

532--B

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 -- recommitted to the Committee on Consumer Protection 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 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

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.
14 S 2. Paragraph (h) of subdivision 2 of section 65.10 of the penal law,
15 as amended by chapter 508 of the laws of 2001, is amended to read as
16 follows:
17 (h) Perform services for a public or not-for-profit corporation, asso-
18 ciation, institution or agency, including but not limited to services

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

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

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

21 6. GRAFFITI REMOVAL. WHEN IMPOSING A SENTENCE OF PROBATION OR OF
22 CONDITIONAL DISCHARGE IN CONNECTION WITH A VIOLATION OF SECTION 145.60,
23 145.62 OR 145.65 OF THIS CHAPTER, THE COURT SHALL AS A CONDITION OF THE
24 SENTENCE, REQUIRE THAT THE DEFENDANT REMOVE GRAFFITI FROM PUBLIC OR
25 PRIVATE PROPERTY, INCLUDING ANY PROPERTY DAMAGED IN THE UNDERLYING
26 OFFENSE, UNLESS THE COURT SHALL DETERMINE THAT AN APPROPRIATE PROGRAM TO
27 SUPERVISE SUCH REMOVAL IS NOT AVAILABLE OR THAT SUCH GRAFFITI REMOVAL
28 WOULD BE UNREASONABLY DANGEROUS; PROVIDED, HOWEVER, THAT GRAFFITI
29 REMOVAL FROM PRIVATE PROPERTY PURSUANT TO THIS SUBDIVISION SHALL BE
30 SUBJECT TO CONSENT OF THE OWNER OF SUCH PROPERTY.

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

33 S 145.60 Making graffiti IN THE SECOND DEGREE.

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

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

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

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

47 S 145.62 MAKING GRAFFITI IN THE FIRST DEGREE.

48 A PERSON IS GUILTY OF MAKING GRAFFITI IN THE FIRST DEGREE WHEN SUCH
49 PERSON DAMAGES THE PROPERTY OF ANOTHER PERSON IN THE MANNER DESCRIBED IN
50 SECTION 145.60 OF THIS ARTICLE, BY MEANS OF MAKING GRAFFITI OF ANY TYPE:

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

52 2. HAVING KNOWLEDGE THAT SUCH PROPERTY IS USED AS A PLACE OF RELIGIOUS
53 WORSHIP, HE OR SHE DAMAGES A BUILDING, STRUCTURE OR THE CURTILAGE OF
54 SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A
55 RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS
56 LAW; OR

1 3. HAVING KNOWLEDGE THAT SUCH PROPERTY COMPRISES A DISPLAY OF RELI-
2 GIOUS SYMBOLS WHICH ARE FOR A REPRESENTATIVE EXPRESSION OF FAITH, HE OR
3 SHE DAMAGES A SCROLL, RELIGIOUS VESTMENT, VESSEL, ITEM COMPRISING A
4 DISPLAY OF RELIGIOUS SYMBOLS WHICH ARE A REPRESENTATIVE EXPRESSION OF
5 FAITH OR A MISCELLANEOUS ITEM OF PROPERTY KEPT OR USED IN OR UPON A
6 BUILDING, STRUCTURE OR CURTILAGE THEREOF DESCRIBED IN SUBDIVISION TWO OF
7 THIS SECTION.

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