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:

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

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

The legislature therefore declares it to be in every sense in the public interest to establish the comprehensive approach to the protection of public order and individual safety enacted by this act that will enhance prosecution and punishment of the unlawful activities 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.

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

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

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

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

TITLE Y-1-A

OFFENSES INVOLVING CRIMINAL STREET GANGS

ARTICLE 495

CRIMINAL STREET GANGS ENFORCEMENT AND PREVENTION ACT

Section 495.05 Definitions.
495.10 Accepting the benefits or proceeds of criminal street gang activity.
495.15 Participation in criminal street gang activity.
495.20 Solicitation for participation in a criminal street gang in the third degree.
495.25 Solicitation for participation in a criminal street gang in the second degree.
495.30 Solicitation of minors for participation in a criminal street gang.
495.35 Solicitation of minors for participation in a criminal street gang on school grounds.
495.40 Sentencing.

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

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

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

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

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

4. "Criminal street gang activity" means any criminal offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.06 (gang assault in the second degree); section 120.07 (gang assault in the first degree); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.27 (murder in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 160.05 (robbery in the third degree); section 160.10 (robbery in the second degree); section 160.15 (robbery in the first degree); sections 210.10 and 210.15 (perjury); sections 215.00, 215.05, 215.11, 215.12, 215.13, 215.15, 215.16, 215.17, 215.19 (bribery, tampering with a juror); sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.28, 220.31, 220.34, 220.39, 220.41, 220.43, 220.44 (controlled substance sale and possession); sections 240.06, 240.15, 240.31, 240.32, 240.46, 240.55, 240.60, 240.61, 240.62, 240.63, 240.71, 240.72, 240.73, 240.75 (riot and offenses against public order); section 240.25 (harassment in the first degree); subdivision one, two, or four of section 240.30 (aggravated harassment

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

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

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

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

§ 495.15 Participation in criminal street gang activity.

A person is guilty of participation in criminal street gang activity when, acting as a member of a criminal street gang, such person knowingly promotes, furthers, assists in, conducts, facilitates, or participates in the commission of criminal street gang activity, or knowingly receives the benefits from criminal street gang activity, or uses or invests the income, assets, proceeds, or substitute proceeds, from criminal street gang activity for the benefit of the criminal street gang.

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

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

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

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

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

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

and their parents to assist them in developing the positive values, self-esteem, knowledge, 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.

§ 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.

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

§ 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-rrrr 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 available for the prevention or intervention of youth involvement in gangs, crime, or violence. Grants shall be awarded pursuant to a request for proposals that informs applicants of the purposes and availability of funds to be awarded and solicits proposals to provide services consistent with this article. Agencies receiving funds pursuant to this section shall utilize the funds to provide services and activities designed to prevent or deter at-risk youth from participating in gangs, criminal activity, or violent behavior. Such funds may not be used for services or activities related to suppression, law enforcement, incarceration, or other purposes not related to the prevention and deterrence of gangs, crime, and violence. Nothing in this subdivision shall prevent funds from being used for violence prevention and gang crime deterrence services provided by nonprofit agencies to youths incarcerated in juvenile detention facilities. Services and activities provided with funds under this section shall be used for at-risk youth who are defined as

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

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

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

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

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