S T A T E O F N E W Y O R K

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

2-A. WHENEVER A JUVENILE OFFENDER IS CONVICTED OF A HATE CRIME PURSUANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, OR OF CONSPIRACY PURSUANT TO ARTICLE ONE HUNDRED FIVE OF THIS CHAPTER TO COMMIT A HATE CRIME PURSUANT TO ARTICLE FOUR HUNDRED EIGHTY-FIVE OF THIS CHAPTER, THE COURT, ABSENT COMPELLING CIRCUMSTANCES STATED ON THE RECORD, SHALL MAKE AN ORDER PROTECTING THE VICTIM, OR KNOWN IMMEDIATE FAMILY OR DOMESTIC PARTNER OF THE VICTIM, FROM FURTHER ACTS OF VIOLENCE, THREATS, STALKING, OR HARASSMENT BY THE JUVENILE OFFENDER, INCLUDING ANY STAY-AWAY CONDITIONS THE COURT DEEMS APPROPRIATE. IN THE EVENT THAT THE JUVENILE OFFENDER IS RELEASED ON PROBATION, THE COURT SHALL MAKE OBEDIENCE OF THAT ORDER A CONDITION OF THE JUVENILE OFFENDER'S PROBATION. IN SUCH CASES THE COURT MAY ALSO ORDER THAT THE JUVENILE OFFENDER BE REQUIRED TO DO ONE OR MORE OF THE FOLLOWING AS A CONDITION OF PROBATION:

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

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

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

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

S 5. Section 70.15 of the penal law is amended by adding a new subdivision 5 to read as follows:

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

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

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

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

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

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

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

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

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

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

S 7. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.