

532--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KLEIN, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to bias-related graffiti, the disposition of graffiti offenses, graffiti for the purpose of promoting gang related activities and graffiti upon religious property; to amend the criminal procedure law, in relation to the unsealing of youthful offender records relating to the commission of making graffiti in the first degree and aggravated harassment in the first degree; and to amend the general business law, in relation to requiring persons engaged in the retail sale of aerosol spray paint to post notice of provisions of and penalties for commission of graffiti offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding a new section 60.31 to
2 read as follows:
3 S 60.31 AUTHORIZED DISPOSITION; AGGRAVATED HARASSMENT IN THE FIRST
4 DEGREE.
5 WHEN A PERSON IS CONVICTED OF AGGRAVATED HARASSMENT IN THE FIRST
6 DEGREE AS DEFINED IN SECTION 240.31 OF THIS CHAPTER, OR OF AN ATTEMPT TO
7 COMMIT SUCH AN OFFENSE, OR OF A LESSER INCLUDED OFFENSE, IN ADDITION TO
8 ANY OTHER SENTENCE IMPOSED OR AS A CONDITION OF PROBATION OR CONDITIONAL
9 DISCHARGE THE COURT MAY ORDER SUCH PERSON TO PARTICIPATE IN, AT HIS OR
10 HER OWN EXPENSE, A DIVERSITY TRAINING PROGRAM THAT IS DESIGNED TO OVER-
11 COME DISCRIMINATION, PREJUDICE AND INTOLERANCE, AND THAT PROMOTES COMMU-
12 NICATION, UNDERSTANDING AND RESPECT AMONG DIVERSE RACIAL, RELIGIOUS AND
13 ETHNIC GROUPS.

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

LBD04419-02-1

1 S 2. Paragraph (h) of subdivision 2 of section 65.10 of the penal law,
2 as amended by chapter 508 of the laws of 2001, is amended to read as
3 follows:

4 (h) Perform services for a public or not-for-profit corporation, asso-
5 ciation, institution or agency, including but not limited to services
6 for the [division] OFFICE of ALCOHOLISM AND substance abuse services,
7 [services in an appropriate community program for removal of graffiti
8 from public or private property, including any property damaged in the
9 underlying offense,] or services for the maintenance and repair of real
10 or personal property maintained as a cemetery plot, grave, burial place
11 or other place of interment of human remains. Provided however, that the
12 performance of any such services shall not result in the displacement of
13 employed workers or in the impairment of existing contracts for
14 services, nor shall the performance of any such services be required or
15 permitted in any establishment involved in any labor strike or lockout.
16 The court may establish provisions for the early termination of a
17 sentence of probation or conditional discharge pursuant to the
18 provisions of subdivision three of section 410.90 of the criminal proce-
19 dure law after such services have been completed. Such sentence may only
20 be imposed upon conviction of a misdemeanor, violation, or class D or
21 class E felony, or a youthful offender finding replacing any such
22 conviction, where the defendant has consented to the amount and condi-
23 tions of such service;

24 S 3. Section 65.10 of the penal law is amended by adding a new subdi-
25 vision 6 to read as follows:

26 6. WHEN IMPOSING A SENTENCE OF PROBATION OR OF CONDITIONAL DISCHARGE
27 IN CONNECTION WITH A VIOLATION OF SECTION 145.60, 145.62 OR 145.65 OF
28 THIS CHAPTER, THE COURT SHALL AS A CONDITION OF THE SENTENCE, REQUIRE
29 THAT THE DEFENDANT REMOVE GRAFFITI FROM PUBLIC OR PRIVATE PROPERTY,
30 INCLUDING ANY PROPERTY DAMAGED IN THE UNDERLYING OFFENSE, UNLESS THE
31 COURT SHALL DETERMINE THAT AN APPROPRIATE PROGRAM TO SUPERVISE SUCH
32 REMOVAL IS NOT AVAILABLE OR THAT SUCH GRAFFITI REMOVAL WOULD BE UNREA-
33 SONABLY DANGEROUS; PROVIDED, HOWEVER, THAT GRAFFITI REMOVAL FROM PRIVATE
34 PROPERTY PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT TO CONSENT OF THE
35 OWNER OF SUCH PROPERTY.

36 S 4. Section 145.60 of the penal law, as added by chapter 458 of the
37 laws of 1992, is amended to read as follows:

38 S 145.60 Making graffiti IN THE SECOND DEGREE.

39 1. For purposes of this section AND SECTION 145.62 OF THIS ARTICLE,
40 the term "graffiti" shall mean the etching, painting, covering, drawing
41 upon or otherwise placing of a mark upon public or private property with
42 intent to damage such property.

43 2. [No person shall make] A PERSON IS GUILTY OF MAKING GRAFFITI IN THE
44 SECOND DEGREE WHEN HE OR SHE MAKES graffiti of any type on any building,
45 public or private, or any other property real or personal owned by any
46 person, firm or corporation or any public agency or instrumentality,
47 without the express permission of the owner or operator of said proper-
48 ty.

49 Making graffiti IN THE SECOND DEGREE is a class A misdemeanor.

50 S 5. The penal law is amended by adding a new section 145.62 to read
51 as follows:

52 S 145.62 MAKING GRAFFITI IN THE FIRST DEGREE.

53 A PERSON IS GUILTY OF MAKING GRAFFITI IN THE FIRST DEGREE WHEN SUCH
54 PERSON DAMAGES PROPERTY OF ANOTHER PERSON IN THE MANNER DESCRIBED IN
55 SECTION 145.60 OF THIS ARTICLE AND HE OR SHE MAKES GRAFFITI OF ANY TYPE.

56 1. IN A MANNER TO PROMOTE OR ENCOURAGE GANG RELATED ACTIVITIES; OR

1 2. ON ANY BUILDING, STRUCTURE OR THE CURTILAGE OF SUCH BUILDING OR
2 STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPO-
3 RATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW, OR UPON
4 ANY PROPERTY THAT CONSISTS OF A SCROLL, RELIGIOUS VESTMENT, VESSEL, ITEM
5 COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH ARE FOR A REPRESENTATIVE
6 EXPRESSION OF FAITH OR OTHER MISCELLANEOUS ITEM OF PROPERTY KEPT OR USED
7 IN OR UPON SUCH BUILDING OR STRUCTURE.

8 MAKING GRAFFITI IN THE FIRST DEGREE IS A CLASS E FELONY.

9 S 6. Section 240.31 of the penal law is amended by adding a new subdi-
10 vision 1-a to read as follows:

11 1-A. ETCHES, PAINTS, COVERS, DRAWS UPON OR OTHERWISE PLACES A MARK
12 UPON ANY BUILDING OR ANY OTHER REAL PROPERTY, PUBLIC OR PRIVATE, WITHOUT
13 THE EXPRESS PERMISSION OF THE OWNER OR OPERATOR OF SUCH BUILDING OR REAL
14 PROPERTY; OR

15 S 7. Section 720.35 of the criminal procedure law is amended by
16 adding a new subdivision 5 to read as follows:

17 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION,
18 WHENEVER A PERSON IS ADJUDICATED A YOUTHFUL OFFENDER AND THE CONVICTION
19 THAT WAS VACATED AND REPLACED BY THE YOUTHFUL OFFENDER FINDING WAS
20 EITHER MAKING GRAFFITI IN THE FIRST DEGREE IN VIOLATION OF SECTION
21 145.62 OF THE PENAL LAW OR AGGRAVATED HARASSMENT IN THE FIRST DEGREE IN
22 VIOLATION OF SECTION 240.31 OF THE PENAL LAW, THEN THE NAME OF THE
23 YOUTHFUL OFFENDER AND THE CRIME FOR WHICH THE YOUTHFUL OFFENDER FINDING
24 WAS SUBSTITUTED SHALL NOT BE CONFIDENTIAL AND MAY BE MADE AVAILABLE TO
25 ANY PERSON OR PUBLIC OR PRIVATE AGENCY.

26 S 8. The general business law is amended by adding a new section 399-j
27 to read as follows:

28 S 399-J. RETAIL SALE OF AEROSOL SPRAY PAINT; NOTICE OF GRAFFITI PENAL-
29 TIES. 1. EVERY PERSON AND ENTITY ENGAGED IN THE RETAIL SALE OF AEROSOL
30 SPRAY PAINT SHALL, AT EACH LOCATION AT WHICH SUCH PAINT IS DISPLAYED FOR
31 SALE, CONSPICUOUSLY POST A SIGN ADVISING CUSTOMERS OF THE PROVISIONS OF
32 AND PENALTIES FOR MAKING GRAFFITI IN THE FIRST DEGREE AS DEFINED IN
33 SECTION 145.60, MAKING GRAFFITI IN THE FIRST DEGREE AS DEFINED IN
34 SECTION 145.62, POSSESSION OF GRAFFITI INSTRUMENTS AS DEFINED IN SECTION
35 145.65 AND AGGRAVATED HARASSMENT IN THE FIRST DEGREE AS DEFINED IN
36 SECTION 240.31 OF THE PENAL LAW.

37 2. A VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY
38 NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS.

39 S 9. This act shall take effect on the first of November next succeed-
40 ing the date on which it shall have become a law.