

STATE OF NEW YORK

2410--A

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sens. GOLDEN, AKSHAR, BOYLE, CROCI, GALLIVAN, HELMING, JACOBS, MARCHIONE, MURPHY, O'MARA, ORTT, PHILLIPS, ROBACH, SERINO, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the penal law, the state finance law and the education 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

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

1 Section 1. This act shall be known and may be cited as the "New York
2 State criminal street gang act".

3 § 2. Legislative findings and purpose. The legislature hereby finds
4 that preservation of public order and improvement of individual safety
5 and security can be improved by a comprehensive, targeted, and systemic
6 enhancement of state laws applicable to criminal street gangs and their
7 activities in order to prevent the growth of such gangs, facilitate
8 prosecution and punishment of their members for unlawful acts, and
9 punish those who solicit others to participate in such gangs and in acts
10 of gang-related violence and unlawfulness or who provide support or
11 resources to those who commit or encourage the commission of such acts.

12 The legislature therefore declares it to be in every sense in the
13 public interest to establish the comprehensive approach to the
14 protection of public order and individual safety enacted by this act
15 that will enhance prosecution and punishment of the unlawful activities
16 of criminal street gangs, prevent their growth and ability to recruit

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

LBD03824-02-8

1 members, and expand effective anti-gang education and intervention
2 activities by the state and its localities.

3 § 3. Paragraph (g) of subdivision 2 of section 1349 of the civil prac-
4 tice law and rules, as amended by chapter 398 of the laws of 2004, is
5 amended to read as follows:

6 (g) Forty percent of all moneys realized through forfeiture which are
7 remaining after distributions pursuant to paragraphs (a) through (f) of
8 this subdivision, to the chemical dependence service fund established
9 pursuant to section ninety-seven-w of the state finance law, except that
10 in the case of any such monies realized through forfeiture resulting
11 from convictions obtained under article four hundred ninety-five of the
12 penal law, such forty percent shall be paid into the criminal street
13 gang prevention fund established by section ninety-seven-rrrr of the
14 state finance law;

15 § 4. The penal law is amended by adding a new title Y-1-A to read as
16 follows:

17 TITLE Y-1-A

18 OFFENSES INVOLVING CRIMINAL STREET GANGS

19 ARTICLE 495

20 CRIMINAL STREET GANGS ENFORCEMENT AND PREVENTION ACT

21 Section 495.05 Definitions.

22 495.10 Accepting the benefits or proceeds of criminal street
23 gang activity.

24 495.15 Participation in criminal street gang activity.

25 495.20 Solicitation for participation in a criminal street gang
26 in the third degree.

27 495.25 Solicitation for participation in a criminal street gang
28 in the second degree.

29 495.30 Solicitation of minors for participation in a criminal
30 street gang.

31 495.35 Solicitation of minors for participation in a criminal
32 street gang on school grounds.

33 495.40 Sentencing.

34 § 495.05 Definitions. As used in this article, the following terms shall
35 mean and include:

36 1. "Criminal street gang" means a street gang that engages in a
37 pattern of criminal street gang activity for its benefit or for the
38 benefit of one or more members. As used in this article, the term
39 "street gang" means and includes any formal or informal association in
40 fact of two or more individuals identified by a common name, sign,
41 dress, symbols, tattoos, or other mark or markings.

42 2. "Participation in a criminal street gang" means (a) the commission
43 of any act of criminal street gang activity by a person for the purpose
44 of obtaining, maintaining or increasing such person's position in a
45 criminal street gang, or (b) the commission of any act of criminal
46 street gang activity at the direction of or with the knowledge of two or
47 more members of a criminal street gang, or (c) knowingly using the
48 assets of a criminal street gang in the commission of any act of crimi-
49 nal street gang activity, or (d) the knowing receipt of any proceeds or
50 benefits, directly or indirectly, from the commission of any act of
51 criminal street gang activity, including the receipt of any substituted
52 asset obtained or converted from proceeds of such act.

53 3. "Pattern of criminal street gang activity" means the commission of
54 two or more discreet acts of criminal street gang activity, one of which
55 occurred after the effective date of this article and the last of which
56 occurred within three years (excluding any period of imprisonment) after

1 the commission of a prior act of criminal street gang activity. As used
2 in this article, "pattern of criminal street gang activity" also means
3 and includes the conspiracy to commit, solicit, attempt, aid and abet
4 the commission of any act of criminal street gang activity;

5 4. "Criminal street gang activity" means any criminal offense defined
6 by any of the following provisions of this chapter: section 120.00
7 (assault in the third degree); section 120.05 (assault in the second
8 degree); section 120.06 (gang assault in the second degree); section
9 120.07 (gang assault in the first degree); section 120.10 (assault in
10 the first degree); section 120.12 (aggravated assault upon a person less
11 than eleven years old); section 120.13 (menacing in the first degree);
12 section 120.14 (menacing in the second degree); section 120.15 (menacing
13 in the third degree); section 120.20 (reckless endangerment in the
14 second degree); section 120.25 (reckless endangerment in the first
15 degree); section 121.12 (strangulation in the second degree); section
16 121.13 (strangulation in the first degree); subdivision one of section
17 125.15 (manslaughter in the second degree); subdivision one, two or four
18 of section 125.20 (manslaughter in the first degree); section 125.27
19 (murder in the first degree); section 125.25 (murder in the second
20 degree); section 120.45 (stalking in the fourth degree); section 120.50
21 (stalking in the third degree); section 120.55 (stalking in the second
22 degree); section 120.60 (stalking in the first degree); subdivision one
23 of section 130.35 (rape in the first degree); subdivision one of section
24 130.50 (criminal sexual act in the first degree); subdivision one of
25 section 130.65 (sexual abuse in the first degree); paragraph (a) of
26 subdivision one of section 130.67 (aggravated sexual abuse in the second
27 degree); paragraph (a) of subdivision one of section 130.70 (aggravated
28 sexual abuse in the first degree); section 135.05 (unlawful imprisonment
29 in the second degree); section 135.10 (unlawful imprisonment in the
30 first degree); section 135.20 (kidnapping in the second degree); section
31 135.25 (kidnapping in the first degree); section 135.60 (coercion in the
32 second degree); section 135.65 (coercion in the first degree); section
33 140.10 (criminal trespass in the third degree); section 140.15 (criminal
34 trespass in the second degree); section 140.17 (criminal trespass in the
35 first degree); section 140.20 (burglary in the third degree); section
36 140.25 (burglary in the second degree); section 140.30 (burglary in the
37 first degree); section 145.00 (criminal mischief in the fourth degree);
38 section 145.05 (criminal mischief in the third degree); section 145.10
39 (criminal mischief in the second degree); section 145.12 (criminal
40 mischief in the first degree); section 150.05 (arson in the fourth
41 degree); section 150.10 (arson in the third degree); section 150.15
42 (arson in the second degree); section 150.20 (arson in the first
43 degree); section 155.25 (petit larceny); section 155.30 (grand larceny
44 in the fourth degree); section 155.35 (grand larceny in the third
45 degree); section 155.40 (grand larceny in the second degree); section
46 155.42 (grand larceny in the first degree); section 160.05 (robbery in
47 the third degree); section 160.10 (robbery in the second degree);
48 section 160.15 (robbery in the first degree); sections 210.10 and 210.15
49 (perjury); sections 215.00, 215.05, 215.11, 215.12, 215.13, 215.15,
50 215.16, 215.17, 215.19 (bribery, tampering with a juror); sections
51 220.06, 220.09, 220.16, 220.18, 220.21, 220.28, 220.31, 220.34, 220.39,
52 220.41, 220.43, 220.44 (controlled substance sale and possession);
53 sections 240.06, 240.15, 240.31, 240.32, 240.46, 240.55, 240.60, 240.61,
54 240.62, 240.63, 240.71, 240.72, 240.73, 240.75 (riot and offenses
55 against public order); section 240.25 (harassment in the first degree);
56 subdivision one, two, or four of section 240.30 (aggravated harassment

1 in the second degree); section 242.15 (harming a service animal in the
2 first degree); sections 250.05, 250.45, 250.50, 250.60 (wiretapping,
3 unlawful surveillance, and offenses against the right to privacy);
4 section 270.20 (unlawful wearing of a body vest); and sections 270.30
5 and 270.35 (unlawful fleeing a police officer in a motor vehicle); drug
6 trafficking felony as defined in subdivision twenty-one of section
7 10.00; or any offense defined by any of the following provisions of this
8 chapter: section 120.03, 120.04, 120.04-a, 120.05, 120.08, 120.09,
9 120.10, 120.11, 120.13, 120.18, 120.55, 120.60, 125.12, 125.13, 125.14,
10 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, 135.65, 140.17,
11 140.20, 140.25, 140.30, 145.00, 145.05, 145.10, 145.12, 145.60, 145.65,
12 190.25, 190.26, 190.78, 190.79, 190.80, 190.80-a, 200.00, 200.03,
13 205.60, 205.65, 230.19, 230.20, 230.25, 230.32, 230.33, or 230.34;
14 265.11, 265.12, or 235.13, as such provisions were in effect prior to
15 the enactment of chapter one of the laws of two thousand thirteen; arti-
16 cle one hundred fifty-five, one hundred sixty, two hundred ten, four
17 hundred seventy, four hundred eighty-five or four hundred ninety; or any
18 felony offense defined in article one hundred thirty, one hundred thir-
19 ty-five, one hundred fifty, one hundred sixty-five, two hundred fifteen,
20 two hundred forty, two hundred fifty or two hundred sixty-three; or any
21 attempt or conspiracy to commit any of the foregoing offenses.

22 § 495.10 Accepting the benefits or proceeds of criminal street gang
23 activity.

24 A person is guilty of accepting the benefits or proceeds of criminal
25 street gang activity when such person knowingly accepts from a criminal
26 street gang the benefits or proceeds derived from the commission of
27 criminal street gang activity, or of any substituted asset obtained or
28 converted from proceeds or benefits derived from such act.

29 Accepting the benefits or proceeds of criminal street gang activity is
30 a class E felony.

31 § 495.15 Participation in criminal street gang activity.

32 A person is guilty of participation in criminal street gang activity
33 when, acting as a member of a criminal street gang, such person knowin-
34 gly promotes, furthers, assists in, conducts, facilitates, or partic-
35 ipates in the commission of criminal street gang activity, or knowingly
36 receives the benefits from criminal street gang activity, or uses or
37 invests the income, assets, proceeds, or substitute proceeds, from crim-
38 inal street gang activity for the benefit of the criminal street gang.

39 Participation in criminal street gang activity is a class E felony.

40 § 495.20 Solicitation for participation in a criminal street gang in the
41 third degree.

42 A person is guilty of solicitation for participation in a criminal
43 street gang in the third degree if such person solicits or recruits
44 another to participate in a criminal street gang, or threatens a person
45 with physical injury with the intent to coerce, induce, or solicit such
46 person or another to participate in a criminal street gang.

47 Solicitation for participation in a criminal street gang in the third
48 degree is a class E felony.

49 § 495.25 Solicitation for participation in a criminal street gang in the
50 second degree.

51 A person is guilty of solicitation for participation in a criminal
52 street gang in the second degree when, with intent to cause physical
53 injury to another person, such person causes physical injury to another
54 person in order to coerce, induce, or solicit such person to participate
55 in a criminal street gang.

Solicitation for participation in a criminal street gang in the second degree is a class D felony.

§ 495.30 Solicitation of minors for participation in a criminal street gang.

A person is guilty of solicitation of minors for participation in a criminal street gang when he or she commits, facilitates, or conspires to commit the crime of solicitation for participation in a criminal street gang and the person solicited is less than eighteen years of age.

Solicitation of minors for participation in a criminal street gang is a class D felony.

§ 495.35 Solicitation of minors for participation in a criminal street gang on school grounds.

A person is guilty of solicitation of minors for participation in a criminal street gang on school grounds when he or she commits, facilitates, or conspires to commit the crime of solicitation of minors for participation in a criminal street gang while on school grounds. For purposes of this section, the term "school grounds" means "school grounds" as defined in subdivision fourteen of section 220.00 of this chapter.

Solicitation of minors for participation in a criminal street gang on school grounds is a class C felony.

§ 495.40 Sentencing.

1. When a person is convicted of the crime of participation in criminal street gang activity pursuant to this article, and one or more of the criminal street gang activities constituting such participation 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 criminal street gang activity is a misdemeanor or a class C, D or E felony, the crime of participation in criminal street gang activity shall be deemed to be one category higher than the criminal street gang activity the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit criminal street gang activity, whichever is applicable.

3. Notwithstanding any other provision of law, when a person is convicted of the crime of participation in criminal street gang activity pursuant to this article and the underlying criminal street gang activity or pattern of criminal street gang activity 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 the 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; and

(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 criminal street gang activity pursuant to this article and the criminal street gang activity is a class A-1 felony, the minimum period of the indeterminate sentence shall be not less than twenty years of imprisonment.

§ 5. The state finance law is amended by adding a new section 97-rrrr to read as follows:

§ 97-rrrr. 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 criminal street gang prevention fund shall consist of moneys appropriated thereto, funds transferred from any other fund or sources, and moneys deposited therein pursuant to subdivision two of section thirteen hundred forty-nine of the civil practice law and rules or any other section of law.

3. Moneys of the fund, following appropriation by the legislature, may be expended to support the criminal street gang and violence prevention partnership program established pursuant to section twelve hundred thirteen of the education law. Moneys shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of the department of education, in collaboration with the division of criminal justice services.

§ 6. 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.

§ 1210. Gang prevention. 1. The department, after consultation with the division of criminal justice services regarding gang violence, shall:

(a) prepare and distribute to schools guidelines for incorporating in-service training in gang violence into staff development plans for teachers, counselors, athletic directors, school board members, and other educational personnel, and shall, upon request, assist any school in developing comprehensive gang violence in-service training programs. To the maximum extent possible such information and guidelines 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 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; and

(b) assist schools seeking to qualify for receipt of federal and state funds to support gang violence and drug and alcohol abuse prevention in-service training programs.

2. 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

1 and their parents to assist them in developing the positive values,
2 self-esteem, knowledge, and skills to lead productive, gang-free, and
3 drug-free lives, including the development of knowledge of the causes of
4 gang violence and substance abuse, and training regarding available
5 information and resources concerning gang violence.

6 § 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 § 1212. Dress code concerning gang-related apparel. Any other
25 provision of any other law to the contrary notwithstanding, following
26 procedures established pursuant to section twenty-eight hundred one of
27 this chapter, the board of education or the trustees, as defined in
28 section two of this chapter, of every school district within the state,
29 however created, and every board of cooperative educational services and
30 county vocational extension board may adopt or rescind a dress code
31 policy that requires pupils to wear a school-wide uniform or prohibits
32 pupils from wearing "gang-related apparel".

33 § 1213. Criminal street gang and violence prevention partnership
34 program. 1. The department, in collaboration with the division of crimi-
35 nal justice services, shall evaluate requests for funding for programs
36 from the criminal street gang prevention fund, established pursuant to
37 section ninety-seven-rrrr of the state finance law. All such funds shall
38 be disbursed to non-profit agencies that comply with the program
39 requirements and who meet funding criteria.

40 2. Grants disbursed pursuant to this section may enhance but shall not
41 supplant local, state, or federal funds that would otherwise be avail-
42 able for the prevention or intervention of youth involvement in gangs,
43 crime, or violence. Grants shall be awarded pursuant to a request for
44 proposals that informs applicants of the purposes and availability of
45 funds to be awarded and solicits proposals to provide services consist-
46 ent with this article. Agencies receiving funds pursuant to this section
47 shall utilize the funds to provide services and activities designed to
48 prevent or deter at-risk youth from participating in gangs, criminal
49 activity, or violent behavior. Such funds may not be used for services
50 or activities related to suppression, law enforcement, incarceration, or
51 other purposes not related to the prevention and deterrence of gangs,
52 crime, and violence. Nothing in this subdivision shall prevent funds
53 from being used for violence prevention and gang crime deterrence
54 services provided by nonprofit agencies to youths incarcerated in juve-
55 nile detention facilities. Services and activities provided with funds
56 under this section shall be used for at-risk youth who are defined as

1 persons from age five to twenty years of age and who are current or
2 former gang members, or who have one or more family members living at
3 home who are current or former members of a gang.

4 3. The department shall conduct an evaluation of the criminal street
5 gang and violence prevention partnership program after two years of
6 program operation and each year thereafter, to assess the effectiveness
7 and results of the program. The evaluation shall be conducted by staff
8 or an independent body that has experience in evaluating programs oper-
9 ated by community-based organizations or nonprofit agencies. After two
10 years of program operation, and each year thereafter, the department
11 shall prepare and submit an annual report to the legislature describing
12 in detail the operation of the program and the results obtained.

13 4. The commissioner shall additionally be empowered to develop and
14 implement an educational program, coordinated with the educational
15 program authorized pursuant to section fifteen-b of the correction law,
16 which shall be known as the department of corrections gang education and
17 prevention program, whereby inmates can receive instruction concerning
18 the impact of and risks associated with gang affiliation, and receive
19 support services in relation to the cessation of gang membership. The
20 commissioner shall be empowered to promulgate rules and regulations
21 necessary to effectuate this program. The program shall be funded from
22 the criminal street gang prevention fund or from any other appropri-
23 ations made or funds otherwise made available to such program.

24 § 7. Severability. If any clause, sentence, paragraph, section or part
25 of this act shall be adjudged by any court of competent jurisdiction to
26 be invalid, such judgment shall not affect, impair or invalidate the
27 remainder thereof, but shall be confined in its operation to the clause,
28 sentence, paragraph, section or part thereof directly involved in the
29 controversy in which such judgment shall have been rendered.

30 § 8. This act shall take effect on the first of January next succeed-
31 ing the date on which it shall have become a law.