

# 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.

17 The following definitions are applicable to this article:

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

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 subdivi-  
10 sion 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.