprise violence. Where local laws duplicate
37 or supplement this article, the provisions of this article shall be
38 construed as providing alternative remedies and not as preempting such
39 local laws.

40 § 2. Section 1310 of the civil practice law and rules is amended by
41 adding three new subdivisions 15, 16 and 17 to read as follows:

42 15. "Criminal street gang enterprise" means a group of persons sharing
43 a common purpose of engaging in criminal conduct, associated in an
44 ascertainable structure distinct from a pattern of street gang criminal
45 activity, and with a continuity of existence, structure and criminal
46 purpose beyond the scope of individual criminal acts.

47 16. "Pattern of street gang criminal activity" means conduct engaged
48 in by persons charged in a criminal street gang enterprise constituting
49 three or more criminal acts that:

50 (a) were committed within ten years of the commencement of the crimi-
51 nal action;

52 (b) are neither isolated incidents, nor so closely related and
53 connected in point of time or circumstances of commission as to consti-
54 tute a criminal offense or criminal transaction, as those terms are
55 defined in section 40.10 of the criminal procedure law; and

1 (c) are either: (i) related to one another through a common scheme or
2 plan or (ii) were committed, solicited, requested, importuned or inten-
3 tionally aided by persons acting with the mental culpability required
4 for the commission thereof and associated with or in the criminal street
5 gang enterprise.

6 17. "Criminal street gang activity" means the commission or attempted
7 commission of, or solicitation or conspiracy to commit, three or more
8 criminal acts that:

9 (a) were committed on separate occasions within a five year period;

10 (b) are neither isolated incidents, nor so closely related and
11 connected in point of time or circumstance of commission as to consti-
12 tute a criminal offense or criminal transaction, as such terms are
13 defined in section 40.10 of the criminal procedure law; and

14 (c) further a criminal street gang enterprise by: (i) being related to
15 one another through a common scheme or plan; or (ii) having been commit-
16 ted, solicited, requested, importuned or intentionally aided by persons
17 acting with the mental culpability required for the commission of such
18 criminal acts and such person is a member of such criminal street gang
19 enterprise.

20 § 3. Paragraph (h) of subdivision 2 of section 1349 of the civil prac-
21 tice law and rules, as added by chapter 655 of the laws of 1990, is
22 amended to read as follows:

23 (h) ~~All~~ Except with respect to a circumstance to which paragraph (i)
24 of this subdivision applies, all moneys remaining after distributions
25 pursuant to paragraphs (a) through (g) of this subdivision shall be
26 distributed as follows:

27 (i) seventy-five percent of such moneys shall be deposited to a law
28 enforcement purposes subaccount of the general fund of the state where
29 the claiming agent is an agency of the state or the political subdivi-
30 sion or public authority of which the claiming agent is a part, to be
31 used for law enforcement use in the investigation of penal law offenses;

32 (ii) the remaining twenty-five percent of such moneys shall be depos-
33 ited to a prosecution services subaccount of the general fund of the
34 state where the claiming authority is the attorney general or the poli-
35 tical subdivision of which the claiming authority is a part, to be used
36 for the prosecution of penal law offenses.

37 Where multiple claiming agents participated in the forfeiture action,
38 funds available pursuant to subparagraph (i) of this paragraph shall be
39 disbursed to the appropriate law enforcement purposes subaccounts in
40 accordance with the terms of a written agreement reflecting the partic-
41 ipation of each claiming agent entered into by the participating claim-
42 ing agents[-];

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

45 (i) If the defendant against whom a forfeiture action is commenced is
46 convicted of a criminal street gang enterprise offense defined in arti-
47 cle two hundred eighty of the penal law, all moneys remaining after
48 distributions pursuant to paragraphs (a) through (g) of this subdivision
49 shall be distributed as follows:

50 (i) seventy-five percent of such moneys shall be deposited to a sepa-
51 rate account of the school district wherein such defendant resides,
52 which the superintendent of such district shall establish for the
53 receipt of all such moneys, and said moneys shall be utilized by the
54 superintendent exclusively to develop, implement and/or maintain
55 instructional programs designed to deter or prevent youths from associ-
56 ating with or becoming members of criminal street gang enterprises,

1 including but not limited to, (A) after-school sports or recreational
2 programs, and/or (B) after-school scholastic or academic programs;

3 (ii) fifteen percent of such moneys shall be deposited to a law
4 enforcement purposes subaccount of the general fund of the state where
5 the claiming agent is an agency of the state or the political subdivi-
6 sion or public authority of which the claiming agent is a part, to be
7 used for law enforcement use in the investigation of penal law offenses;
8 and

9 (iii) the remaining ten percent of such moneys shall be deposited to a
10 prosecution services subaccount of the general fund of the state where
11 the claiming authority is the attorney general or the political subdivi-
12 sion of which the claiming authority is a part, to be used for the pros-
13 ecution of penal law offenses.

14 Where multiple claiming agents participated in the forfeiture action,
15 funds available pursuant to subparagraph (ii) of this paragraph shall be
16 disbursed to the appropriate law enforcement purposes subaccounts in
17 accordance with the terms of a written agreement reflecting the partic-
18 ipation of each claiming agent entered into by the participating claim-
19 ing agents.

20 § 5. Severability. If any provision of this act, or the application
21 thereof to any person or circumstance, shall be adjudged by any court of
22 competent jurisdiction to be invalid or unconstitutional, such judgment
23 shall not affect, impair or invalidate the remainder thereof, but shall
24 be confined in its operation to the provision of this act, or in its
25 application to the person or circumstance, directly involved in the
26 controversy in which such judgment shall have been rendered.

27 § 6. This act shall take effect on the first of November next succeed-
28 ing the date on which it shall have become a law.