

STATE OF NEW YORK

9368

IN ASSEMBLY

March 6, 2024

Introduced by M. of A. NOVAKHOV, BROOK-KRASNY, CHANG -- 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 2024; and making an appropriation therefor

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "criminal street gang abatement act of 2024".

3 § 2. The penal law is amended by adding a new article 465 to read as
4 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:

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

21 2. The state of New York has seen an increase in violent street gangs
22 whose members threaten, terrorize, and commit a multitude of crimes
23 against the peaceful citizens of their neighborhoods. These activities,
24 both individually and collectively, present a clear and present danger
25 to public order and safety.

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

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1 3. Gangs have expanded their criminal predations across every region
2 in the state of New York. Furthermore, all of the nationally known gangs
3 now exist throughout New York, and there has been a recent influx of
4 hereto unknown criminal gangs as well. While gang membership in the past
5 remained concentrated primarily in low-income communities, gangs have
6 increasingly surfaced everywhere throughout the state, impacting the
7 safety, prosperity, and quality of life for all New Yorkers.

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

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

17 § 465.05 Definitions.

18 The following definitions are applicable to this article.

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

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

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

38 3. "Criminal act" means conduct constituting any of the following
39 crimes, or conspiracy or attempt to commit any of the following felo-
40 nies:

41 Any of the felonies set forth in this chapter: sections 120.05, 120.10
42 and 120.11 relating to assault; sections 125.10 to 125.27 relating to
43 homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections
44 135.20 and 135.25 relating to kidnapping; section 135.65 relating to
45 coercion; sections 140.20, 140.25 and 140.30 relating to burglary;
46 sections 145.05, 145.10 and 145.12 relating to criminal mischief; arti-
47 cle one hundred fifty relating to arson; sections 155.30, 155.35, 155.40
48 and 155.42 relating to grand larceny; article one hundred sixty relating
49 to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to crim-
50 inal possession of stolen property; sections 170.10, 170.15, 170.25,
51 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10,
52 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections
53 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections
54 178.20 and 178.25 relating to criminal diversion of prescription medica-
55 tions and prescriptions; sections 180.03, 180.08, 180.15, 180.25,
56 180.40, 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 1. intentionally coerces, solicits, recruits, employs, causes, encour-
2 ages, or conspires to cause another person under eighteen years of age
3 to be or remain as a member of a criminal street gang that requires as a
4 condition of membership or continued membership the commission of or
5 participation in gang crimes; or

6 2. intentionally makes any communication, direct or indirect, consti-
7 tuting a threat to a person under eighteen years of age, to property, or
8 to any associate or relative of a minor being solicited, recruited or
9 retained as a member of a criminal street gang that requires as a condi-
10 tion of membership or continued membership the commission of or partici-
11 ipation in gang crimes.

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

14 § 465.25 Gang solicitation, recruitment or retention of minors on school
15 grounds.

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

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

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

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

33 § 465.30 Statewide gang database.

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

41 2. In developing and maintaining the statewide gang database estab-
42 lished pursuant to subdivision one of this section, the superintendent
43 of the division of state police shall:

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

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

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

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

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

11 (f) create a quality control program regarding confirmation of organ-
12 ized criminal street gang membership and organized gang affiliation
13 data, timeliness and accuracy of information entered into the statewide
14 gang database and performance audits of all agencies entering informa-
15 tion;

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

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

21 § 3. Paragraph (h) of subdivision 2 of section 1349 of the civil prac-
22 tice law and rules, as added by chapter 655 of the laws of 1990, and
23 subparagraph (i) as amended by chapter 206 of the laws of 2018, is
24 amended to read as follows:

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

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

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

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

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

48 (i) If the defendant against whom a forfeiture action is commenced is
49 identified as, or is declared or adjudged by the court to be a member of
50 a "criminal street gang", as defined in section 465.05 of the penal law,
51 all moneys remaining after distributions pursuant to paragraphs (a)
52 through (g) of this subdivision shall be distributed as follows:

53 (i) seventy-five percent of such moneys shall be deposited to a sepa-
54 rate account of the local school district wherein such defendant
55 resides, which the superintendent of such district shall establish for
56 the receipt of all such moneys, and said moneys shall be utilized by the

1 superintendent exclusively to develop, implement and/or maintain
2 instructional programs designed to deter or prevent youths from associ-
3 ating with, or becoming members of, criminal street gangs, including but
4 not limited to, (A) after-school sports or recreational programs, and/or
5 (B) after-school scholastic or academic programs;

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

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

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

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

33 § 6. The criminal procedure law is amended by adding a new section
34 700.75 to read as follows:

35 § 700.75 Roving interceptions.

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

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

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

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

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

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

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

53 3. Interception of communications under an order issued pursuant to
54 this section shall not begin until the facilities from which, or the
55 place where, the communication is to be intercepted is ascertained by
56 the person implementing the interception order. A provider of wire or

1 electronic communications service that has received an order as provided
2 for in subdivision two of this section may move the court to modify or
3 quash the order on the grounds that its assistance with respect to the
4 interception cannot be performed in a timely or reasonable fashion. The
5 court, upon notice to the applicant, shall decide such motion expe-
6 ditiously.

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

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

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

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

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

16 § 99-rr. Witness protection fund. 1. There is hereby established in
17 the joint custody of the state comptroller and the commissioner of the
18 department of taxation and finance a special revenue fund to be known as
19 the "witness protection fund".

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

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

28 (c) all other fees, fines, grants, bequests or other monies credited,
29 appropriated or transferred thereto from any other fund or source pursu-
30 ant to law or any other moneys made available for the purposes of the
31 fund.

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

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

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

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