

6701

I N S E N A T E

January 28, 2010

Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the correction law, in relation to the issuance of protective orders during the disposition of cases involving hate crimes and upon release of a convicted hate crime perpetrator, and authorizing the imposition of additional sentencing conditions

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

1 Section 1. It is the intent of the Legislature to encourage state
2 agencies and treatment facilities, and counties, cities, and school
3 districts, to establish education and training programs to prevent
4 violations of civil rights and hate crimes.

5 S 2. Section 65.10 of the penal law is amended by adding a new subdi-
6 vision 2-a to read as follows:

7 2-A. WHENEVER A PERSON IS CONVICTED OF A HATE CRIME PURSUANT TO ARTI-
8 CLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, OR OF CONSPIRACY PURSUANT
9 TO ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE CRIME
10 PURSUANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, THE COURT,
11 ABSENT COMPELLING CIRCUMSTANCES STATED ON THE RECORD, SHALL MAKE AN
12 ORDER PROTECTING THE VICTIM, OR KNOWN IMMEDIATE FAMILY OR DOMESTIC PART-
13 NER OF THE VICTIM, FROM FURTHER ACTS OF VIOLENCE, THREATS, STALKING, OR
14 HARASSMENT BY THE CONVICTED PERSON, INCLUDING ANY STAY-AWAY CONDITIONS
15 THE COURT DEEMS APPROPRIATE, AND SHALL MAKE OBEDIENCE OF THAT ORDER A
16 CONDITION OF THE CONVICTED PERSON'S PROBATION. IN SUCH CASES THE COURT
17 MAY ALSO ORDER THAT THE CONVICTED PERSON BE REQUIRED TO DO ONE OR MORE
18 OF THE FOLLOWING AS A CONDITION OF PROBATION:

19 (A) COMPLETE A CLASS OR PROGRAM ON RACIAL OR ETHNIC SENSITIVITY, OR
20 OTHER SIMILAR TRAINING IN THE AREA OF CIVIL RIGHTS, OR A ONE-YEAR COUN-
21 SELING PROGRAM INTENDED TO REDUCE THE TENDENCY TOWARD VIOLENT AND ANTI-
22 SOCIAL BEHAVIOR IF THAT CLASS, PROGRAM, OR TRAINING IS AVAILABLE AND WAS
23 DEVELOPED OR AUTHORIZED BY THE COURT OR LOCAL AGENCIES IN COOPERATION
24 WITH ORGANIZATIONS SERVING THE AFFECTED COMMUNITY;

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

LBD14934-01-9

1 (B) REIMBURSE THE VICTIM FOR REASONABLE COSTS OF COUNSELING AND OTHER
2 REASONABLE EXPENSES THAT THE COURT FINDS ARE THE DIRECT RESULT OF THE
3 CONVICTED PERSON'S ACTS; AND

4 (C) MAKE PAYMENTS OR OTHER COMPENSATION TO A COMMUNITY-BASED PROGRAM
5 OR LOCAL AGENCY THAT PROVIDES SERVICES TO VICTIMS OF HATE VIOLENCE,
6 PROVIDED THAT ANY PAYMENTS OR OTHER COMPENSATION ORDERED UNDER THIS
7 PARAGRAPH SHALL BE IN ADDITION TO RESTITUTION PAYMENTS REQUIRED UNDER
8 PARAGRAPH (B) OF THIS SUBDIVISION, AND SHALL BE MADE ONLY AFTER THAT
9 RESTITUTION IS PAID IN FULL.

10 S 3. Section 70.00 of the penal law is amended by adding a new subdi-
11 vision 2-a to read as follows:

12 2-A. WHENEVER A PERSON IS CONVICTED OF A HATE CRIME PURSUANT TO ARTI-
13 CLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, OR OF CONSPIRACY PURSUANT
14 TO ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE CRIME
15 PURSUANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, THE COURT,
16 ABSENT COMPELLING CIRCUMSTANCES STATED ON THE RECORD, SHALL MAKE AN
17 ORDER PROTECTING THE VICTIM, OR KNOWN IMMEDIATE FAMILY OR DOMESTIC PART-
18 NER OF THE VICTIM, FROM FURTHER ACTS OF VIOLENCE, THREATS, STALKING, OR
19 HARASSMENT BY THE CONVICTED PERSON, INCLUDING ANY STAY-AWAY CONDITIONS
20 THE COURT DEEMS APPROPRIATE. IN THE EVENT THAT THE CONVICTED PERSON IS
21 RELEASED ON PROBATION, THE COURT SHALL MAKE OBEDIENCE OF THAT ORDER A
22 CONDITION OF THE CONVICTED PERSON'S PROBATION. IN SUCH CASES THE COURT
23 MAY ALSO ORDER THAT THE CONVICTED PERSON BE REQUIRED TO DO ONE OR MORE
24 OF THE FOLLOWING AS A CONDITION OF PROBATION:

25 (A) COMPLETE A CLASS OR PROGRAM ON RACIAL OR ETHNIC SENSITIVITY, OR
26 OTHER SIMILAR TRAINING IN THE AREA OF CIVIL RIGHTS, OR A ONE-YEAR COUN-
27 SELING PROGRAM INTENDED TO REDUCE THE TENDENCY TOWARD VIOLENT AND ANTI-
28 SOCIAL BEHAVIOR IF THAT CLASS, PROGRAM, OR TRAINING IS AVAILABLE AND WAS
29 DEVELOPED OR AUTHORIZED BY THE COURT OR LOCAL AGENCIES IN COOPERATION
30 WITH ORGANIZATIONS SERVING THE AFFECTED COMMUNITY;

31 (B) REIMBURSE THE VICTIM FOR REASONABLE COSTS OF COUNSELING AND OTHER
32 REASONABLE EXPENSES THAT THE COURT FINDS ARE THE DIRECT RESULT OF THE
33 CONVICTED PERSON'S ACTS; AND

34 (C) MAKE PAYMENTS OR OTHER COMPENSATION TO A COMMUNITY-BASED PROGRAM
35 OR LOCAL AGENCY THAT PROVIDES SERVICES TO VICTIMS OF HATE VIOLENCE,
36 PROVIDED THAT ANY PAYMENTS OR OTHER COMPENSATION ORDERED UNDER THIS
37 PARAGRAPH SHALL BE IN ADDITION TO RESTITUTION PAYMENTS REQUIRED UNDER
38 PARAGRAPH (B) OF THIS SUBDIVISION, AND SHALL BE MADE ONLY AFTER THAT
39 RESTITUTION IS PAID IN FULL.

40 S 4. Section 70.05 of the penal law is amended by adding a new subdi-
41 vision 2-a to read as follows:

42 2-A. WHENEVER A JUVENILE OFFENDER IS CONVICTED OF A HATE CRIME PURSU-
43 ANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, OR OF CONSPIRA-
44 CY PURSUANT TO ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE
45 CRIME PURSUANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, THE
46 COURT, ABSENT COMPELLING CIRCUMSTANCES STATED ON THE RECORD, SHALL MAKE
47 AN ORDER PROTECTING THE VICTIM, OR KNOWN IMMEDIATE FAMILY OR DOMESTIC
48 PARTNER OF THE VICTIM, FROM FURTHER ACTS OF VIOLENCE, THREATS, STALKING,
49 OR HARASSMENT BY THE JUVENILE OFFENDER, INCLUDING ANY STAY-AWAY CONDI-
50 TIONS THE COURT DEEMS APPROPRIATE. IN THE EVENT THAT THE JUVENILE OFFEN-
51 DER IS RELEASED ON PROBATION, THE COURT SHALL MAKE OBEDIENCE OF THAT
52 ORDER A CONDITION OF THE JUVENILE OFFENDER'S PROBATION. IN SUCH CASES
53 THE COURT MAY ALSO ORDER THAT THE JUVENILE OFFENDER BE REQUIRED TO DO
54 ONE OR MORE OF THE FOLLOWING AS A CONDITION OF PROBATION:

55 (A) COMPLETE A CLASS OR PROGRAM ON RACIAL OR ETHNIC SENSITIVITY, OR
56 OTHER SIMILAR TRAINING IN THE AREA OF CIVIL RIGHTS, OR A ONE-YEAR COUN-

1 SELING PROGRAM INTENDED TO REDUCE THE TENDENCY TOWARD VIOLENT AND ANTI-
2 SOCIAL BEHAVIOR IF THAT CLASS, PROGRAM, OR TRAINING IS AVAILABLE AND WAS
3 DEVELOPED OR AUTHORIZED BY THE COURT OR LOCAL AGENCIES IN COOPERATION
4 WITH ORGANIZATIONS SERVING THE AFFECTED COMMUNITY;

5 (B) REIMBURSE THE VICTIM FOR REASONABLE COSTS OF COUNSELING AND OTHER
6 REASONABLE EXPENSES THAT THE COURT FINDS ARE THE DIRECT RESULT OF THE
7 JUVENILE OFFENDER'S ACTS; AND

8 (C) MAKE PAYMENTS OR OTHER COMPENSATION TO A COMMUNITY-BASED PROGRAM
9 OR LOCAL AGENCY THAT PROVIDES SERVICES TO VICTIMS OF HATE VIOLENCE,
10 PROVIDED THAT ANY PAYMENTS OR OTHER COMPENSATION ORDERED UNDER THIS
11 PARAGRAPH SHALL BE IN ADDITION TO RESTITUTION PAYMENTS REQUIRED UNDER
12 PARAGRAPH (B) OF THIS SUBDIVISION, AND SHALL BE MADE ONLY AFTER THAT
13 RESTITUTION IS PAID IN FULL.

14 S 5. Section 70.15 of the penal law is amended by adding a new subdi-
15 vision 5 to read as follows:

16 5. WHENEVER A PERSON IS CONVICTED OF A HATE CRIME PURSUANT TO ARTICLE
17 FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, OR OF CONSPIRACY PURSUANT TO
18 ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE CRIME PURSUANT
19 TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, THE COURT, ABSENT
20 COMPELLING CIRCUMSTANCES STATED ON THE RECORD, SHALL MAKE AN ORDER
21 PROTECTING THE VICTIM, OR KNOWN IMMEDIATE FAMILY OR DOMESTIC PARTNER OF
22 THE VICTIM, FROM FURTHER ACTS OF VIOLENCE, THREATS, STALKING, OR HARASS-
23 MENT BY THE CONVICTED PERSON, INCLUDING ANY STAY-AWAY CONDITIONS THE
24 COURT DEEMS APPROPRIATE. IN THE EVENT THAT THE CONVICTED PERSON IS
25 RELEASED ON PROBATION, THE COURT SHALL MAKE OBEDIENCE OF THAT ORDER A
26 CONDITION OF THE CONVICTED PERSON'S PROBATION. IN SUCH CASES THE COURT
27 MAY ALSO ORDER THAT THE CONVICTED PERSON BE REQUIRED TO DO ONE OR MORE
28 OF THE FOLLOWING AS A CONDITION OF PROBATION:

29 (A) COMPLETE A CLASS OR PROGRAM ON RACIAL OR ETHNIC SENSITIVITY, OR
30 OTHER SIMILAR TRAINING IN THE AREA OF CIVIL RIGHTS, OR A ONE-YEAR COUN-
31 SELING PROGRAM INTENDED TO REDUCE THE TENDENCY TOWARD VIOLENT AND ANTI-
32 SOCIAL BEHAVIOR IF THAT CLASS, PROGRAM, OR TRAINING IS AVAILABLE AND WAS
33 DEVELOPED OR AUTHORIZED BY THE COURT OR LOCAL AGENCIES IN COOPERATION
34 WITH ORGANIZATIONS SERVING THE AFFECTED COMMUNITY;

35 (B) REIMBURSE THE VICTIM FOR REASONABLE COSTS OF COUNSELING AND OTHER
36 REASONABLE EXPENSES THAT THE COURT FINDS ARE THE DIRECT RESULT OF THE
37 CONVICTED PERSON'S ACTS; AND

38 (C) MAKE PAYMENTS OR OTHER COMPENSATION TO A COMMUNITY-BASED PROGRAM
39 OR LOCAL AGENCY THAT PROVIDES SERVICES TO VICTIMS OF HATE VIOLENCE,
40 PROVIDED THAT ANY PAYMENTS OR OTHER COMPENSATION ORDERED UNDER THIS
41 PARAGRAPH SHALL BE IN ADDITION TO RESTITUTION PAYMENTS REQUIRED UNDER
42 PARAGRAPH (B) OF THIS SUBDIVISION, AND SHALL BE MADE ONLY AFTER THAT
43 RESTITUTION IS PAID IN FULL.

44 S 6. Section 402 of the correction law is amended by adding a new
45 subdivision 14 to read as follows:

46 14. WHENEVER A PERSON IS CONVICTED OF A HATE CRIME PURSUANT TO ARTICLE
47 FOUR HUNDRED EIGHTY-FIVE OF THE PENAL LAW, OR OF CONSPIRACY PURSUANT TO
48 ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE CRIME PURSUANT
49 TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THE PENAL LAW, IS COMMITTED TO A
50 STATE HOSPITAL OR OTHER TREATMENT FACILITY AND THEN IS EITHER PLACED ON
51 OUTPATIENT STATUS OR CONDITIONAL RELEASE FROM THE STATE HOSPITAL OR
52 OTHER TREATMENT FACILITY, THE COURT, ABSENT COMPELLING CIRCUMSTANCES
53 STATED ON THE RECORD, SHALL MAKE AN ORDER PROTECTING THE VICTIM, OR
54 KNOWN IMMEDIATE FAMILY OR DOMESTIC PARTNER OF THE VICTIM, FROM FURTHER
55 ACTS OF VIOLENCE, THREATS, STALKING, OR HARASSMENT BY THE CONVICTED
56 PERSON, INCLUDING ANY STAY-AWAY CONDITIONS THE COURT DEEMS APPROPRIATE.

1 IN THE EVENT THAT THE CONVICTED PERSON IS RELEASED ON PROBATION, THE
2 COURT SHALL MAKE OBEDIENCE OF THAT ORDER A CONDITION OF THE CONVICTED
3 PERSON'S PROBATION. IN SUCH CASES THE COURT MAY ALSO ORDER THAT THE
4 CONVICTED PERSON BE REQUIRED TO DO ONE OR MORE OF THE FOLLOWING AS A
5 CONDITION OF PROBATION:

6 (A) COMPLETE A CLASS OR PROGRAM ON RACIAL OR ETHNIC SENSITIVITY, OR
7 OTHER SIMILAR TRAINING IN THE AREA OF CIVIL RIGHTS, OR A ONE-YEAR COUN-
8 SELING PROGRAM INTENDED TO REDUCE THE TENDENCY TOWARD VIOLENT AND ANTI-
9 SOCIAL BEHAVIOR IF THAT CLASS, PROGRAM, OR TRAINING IS AVAILABLE AND WAS
10 DEVELOPED OR AUTHORIZED BY THE COURT OR LOCAL AGENCIES IN COOPERATION
11 WITH ORGANIZATIONS SERVING THE AFFECTED COMMUNITY;

12 (B) REIMBURSE THE VICTIM FOR REASONABLE COSTS OF COUNSELING AND OTHER
13 REASONABLE EXPENSES THAT THE COURT FINDS ARE THE DIRECT RESULT OF THE
14 CONVICTED PERSON'S ACTS; AND

15 (C) MAKE PAYMENTS OR OTHER COMPENSATION TO A COMMUNITY-BASED PROGRAM
16 OR LOCAL AGENCY THAT PROVIDES SERVICES TO VICTIMS OF HATE VIOLENCE,
17 PROVIDED THAT ANY PAYMENTS OR OTHER COMPENSATION ORDERED UNDER THIS
18 PARAGRAPH SHALL BE IN ADDITION TO RESTITUTION PAYMENTS REQUIRED UNDER
19 PARAGRAPH (B) OF THIS SUBDIVISION, AND SHALL BE MADE ONLY AFTER THAT
20 RESTITUTION IS PAID IN FULL.

21 S 7. This act shall take effect on the first of November next succeed-
22 ing the date upon which it shall have become a law.