

4028

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. THIELE, KOLB, WALKER, ALFANO, BALL, BARRA, SALADINO -- Multi-Sponsored by -- M. of A. BACALLES, BURLING, CROUCH, DUPREY, GIGLIO, HAYES, QUINN, REILICH, SAYWARD, SPANO, TEDISCO, TOBACCO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing the penalties for hazing; to amend the education law, in relation to prohibiting bullying or cyber-bullying on school property; to amend the penal law, in relation to establishing the crime of aggravated harassment of teachers and school personnel; and to amend the education law, in relation to creating a statewide central registry for bullying, cyber-bullying and hazing complaints

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

1 Section 1. Section 120.16 of the penal law, as amended by chapter 86  
2 of the laws of 1988, is amended to read as follows:

3 S 120.16 Hazing in the first degree.

4 A person is guilty of hazing in the first degree when, in the course  
5 of another person's initiation into or affiliation with any organiza-  
6 tion, he OR SHE intentionally or recklessly engages in conduct which  
7 creates a substantial risk of SERIOUS physical injury OR DEATH to such  
8 other person or a third person and thereby causes such SERIOUS injury OR  
9 DEATH TO SUCH PERSON OR TO A THIRD PERSON.

10 Hazing in the first degree is a class [A misdemeanor] D FELONY.

11 S 2. Section 120.17 of the penal law, as added by chapter 86 of the  
12 laws of 1988, is amended to read as follows:

13 S 120.17 Hazing in the second degree.

14 A person is guilty of hazing in the second degree when, in the course  
15 of another person's initiation or affiliation with any organization, he  
16 OR SHE intentionally or recklessly engages in conduct which creates a  
17 substantial risk of physical injury to such other person or a third  
18 person AND THEREBY CAUSES SUCH INJURY.

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

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1 Hazing in the second degree is a [violation] CLASS E FELONY.

2 S 3. The penal law is amended by adding two new sections 120.19 and  
3 120.26 to read as follows:

4 S 120.19 HAZING IN THE THIRD DEGREE.

5 A PERSON IS GUILTY OF HAZING IN THE THIRD DEGREE WHEN, IN THE COURSE  
6 OF ANOTHER PERSON'S INITIATION OR AFFILIATION WITH ANY ORGANIZATION, HE  
7 OR SHE INTENTIONALLY OR RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A  
8 SUBSTANTIAL RISK OF PHYSICAL INJURY TO SUCH OTHER PERSON OR A THIRD  
9 PERSON.

10 HAZING IN THE THIRD DEGREE IS A CLASS A MISDEMEANOR.

11 S 120.26 FAILURE TO REPORT HAZING.

12 A PERSON IS GUILTY OF FAILURE TO REPORT HAZING WHEN A PERSON KNOWS  
13 THAT ANOTHER PERSON IS THE VICTIM OF HAZING AND FAILS TO REPORT SUCH  
14 CRIME TO AN APPROPRIATE LAW ENFORCEMENT OFFICIAL AS SOON AS REASONABLY  
15 PRACTICABLE.

16 FAILURE TO REPORT HAZING IS A CLASS B MISDEMEANOR.

17 S 4. Legislative intent. In recent years, the state legislature has  
18 taken several steps to ensure that school pupils, teachers and other  
19 personnel are provided with a safe and secure learning environment on  
20 all school property. Through the enactment of provisions requiring the  
21 fingerprinting of a school district's prospective employees and the  
22 enactment of the Safe Schools Against Violence in Education Act, the  
23 legislature has ensured the increased safety of our schools. However,  
24 to address concerns that harassment of pupils and school personnel  
25 through acts of bullying or cyber-bullying can be both disruptive to the  
26 learning process and harmful, mentally and/or physically, to intended  
27 victims, the legislature finds that enactment of this section and  
28 sections five through ten of this act to prohibit bullying and cyber-  
29 bullying on school property, which shall be known and may be noted as  
30 the "Schools as Safe Harbors Act," is necessary and appropriate to  
31 further ensure that New York state's public schools be made as safe as  
32 possible.

33 S 5. Section 801-a of the education law, as added by chapter 181 of  
34 the laws of 2000, is amended to read as follows:

35 S 801-a. Instruction in civility, citizenship and character education.  
36 The regents shall ensure that the course of instruction in grades  
37 kindergarten through twelve includes a component on civility, citizen-  
38 ship and character education. Such component shall instruct students on  
39 the principles of honesty, tolerance, personal responsibility, respect  
40 for others, observance of laws and rules, courtesy, dignity and other  
41 traits which will enhance the quality of their experiences in, and  
42 contributions to, the community. SUCH COMPONENT SHALL ALSO ADDRESS  
43 METHODS OF DISCOURAGING ACTS OF BULLYING AND CYBER-BULLYING, AS DEFINED  
44 IN SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAP-  
45 TER, AGAINST FELLOW STUDENTS. The regents shall determine how to incor-  
46 porate such component in existing curricula and the commissioner shall  
47 promulgate any regulations needed to carry out such determination of the  
48 regents.

49 S 6. Subdivision 2 of section 2801 of the education law is amended by  
50 adding a new paragraph a-1 to read as follows:

51 A-1. PROVISIONS PROHIBITING BULLYING AND CYBER-BULLYING ON SCHOOL  
52 PROPERTY, INCLUDING A SCHOOL FUNCTION, PURSUANT TO SECTION TWENTY-EIGHT  
53 HUNDRED THREE OF THIS ARTICLE;

54 S 7. Subdivision 2 of section 2801 of the education law is amended by  
55 adding a new paragraph f-1 to read as follows:

1 F-1. WHEN ANY SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT  
2 A STUDENT HAS COMMITTED AN ACT OF BULLYING OR CYBER-BULLYING, AS DEFINED  
3 IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS ARTICLE, THE SCHOOL  
4 EMPLOYEE SHALL REPORT SUCH INCIDENT TO THE PRINCIPAL, OR DESIGNEE THERE-  
5 OF, WHO IN TURN SHALL REPORT SUCH INCIDENT TO THE SUPERINTENDENT, UPON  
6 A DETERMINATION BY THE PRINCIPAL, OR DESIGNEE THEREOF, THAT THERE IS A  
7 REASONABLE SUSPICION THAT THE ACT OCCURRED. FAILURE OF AN EMPLOYEE TO  
8 MAKE A REPORT PURSUANT TO THIS PARAGRAPH MAY NOT BE THE BASIS FOR ANY  
9 DISCIPLINARY ACTION OR PROFESSIONAL MISCONDUCT CHARGE AGAINST THE  
10 EMPLOYEE;

11 S 8. The education law is amended by adding a new section 2803 to read  
12 as follows:

13 S 2803. BULLYING AND CYBER-BULLYING PROHIBITED. 1. FOR PURPOSES OF  
14 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

15 A. "PUBLIC SCHOOL" MEANS:

16 (I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL, KINDERGARTEN OR PRE-KIN-  
17 DERGARTEN PROGRAM, ADULT OR CONTINUING EDUCATION PROGRAM OR OTHER EDUCA-  
18 TIONAL PROGRAM OPERATED BY A SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF  
19 COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTEN-  
20 SION BOARDS; AND

21 (II) A SCHOOL OR EDUCATIONAL PROGRAM THAT SERVES STUDENTS IN ANY OF  
22 GRADES KINDERGARTEN THROUGH TWELVE AND IS OPERATED BY THE DEPARTMENT, OR  
23 IS OPERATED OR SUPERVISED BY ANOTHER STATE AGENCY OR A POLITICAL SUBDI-  
24 VISION AND IS SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF  
25 THIS CHAPTER.

26 B. "PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM" MEANS AN APPROVED  
27 PROVIDER OF SPECIAL EDUCATION PROGRAMS AND SERVICES UNDER SECTION  
28 FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, AN APPROVED PRIVATE RESIDENTIAL  
29 OR NON-RESIDENTIAL SCHOOL FOR THE PROVISION OF SPECIAL SERVICES OR  
30 PROGRAMS PURSUANT TO SUBDIVISION TWO OF SECTION FORTY-FOUR HUNDRED ONE  
31 OF THIS CHAPTER, A STATE-SUPPORTED SCHOOL SUBJECT TO THE PROVISIONS OF  
32 ARTICLE EIGHTY-FIVE OF THIS CHAPTER OR ANY OTHER AGENCY OR ENTITY THAT  
33 PROVIDES SPECIAL EDUCATION PROGRAMS OR SERVICES PURSUANT TO THE  
34 PROVISIONS OF ARTICLE EIGHTY-ONE OR EIGHTY-NINE OF THIS CHAPTER.

35 C. "SCHOOL PROPERTY" MEANS IN OR WITHIN ANY BUILDING, STRUCTURE,  
36 ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT OR LAND CONTAINED WITHIN  
37 THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC SCHOOL OR A PUBLICLY FUNDED  
38 SPECIAL EDUCATION PROGRAM; OR IN OR ON A SCHOOL BUS, AS DEFINED IN  
39 SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW; AND A  
40 "SCHOOL FUNCTION" MEANS A SCHOOL SPONSORED EXTRA-CURRICULAR EVENT OR  
41 ACTIVITY.

42 D. "BULLYING" MEANS THREATENING, STALKING OR SEEKING TO COERCE OR  
43 COMPEL A PERSON TO DO SOMETHING; ENGAGING IN VERBAL OR PHYSICAL CONDUCT  
44 THAT THREATENS ANOTHER WITH HARM, INCLUDING INTIMIDATION THROUGH THE USE  
45 OF EPITHETS OR SLURS INVOLVING RACE, ETHNICITY, NATIONAL ORIGIN, RELI-  
46 GION, RELIGIOUS PRACTICES, GENDER, OR DISABILITY.

47 E. "CYBER-BULLYING" MEANS A COURSE OF CONDUCT OR REPEATED ACTS OF  
48 ABUSIVE BEHAVIOR BY COMMUNICATING THROUGH ELECTRONIC MEANS, WITH A  
49 PERSON ANONYMOUSLY OR OTHERWISE OVER A PERIOD OF TIME COMMITTING SUCH  
50 ACTS AS, BUT NOT LIMITED TO, TAUNTING, INSULTING, HUMILIATING, HARASS-  
51 ING, MENACING, SENDING HATE MAIL OR EMBARRASSING PHOTOGRAPHS.

52 2. NO STUDENT SHALL BE SUBJECT TO BULLYING OR CYBER-BULLYING BY ANY  
53 STUDENT OF A PUBLIC SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM.

54 3. A. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS  
55 SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO  
56 DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT

1 ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND  
2 THE DISCIPLINE PROCEDURES APPLICABLE TO STUDENTS OR EMPLOYEES OF THE  
3 PUBLIC SCHOOL. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF  
4 THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE  
5 SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM  
6 GOVERNING STUDENT CONDUCT OR EMPLOYEE DISCIPLINE.

7 B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE A PRIVATE  
8 CAUSE OF ACTION.

9 4. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO  
10 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL  
11 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,  
12 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL  
13 ORDINANCE, LAW, RULE OR REGULATION.

14 5. A PLAIN-LANGUAGE, AGE-APPROPRIATE DESCRIPTION OF THE POLICIES  
15 OUTLINED IN SUBDIVISION TWO OF THIS SECTION SHALL BE DISTRIBUTED TO  
16 EMPLOYEES, STUDENTS AND PARENTS OF EACH PUBLIC SCHOOL OR PUBLICLY-FUNDED  
17 SPECIAL EDUCATION PROGRAM ON AT LEAST AN ANNUAL BASIS. IN THE CASE OF  
18 PUBLIC SCHOOLS, SUCH REQUIREMENT SHALL BE MET BY INCLUDING SUCH  
19 DESCRIPTION IN THE SUMMARY OF THE CODE OF CONDUCT PROVIDED TO EACH  
20 STUDENT AND MAILED TO PARENTS PURSUANT TO SUBDIVISION FOUR OF SECTION  
21 TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE.

22 6. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY COURT  
23 OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR  
24 PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS APPLICABILITY TO ANY  
25 GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE, IS DECLARED INVALID, THE  
26 REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE  
27 AFFECTED.

28 S 9. Section 3028-c of the education law, as added by chapter 181 of  
29 the laws of 2000, is amended to read as follows:

30 S 3028-c. Protection of school employees who report acts of BULLYING,  
31 CYBER-BULLYING OR violence and weapons possession. Any school employee  
32 having reasonable cause to suspect that a person has committed an act of  
33 BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED IN SECTION  
34 TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence while in or on  
35 school property, or having reasonable cause to suspect that a person has  
36 committed an act of BULLYING OR CYBER-BULLYING AS SUCH TERM IS DEFINED  
37 IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR violence upon a  
38 student, school employee or volunteer either upon school grounds or  
39 elsewhere, or having reasonable cause to suspect that a person has  
40 brought a gun, knife, bomb or other instrument capable of or that  
41 appears capable of causing death or physical injury upon school grounds  
42 who in good faith reports such information to school officials, to the  
43 commissioner, or to law enforcement authorities, shall have immunity  
44 from any civil liability that may arise from the making of such report,  
45 and no school district or school district employee shall take, request  
46 or cause a retaliatory action against any such employee who makes such  
47 report.

48 S 10. The penal law is amended by adding a new section 240.33 to read  
49 as follows:

50 S 240.33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL.

51 A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL  
52 PERSONNEL WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A PERSON WHOM HE  
53 OR SHE KNOWS OR REASONABLY SHOULD KNOW TO BE A TEACHER, ADMINISTRATOR OR  
54 OTHER STAFF MEMBER OF A PUBLIC OR PRIVATE ELEMENTARY, INTERMEDIATE,  
55 JUNIOR HIGH, VOCATIONAL OR HIGH SCHOOL, ENGAGED IN THE COURSE OF HIS OR  
56 HER EMPLOYMENT, HE OR SHE STRIKES, SHOVES OR KICKS SUCH TEACHER, ADMIN-

1 ISTRATOR OR OTHER STAFF MEMBER, AND WHEN SUCH CONDUCT TAKES PLACE ON  
2 SCHOOL PROPERTY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE  
3 EDUCATION LAW WHERE SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER IS  
4 EMPLOYED OR ASSIGNED ON THE DATE OF SUCH CONDUCT.

5 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL IS A CLASS B  
6 MISDEMEANOR.

7 S 11. The education law is amended by adding a new section 2804 to  
8 read as follows:

9 S 2804. STATEWIDE CENTRAL REGISTER FOR RECEIPT OF BULLYING, CYBER-BUL-  
10 LYING AND HAZING COMPLAINTS. 1. THE COMMISSIONER SHALL CREATE A CENTRAL  
11 REGISTER IN THE DEPARTMENT CAPABLE OF RECEIVING TELEPHONE CALLS ALLEGING  
12 BULLYING, CYBER-BULLYING AND HAZING.

13 2. THERE SHALL BE A SINGLE STATEWIDE TELEPHONE NUMBER THAT ALL PERSONS  
14 MAY USE TO MAKE TELEPHONE CALLS ALLEGING BULLYING, CYBER-BULLYING AND/OR  
15 HAZING. ALL SUCH ALLEGATIONS SHALL BE REPORTED BY THE DEPARTMENT TO THE  
16 APPROPRIATE SCHOOL WHERE THE ALLEGED INCIDENT HAS OCCURRED AND LAW  
17 ENFORCEMENT AGENCY WHERE IT SHALL BE DETERMINED IF A CRIME OF BULLYING,  
18 CYBER-BULLYING OR HAZING HAS OCCURRED. A REPORT SHALL ALSO BE MADE TO  
19 THE SCHOOL DISTRICT IN WHICH THE ALLEGED INCIDENT OCCURRED. WHEN ANY  
20 ALLEGATIONS CONTAINED IN SUCH TELEPHONE CALLS COULD REASONABLY CONSTI-  
21 TUTE A CRIME OF BULLYING, CYBER-BULLYING OR HAZING, SUCH ALLEGATIONS  
22 SHALL BE IMMEDIATELY TRANSMITTED ORALLY OR ELECTRONICALLY BY THE DEPART-  
23 MENT TO THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY FOR INVESTIGATION.  
24 THE INABILITY OF THE PERSON CALLING THE REGISTER TO IDENTIFY THE ALLEGED  
25 PERPETRATOR SHALL, IN NO CIRCUMSTANCE, CONSTITUTE THE SOLE CAUSE FOR THE  
26 REGISTER TO REJECT SUCH ALLEGATION OR FAIL TO TRANSMIT SUCH ALLEGATION  
27 FOR INVESTIGATION. IF THE RECORDS INDICATE A PREVIOUS REPORT CONCERNING  
28 A SUBJECT OF THE REPORT, OTHER PERSONS NAMED IN THE REPORT OR OTHER  
29 PERTINENT INFORMATION, THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY  
30 SHALL BE IMMEDIATELY NOTIFIED OF THE FACT.

31 S 12. This act shall take effect on the first of November next  
32 succeeding the date on which it shall have become a law.