

BILL TEXT:

STATE OF NEW YORK

7970--A

2005-2006 Regular Sessions

IN ASSEMBLY

May 3, 2005

Introduced by M. of A. CONTE, ALFANO, BARRA, RAIA, SALADINO -- Multi-Sponsored by -- M. of A. FITZPATRICK, McDONOUGH, THIELE -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the civil practice law and rules, in relation to enacting the criminal street gang abatement act of 2006; 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 2006".

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

ARTICLE 465

CRIMINAL STREET GANG ABATEMENT

7 Section 465.00 Legislative findings and intent.

8 465.05 Definitions.

9 465.10 Criminal street gang activity; enhanced penalties.

10 465.15 Gang solicitation, recruitment or retention.

11 465.20 Gang solicitation, recruitment or retention of minors.

12 465.25 Gang solicitation, recruitment or retention of minors on
13 school grounds.

14 § 465.00 Legislative findings and intent.

15 The legislature finds and determines as follows:

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

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

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1 2. Long Island has seen an increase in violent street gangs whose
2 members threaten, terrorize, and commit a multitude of crimes against
3 the peaceful citizens of their neighborhoods. These activities, both
4 individually and collectively, present a clear and present danger to
5 public order and safety.

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

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

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

20 § 465.05 Definitions.

21 The following definitions are applicable to this article.

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

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

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

41 3. "Criminal act" means conduct constituting any of the following
42 crimes, or conspiracy or attempt to commit any of the following felo-
43 nies:

44 Any of the felonies set forth in this chapter: sections 120.05, 120.10
45 and 120.11 relating to assault; sections 125.10 to 125.27 relating to
46 homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections
47 135.20 and 135.25 relating to kidnapping; section 135.65 relating to
48 coercion; sections 140.20, 140.25 and 140.30 relating to burglary;
49 sections 145.05, 145.10 and 145.12 relating to criminal mischief; arti-
50 cle one hundred fifty relating to arson; sections 155.30, 155.35, 155.40
51 and 155.42 relating to grand larceny; article one hundred sixty relating
52 to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to crim-
53 inal possession of stolen property; sections 170.10, 170.15, 170.25,
54 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10,
55 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections
56 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections

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1 178.20 and 178.25 relating to criminal diversion of prescription medica-
2 tions and prescriptions; sections 180.03, 180.08, 180.15, 180.25,
3 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20,
4 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery;
5 sections 190.40 and 190.42 relating to criminal usury; section 190.65
6 relating to schemes to defraud; sections 205.60 and 205.65 relating to
7 hindering prosecution; sections 210.10, 210.15, and 215.51 relating to
8 perjury and contempt; section 215.40 relating to tampering with physical
9 evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31,
10 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to
11 controlled substances; sections 225.10 and 225.20 relating to gambling;
12 sections 230.25, 230.30, and 230.32 relating to promoting prostitution;
13 sections 235.06, 235.07 and 235.21 relating to obscenity; section 263.10
14 relating to promoting an obscene sexual performance by a child; sections
15 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of
16 section 265.10 which constitute a felony relating to firearms and other
17 dangerous weapons; and sections 265.14 and 265.16 relating to criminal
18 sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relat-
19 ing to unauthorized recordings; and sections 470.05, 470.10, 470.15 and
20 470.20 relating to money laundering.

21 § 465.10 Criminal street gang activity; enhanced penalties.

22 1. Upon a finding by the trier of fact that a defendant is a member of
23 a criminal street gang, or that a defendant, in the course of the
24 commission of the underlying offense, actively participated in a crimi-
25 nal street gang, the penalty for any felony or misdemeanor, or any
26 delinquent act or violation of law which would be a felony or misdemea-
27 nor if committed by an adult, shall be enhanced if the defendant was a
28 member of a criminal street gang at the time of the commission of such
29 offense and the court determines that the offense was committed with the
30 intent to further such criminal street gang. Such finding shall be based
31 upon proof beyond a reasonable doubt.

32 2. Such enhancement shall be as follows:

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

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

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

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

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

43 § 465.15 Gang solicitation, recruitment or retention.

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

46 1. intentionally coerces, solicits, recruits, employs, causes, encour-
47 ages, or conspires to cause another person to be or remain as a member
48 of a criminal street gang that requires as a condition of membership or
49 continued membership the commission of or participation in gang crimes;
50 or

51 2. intentionally makes any communication, direct or indirect, consti-
52 tuting a threat to person or property or to any associate or relative of
53 the person being solicited, recruited or retained as a member of a crim-
54 inal street gang that requires as a condition of membership or continued
55 membership the commission of or participation in gang crimes.

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

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1 § 465.20 Gang solicitation, recruitment or retention of minors.

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

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

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

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

17 § 465.25 Gang solicitation, recruitment or retention of minors on school
18 grounds.

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

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

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

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

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

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

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

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

53 Where multiple claiming agents participated in the forfeiture action,
54 funds available pursuant to subparagraph (i) of this paragraph shall be
55 disbursed to the appropriate law enforcement purposes subaccounts in
56 accordance with the terms of a written agreement reflecting the partic-

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1 ipation of each claiming agent entered into by the participating claim-
2 ing agents.

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

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

10 (i) seventy-five percent of such moneys shall be deposited to a sepa-
11 rate account of the local school district wherein such defendant
12 resides, which the superintendent of such district shall establish for
13 the receipt of all such moneys, and said moneys shall be utilized by the
14 superintendent exclusively to develop, implement and/or maintain
15 instructional programs designed to deter or prevent youths from associ-
16 ating with, or becoming members of, criminal street gangs, including but
17 not limited to, (A) after-school sports or recreational programs, and/or
18 (B) after-school scholastic or academic programs;

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

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

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

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

46 § 6. This act shall take effect on the first of November next succeed-
47 ing the date on which it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A7970A

SPONSOR: Conte (MS)

TITLE OF BILL: An act to amend the penal law and the civil practice

RETRIEVE BILL

law and rules, in relation to enacting the criminal street gang abatement act of 2006; and making an appropriation therefor

PURPOSE OR GENERAL IDEA OF BILL:

The Criminal Street Gang Abatement Act of 2006 will provide law enforcement the tools they need to combat gang violence by focusing upon patterns of criminal gang activity, the chief source of violence created by street gangs. It also provides two funding mechanisms for after-school academic, sports and recreational programs and other gang prevention programs, thereby providing youths an alternative to joining gangs.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: States the short title of the bill.

Section 2: Adds a new Article 465 to Penal Law entitled the "Criminal Street Gang Abatement Act".

Section 465.00: Sets forth legislative findings and intent.

Section 465.05: Defines "criminal street gang," "pattern of street gang activity," and "criminal act".

Section 465.10: Provides for enhanced penalties for criminal acts committed by a criminal street gang member.

Section 465.15: Creates the crime of Gang Solicitation, Recruitment or Retention, a class E felony.

Section 465.20: Creates the crime of Gang Solicitation, Recruitment or Retention of Minors, a class D felony.

Section 465.25: Creates the crime of Gang Solicitation, Recruitment or Retention of Minors on School Grounds, a class C felony.

Sections 3 and 4: Amends paragraph (h) and adds a new paragraph (i) to subdivision 2 of Section 1349 of the Civil Practice Law and Rules to provide that after disbursement of forfeited assets pursuant to paragraphs (a) through (g) of this section, if a defendant subject to forfeiture is a "street gang member" seventy-five percent of any remaining seized assets shall be distributed to the defendant's local school district to fund after-school programs. After this distribution, fifteen percent shall be distributed to law enforcement with the remaining ten percent distributed to the prosecution services subaccount.

Section 5: Adds the sum of one million dollars, or so much thereof any be necessary to be appropriated to the Division of Criminal Justice Services for the purposes of developing a grant program in consultation with the Department of Education and the State Police for schools to receive gang prevention programs.

Section 6: authorizes this act to take effect on the first of November next succeeding the date on which it shall have become a law.

JUSTIFICATION:

New York 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 to illegally benefit themselves. These activities, both individually and collectively, present a clear and present danger to public order and safety.

Gangs have expanded from New York City and other states into New York with all of the nationally known gangs now existing throughout the major cities. Gang membership numbers run as high as 10,000. While gang membership remains concentrated primarily in low-income communities, they have surfaced in many other areas throughout New York, becoming more racially and ethnically diverse.

However, with the exception of the crimes of gang assault and making graffiti, New York's laws are silent on gang-related crimes. With no uniform state law, police departments throughout the state are not classifying gangs for what they are - a group of three or more people who come together to do a criminal act. They use terms like "large groups of youths." Subsequently, drug and gun sales as well as assaults, rapes and murders are not recorded, investigated and disclosed to the public as the gang crimes they are.

Due to the lack of specific state law to adequately address the brutality of gang-related crimes, the Bronx District Attorney is trying an alleged gang member as a terrorist, the first case to be tried under the state's antiterrorism law enacted shortly after Sept. 11, 2001, in order to subject this individual to the more severe penalties mandated by this statute.

Enactment of this article provides law enforcement with the tools they need to combat gang violence. This legislation codifies the definitions of "gang member," "pattern of street gang activity" and "criminal act" in Penal Law thereby providing uniformity and clarification to the law enforcement community throughout the state. These definitions will allow for more accurate and reliable data to provide a clearer assessment of the gang problem and the extent of gang-related crimes throughout the state.

It further provides for enhanced penalties for crimes committed by street gang members, providing a deterrent for existing members as well as a deterrent for potential new members who might otherwise commit a crime to gain acceptance within a gang.

Criminal street gangs are constantly seeking to recruit new members into their hierarchy by utilizing threats, intimidation and physical violence. Minors are particularly vulnerable and are often forced into criminal activity as a means of gang initiation, falling prey to such incitement and intimidation in their local neighborhoods and schools. This bill seeks to discourage gang recruitment by holding accountable those who solicit or recruit gang members and as a further deterrent, provide for heightened penalties for those who prey upon minors and utilize school grounds to increase their membership.

One positive step that communities can take is to provide youths with alternatives to joining gangs. After-school academic, sports programs, and various other gang prevention programs can provide youths with a safe environment, positive role models and positive reinforcement. Youths who receive this positive reinforcement are less likely to join gangs. This bill will provide funding at the local level for these important programs, funded by a \$1,000,000 appropriation and from the the very gang members who are attempting to destroy these communities.

Present law relating to asset forfeiture actions provides that after distribution pursuant to provisions in civil practice law and rules, seventy-five percent of any remaining funds shall be distributed to a law enforcement subaccount with the remaining twenty-five percent distributed to a prosecution services subaccount. This bill will not alter this distribution scheme except in cases where the forfeited assets are from a known "gang member." In this case seventy-five percent of the remaining assets after distribution shall be distributed to local school districts to establish or maintain programs designed to prevent or deter youths from joining gangs. The remaining funds will be distrib-

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uted at fifteen percent to the law enforcement subaccount with the remaining ten percent being distributed to the prosecution services subaccount.

PRIOR LEGISLATIVE HISTORY:

2005 A.7970 - referred to codes

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

Funding reallocation. Funds derived from forfeited assets shall be distributed to local school districts instead of deposited into a law enforcement subaccount. Appropriation of one million to the Division of Criminal Justice Services from any moneys available in the State Treasury in the General Fund to the credit of the Local Assistance Account for the development of a grant program for schools to receive gang prevention programs.

EFFECTIVE DATE:

The first of November next succeeding the date on which it shall become a law.
