

9220

2009-2010 Regular Sessions

I N A S S E M B L Y

October 28, 2009

Introduced by M. of A. MENG -- read once and referred 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 involv-
ing hate crimes and upon release of a convicted hate crime perpetra-
tor, and authorizing the imposition of additional sentencing condi-
tions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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

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

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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 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 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 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:

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

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

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

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

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

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

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

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

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

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

1 ACTS OF VIOLENCE, THREATS, STALKING, OR HARASSMENT BY THE CONVICTED
2 PERSON, INCLUDING ANY STAY-AWAY CONDITIONS THE COURT DEEMS APPROPRIATE.
3 IN THE EVENT THAT THE CONVICTED PERSON IS RELEASED ON PROBATION, THE
4 COURT SHALL MAKE OBEDIENCE OF THAT ORDER A CONDITION OF THE CONVICTED
5 PERSON'S PROBATION. IN SUCH CASES THE COURT MAY ALSO ORDER THAT THE
6 CONVICTED PERSON BE REQUIRED TO DO ONE OR MORE OF THE FOLLOWING AS A
7 CONDITION OF PROBATION:

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

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

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

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