STATE OF NEW YORK

7608

2017-2018 Regular Sessions

IN ASSEMBLY

May 3, 2017

Introduced by M. of A. LUPINACCI -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the civil practice law and rules, the criminal procedure law and the state finance law, in relation to enacting the criminal street gang abatement act of 2017; and making an appropriation therefor

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

Section 1. Short title. This act shall be known and may be cited as the "criminal street gang abatement act of 2017".

§ 2. The penal law is amended by adding a new article 465 to read as follows:

ARTICLE 465

CRIMINAL STREET GANG ABATEMENT

Section 465.00 Legislative findings and intent.

465.05 Definitions.

465.10 Criminal street gang activity; enhanced penalties.

465.15 Gang solicitation, recruitment or retention.

465.20 Gang solicitation, recruitment or retention of minors.

465.25 Gang solicitation, recruitment or retention of minors on school grounds.

465.30 Statewide gang database.

§ 465.00 Legislative findings and intent.

The legislature finds and determines as follows:

1. It is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

2. Long Island has seen an increase in violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both

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

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individually and collectively, present a clear and present danger to public order and safety.

3. Gangs have expanded from New York city and other states onto Long Island. Furthermore, all of the nationally known gangs now exist throughout New York. While gang membership remains concentrated primarily in low-income communities, gangs have surfaced in many other areas, becoming more racially and ethnically diverse.

4. The enactment of this article seeks to eradicate criminal activity by street gangs by focusing upon patterns of criminal gang activity, the chief source of violence created by street gangs.

5. Further, that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs. These proceeds in turn, will provide a funding stream to implement proactive measures such as after-school programs to prevent youths from becoming gang members.

§ 465.05 Definitions.

The following definitions are applicable to this article.

1. "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

In order to secure a conviction, or a delinquent act, it is not necessary for the prosecution to prove that the person devotes all or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

2. "Pattern of criminal street gang activity" means the commission of, attempted commission of, conspiracy to commit, or solicitation of, a delinquent act, or conviction of two or more enumerated criminal acts, provided at least one of these criminal acts occurred after the effective date of this article and the last of those criminal acts occurred within three years after a prior offense, and the criminal acts were committed on separate occasions, or by two or more persons.

3. "Criminal act" means conduct constituting any of the following crimes, or conspiracy or attempt to commit any of the following felonies:

Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20,

200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; sections 235.06, 235.07 and 235.21 relating to obscenity; section 263.10 relating to promoting an obscene sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering.

§ 465.10 Criminal street gang activity; enhanced penalties.

1. Upon a finding by the trier of fact that a defendant is a member of a criminal street gang, or that a defendant, in the course of the commission of the underlying offense, actively participated in a criminal street gang, the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, shall be enhanced if the defendant was a member of a criminal street gang at the time of the commission of such offense and the court determines that the offense was committed with the intent to further such criminal street gang. Such finding shall be based upon proof beyond a reasonable doubt.

2. Such enhancement shall be as follows:

(a) A class A misdemeanor shall be deemed to be and be punished as if it were a class E felony;

(b) A class E felony shall be deemed to be and be punished as if it were a class D felony;

(c) A class D felony shall be deemed to be and be punished as if it were a class C felony;

(d) A class C felony shall be deemed to be and be punished as if it were a class B felony; and

(e) A class B felony shall be deemed to be and be punished as if it were a class A-II felony.

§ 465.15 Gang solicitation, recruitment or retention.

A person is guilty of gang solicitation, recruitment or retention when he or she:

1. intentionally coerces, solicits, recruits, employs, causes, encourages, or conspires to cause another person to be or remain as a member of a criminal street gang that requires as a condition of membership or continued membership the commission of or participation in gang crimes; or

2. intentionally makes any communication, direct or indirect, constituting a threat to person or property or to any associate or relative of the person being solicited, recruited or retained as a member of a criminal street gang that requires as a condition of membership or continued membership the commission of or participation in gang crimes.

Gang solicitation, recruitment or retention is a class E felony.

§ 465.20 Gang solicitation, recruitment or retention of minors.

A person is guilty of gang solicitation, recruitment or retention of minors when he or she:

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

2. intentionally makes any communication, direct or indirect, constituting a threat to a person under eighteen years of age, to property, or to any associate or relative of a minor being solicited, recruited or retained as a member of a criminal street gang that requires as a condition of membership or continued membership the commission of or participation in gang crimes.

Gang solicitation, recruitment or retention of minors is a class D felony.

§ 465.25 Gang solicitation, recruitment or retention of minors on school grounds.

A person is guilty of gang solicitation, recruitment or retention of minors on school grounds when he or she:

1. while on school grounds, intentionally coerces, solicits, recruits, employs, causes, encourages, or conspires to cause another person under eighteen years of age to be or remain as a member of a criminal street gang that requires as a condition of membership or continued membership the commission of or participation in gang crimes; or

2. while on school grounds, intentionally makes any communication, direct or indirect, constituting a threat to a person under eighteen years of age, to property, or to any associate or relative of the minor being solicited, recruited or retained as a member of a criminal street gang that requires as a condition of membership or continued membership the commission of or participation in gang crimes. For the purposes of this section, "school grounds" shall be defined as provided for in subdivision fourteen of section 220.00 of this chapter.

Gang solicitation, recruitment or retention of minors on school grounds is a class C felony.

§ 465.30 Statewide gang database.

1. The superintendent of the division of state police is hereby authorized to develop and maintain a statewide gang database consisting or identification information pertaining to gang members. For the purpose of this section, "gang member" or "criminal street gang member" shall mean an individual who is a member of a formal or informal group, club, organization, or association of three or more individuals who participate, or agree to participate, in criminal activity.

2. In developing and maintaining the statewide gang database established pursuant to subdivision one of this section, the superintendent of the division of state police shall:

(a) create a uniform reporting format for the entry of pertinent information regarding the report of an arrested criminal street gang member or organized gang affiliates into the statewide gang database;

(b) notify all state and local law enforcement agencies that reports or arrested criminal street gang members or organized gang affiliates shall be entered into the statewide gang database as soon as the minimum level of data, to be specified by such superintendent, is available to the reporting agency;

(c) develop and implement a policy for notifying state and local law enforcement agencies of the emergence of new organized criminal street gangs, or the change of a name or other identifying information, sign or symbol of an existing organized criminal street gang;

(d) compile and retain information regarding organized criminal street gangs and their members and affiliates, in a manner that allows the information to be used by state and local law enforcement agencies, and other state agencies, as deemed appropriate by the superintendent of the division of state police, for investigative purposes;

(e) compile and maintain a history data repository relating to organized criminal street gangs and their members and affiliates in order to develop and improve techniques utilized by law enforcement agencies and prosecutors in the investigation, apprehension, and prosecution of members and affiliates of organized gangs;

(f) create a quality control program regarding confirmation of organized criminal street gang membership and organized gang affiliation data, timeliness and accuracy of information entered into the statewide gang database and performance audits of all agencies entering information;

(g) determine which law enforcement agencies may benefit from access to the statewide gang database, and notify them of its existence; and

(h) cooperate with all law enforcement agencies wishing to gain access to the statewide gang database, and facilitate their entry into and continued access to the database system.

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

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

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

(ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (i) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

§ 4. 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 identified as, or is declared or adjudged by the court to be a member of a "criminal street gang", as defined in section 465.05 of the penal law, all moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:

(i) seventy-five percent of such moneys shall be deposited to a separate account of the local school district wherein such defendant resides, which the superintendent of such district shall establish for the receipt of all such moneys, and said moneys shall be utilized by the superintendent exclusively to develop, implement and/or maintain instructional programs designed to deter or prevent youths from associ-

ating with, or becoming members of, criminal street gangs, including but not limited to, (A) after-school sports or recreational programs, and/or (B) after-school scholastic or academic programs;

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

(iii) the remaining ten percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (ii) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

§ 5. The sum of one million dollars ($1,000,000), or so much thereof as may be necessary, is hereby appropriated to the division of criminal justice services out of any moneys in the state treasury in the general fund to the credit of the local assistance account, not otherwise appropriated, and made immediately available, for the purpose of developing a grant program in consultation with the department of education and the state police for schools to receive gang prevention programs. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of the division of criminal justice services in the manner prescribed by law.

§ 6. The criminal procedure law is amended by adding a new section 700.75 to read as follows:

§ 700.75 Roving interceptions.

In any case in which the designated offense is defined in subdivision eight of section 700.05 of this article, the requirements of this article relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

1. In the case of an application for the interception of an oral communication:

(a) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense whose communications are to be intercepted; and

(b) the court finds that such specification is not practical; or

2. In the case of an application with respect to interception of a wire or electronic communication:

(a) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(b) the court finds that such purpose has been adequately shown.

3. Interception of communications under an order issued pursuant to this section shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subdivision two of this section may move the court to modify or

quash the order on the grounds that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the applicant, shall decide such motion expeditiously.

§ 7. Subdivision 8 of section 700.05 of the criminal procedure law is amended by adding a new paragraph (v) to read as follows:

(v) Any felony under article four hundred sixty-five of the penal law.

§ 8. Section 60.22 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. The limitations of this section do not apply to the prosecution of an offense defined in article four hundred sixty-five of the penal law.

§ 9. The state finance law is amended by adding a new section 99-r to read as follows:

§ 99-r. Witness protection fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of the department of taxation and finance a special revenue fund to be known as the "witness protection fund".

2. The witness protection fund shall consist of: (a) five percent of all the moneys received by the state pursuant to section 60.35 of the penal law and five percent of all the moneys received by the state pursuant to section eighteen hundred nine of the vehicle and traffic law from any court of the unified court system other than town or village courts;

(b) ten percent of all the moneys deposited to the credit of the state police seized assets account in each calendar year; and

(c) all other fees, fines, grants, bequests or other monies credited, appropriated or transferred thereto from any other fund or source pursuant to law or any other moneys made available for the purposes of the fund.

3. Moneys of the witness protection fund, following appropriation by the legislature and allocation by the director of the budget, shall be made available to the division of criminal justice services for local assistance services and expenses of programs to provide witness protection services to witnesses of crimes.

4. The moneys of the fund shall be paid out on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of the division of criminal justice services. At the end of each year, any moneys remaining in the fund shall be returned in the fund and shall not revert to the general fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to the fund.

§ 10. The sum of five million dollars ($5,000,000), or so much thereof as may be necessary, is hereby appropriated to the witness protection fund, established pursuant to section 99-r of the state finance law as added by section nine of this act, out of any moneys in the state treasury in the general fund to the credit of the local assistance account not otherwise appropriated, for local assistance services and expenses of programs to provide witness protection services to witnesses of crimes.

§ 11. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.