

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

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

AN ACT to amend the New York city charter and the executive law, in relation to the creation of a bias-related crime classification review panel and reporting of bias-related crime statistics

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

1 Section 1. The New York city charter is amended by adding two new
2 sections 439 and 439-a to read as follows:

3 S 439. BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. (A) DEFINI-
4 TIONS. FOR THE PURPOSES OF THIS SECTION:

5 1. "PANEL" SHALL MEAN THE BIAS-RELATED CRIME CLASSIFICATION REVIEW
6 PANEL CREATED PURSUANT TO SUBDIVISION (B) OF THIS SECTION.

7 2. "VICTIM" SHALL MEAN A PERSON WHO HAD OR CLAIMS TO HAVE HAD A BIAS-
8 RELATED CRIME PERPETRATED AGAINST HIM.

9 3. "BIAS-RELATED CRIME" SHALL MEAN ANY CRIMINAL ACT WHETHER ACTUAL,
10 THREATENED OR ATTEMPTED DIRECTED AT AN INDIVIDUAL BECAUSE OF HIS ACTUAL
11 OR PERCEIVED RACE, CREED, COLOR, RELIGION, RELIGIOUS PRACTICE, ETHNICI-
12 TY, NATIONAL ORIGIN, DISABILITY, AGE, GENDER OR SEXUAL ORIENTATION.

13 4. "DEPARTMENTAL APPOINTMENTS" SHALL MEAN ANY INDIVIDUAL REPRESENTING
14 A LEGAL, POLITICAL OR GOVERNMENTAL ENTITY, OR SUBDIVISION THEREOF.

15 5. "NON-DEPARTMENTAL APPOINTMENTS" SHALL MEAN ANY INDIVIDUAL OR REPRE-
16 SENTATIVE INDEPENDENT OF A LEGAL, POLITICAL OR GOVERNMENTAL ENTITY, OR
17 SUBDIVISION THEREOF.

18 (B) BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. 1. THERE IS HEREBY
19 CREATED A BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. SUCH PANEL
20 SHALL CONSIST OF THIRTEEN VOTING MEMBERS. THE FOLLOWING EIGHT MEMBERS
21 SHALL BE APPOINTED BY THE MAYOR: THREE WHO SHALL BE NON-DEPARTMENTAL
22 APPOINTMENTS, WHO SHALL BE REPRESENTATIVE OF VARIOUS GROUPS WHO HAVE
23 BEEN TRADITIONALLY VICTIMIZED OR MAY BE VICTIMIZED BASED ON THEIR ACTUAL

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

1 OR PERCEIVED AFFILIATION WITH OR ORIENTATION TO A PARTICULAR GROUP OR
2 CLASSIFICATION ENUMERATED IN, BUT NOT LIMITED TO THOSE GROUPS AND CLAS-
3 SIFICATIONS SPECIFIED IN PARAGRAPH THREE OF SUBDIVISION (A) OF THIS
4 SECTION. THE REMAINING FIVE APPOINTMENTS SHALL BE DEPARTMENTAL APPOINT-
5 MENTS: ONE WHO SHALL BE AN ATTORNEY ON THE STAFF OF A LEGAL AID SOCIETY
6 UPON THE NOMINATION OF THE LEGAL AID SOCIETY; ONE POLICE REPRESENTATIVE
7 UPON THE NOMINATION OF THE COMMISSIONER OF POLICE; ONE WHO SHALL BE AN
8 ATTORNEY ON THE STAFF OF A DISTRICT ATTORNEY'S OFFICE UPON THE JOINT
9 NOMINATION OF THE FIVE DISTRICT ATTORNEYS WITHIN NEW YORK CITY; ONE
10 SHALL BE THE CHAIRPERSON OF THE HUMAN RIGHTS COMMISSION OF THE CITY OF
11 NEW YORK OR HIS DESIGNEE AND ONE SHALL BE THE NEW YORK CITY CRIMINAL
12 JUSTICE COORDINATOR OR HIS DESIGNEE. OF THE FIVE DEPARTMENTAL APPOINT-
13 MENTS, TWO SHALL BE REPRESENTATIVE OF VARIOUS GROUPS WHO HAVE BEEN
14 TRADITIONALLY VICTIMIZED OR MAY BE VICTIMIZED BASED ON THEIR ACTUAL OR
15 PERCEIVED AFFILIATION WITH OR ORIENTATION TO A PARTICULAR GROUP OR CLAS-
16 SIFICATION ENUMERATED IN, BUT NOT LIMITED TO, THOSE GROUPS AND CLASSI-
17 FICATIONS SPECIFIED IN PARAGRAPH THREE OF SUBDIVISION (A) OF THIS
18 SECTION. THE FOLLOWING SHALL ALSO BE MEMBERS OF THE PANEL: THE CHAIR-
19 PERSON OF THE CRIME VICTIMS BOARD OR HIS DESIGNEE; THE COMMISSIONER OF
20 THE DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS DESIGNEE AND THE NEW
21 YORK STATE COMMISSIONER OF HUMAN RIGHTS OR HIS DESIGNEE. THE TWO REMAIN-
22 ING MEMBERS OF THE PANEL SHALL BE NON-DEPARTMENTAL MEMBERS AND SHALL BE
23 APPOINTED BY A MAJORITY VOTE OF THE FIVE NEW YORK STATE AND NEW YORK
24 CITY MEMBERS OF THE PANEL AS FOLLOWS: THE CHAIRPERSON OF THE NEW YORK
25 STATE CRIME VICTIMS BOARD OR HIS DESIGNEE, THE COMMISSIONER OF THE NEW
26 YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS DESIGNEE, THE
27 NEW YORK STATE COMMISSIONER OF THE DIVISION OF HUMAN RIGHTS OR HIS
28 DESIGNEE, THE CHAIRPERSON OF THE HUMAN RIGHTS COMMISSION OF THE CITY OF
29 NEW YORK OR HIS DESIGNEE AND THE NEW YORK CITY CRIMINAL JUSTICE COORDI-
30 NATOR OR HIS DESIGNEE. AT LEAST ONE OF THESE TWO MEMBERS SHALL BE AN
31 ACADEMICIAN WHOSE KNOWLEDGE, EXPERIENCE AND ACADEMIC DEGREE AND/OR
32 DEGREES FOCUS ON THE STUDY OF SOCIAL SCIENCES INCLUDING, BUT NOT LIMITED
33 TO, CRIMINAL JUSTICE, SOCIAL WORK, PSYCHOLOGY AND/OR POLITICAL SCIENCE.
34 IN ADDITION, ONE INVESTIGATOR AND SUPPORT STAFF FROM THE CRIME VICTIMS
35 BOARD SHALL REGULARLY ASSIST THE PANEL IN PERFORMING ITS FIELD WORK AND
36 GENERAL ADMINISTRATIVE TASKS. ALL MAILINGS, NOTICES AND SCHEDULING OF
37 MEETINGS SHALL BE THE RESPONSIBILITY OF THE BIAS-RELATED CRIME INVESTI-
38 GATOR, ASSISTED BY SUPPORT STAFF, AT THE DIRECTION OF THE CHAIRPERSON OF
39 THE BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. ALL DUTIES ASSIGNED
40 TO THE INVESTIGATOR BY THE PANEL SHALL TAKE PRECEDENCE OVER ANY TASKS OR
41 DUTIES ASSIGNED BY THE CRIME VICTIMS BOARD. EVERY DEPARTMENT, BOARD,
42 BUREAU, COMMISSION (INCLUDING ANY PUBLIC BENEFIT CORPORATION) OR POLI-
43 TICAL SUBDIVISION OF THE CITY AND/OR STATE SHALL PROVIDE TO THE PANEL
44 EVERY ASSISTANCE AND COOPERATION, INCLUDING USE OF CITY AND/OR STATE
45 FACILITIES, WHICH MAY BE NECESSARY OR DESIRABLE FOR THE ACCOMPLISHMENT
46 OF THE DUTIES OR PURPOSES OF THIS PANEL.

47 2. WITH THE EXCEPTION OF THE FIRST TERM, THE TERM OF OFFICE FOR EACH
48 PANEL MEMBER SHALL BE THREE YEARS. AT THE TIME INITIAL APPOINTMENTS ARE
49 MADE, TWO APPOINTMENTS SHALL BE FOR A TERM OF ONE YEAR, THREE APPOINT-
50 MENTS SHALL BE FOR A TERM OF TWO YEARS AND THREE APPOINTMENTS SHALL BE
51 FOR A TERM OF THREE YEARS. VACANCIES SHALL BE FILLED FOR THE REMAINDER
52 OF THE TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT. THE PANEL
53 SHALL BE CHAIRED BY ONE MEMBER ELECTED BY THE OTHER MEMBERS. A NEW
54 ELECTION SHALL BE HELD AT THE EXPIRATION OF THE TERM OF THE MEMBER WHO
55 IS CHAIRPERSON, REGARDLESS OF WHETHER THAT MEMBER IS APPOINTED TO SERVE
56 ANOTHER TERM. THE MEMBERS SHALL RECEIVE NO COMPENSATION FOR THEIR

1 SERVICES BUT SHALL BE ENTITLED TO THEIR ACTUAL EXPENSES INCURRED IN THE
2 PERFORMANCE OF THEIR OFFICIAL DUTIES.

3 3. THE PANEL SHALL MEET AT THE REQUEST OF THE CHAIRPERSON, OR AT THE
4 REQUEST OF THE MAJORITY OF THE MEMBERS, BUT IN ANY EVENT, NOT LESS THAN
5 FOUR TIMES IN EACH FULL CALENDAR YEAR.

6 (C) POWERS AND DUTIES OF PANEL. 1. (I) THE PANEL SHALL IMPLEMENT AND
7 UTILIZE GUIDELINES FOR IDENTIFYING BIAS INCIDENTS. IN DEVELOPING THESE
8 GUIDELINES, THE PANEL MAY USE, BUT NOT BE LIMITED TO, THE NEW YORK CITY
9 POLICE DEPARTMENT'S GUIDELINES; (II) THE PANEL SHALL, UPON REQUEST OF A
10 VICTIM, THE FAMILY OF A VICTIM OR THE REPRESENTATIVE OF A VICTIM, REVIEW
11 CLASSIFICATION OF A CASE OR CASES DETERMINED TO BE NON-BIAS BY THE NEW
12 YORK CITY POLICE DEPARTMENT IN THOSE INSTANCES WHERE THE CRIME WAS
13 ORIGINALLY REPORTED AS BIAS; (III) THE PANEL SHALL RETURN TO THE NEW
14 YORK CITY POLICE DEPARTMENT FOR RECONSIDERATION ANY INCIDENT WHICH THE
15 PANEL RECLASSIFIES AS BIAS; (IV) THE PANEL SHALL SUBMIT TO THE POLICE
16 DEPARTMENT FOR ITS CONSIDERATION ANY ADDITIONAL INFORMATION THE PANEL
17 HAS GATHERED DURING THE COURSE OF ITS INVESTIGATION; AND (V) AFTER
18 INITIAL EVALUATION THE PANEL MAY DECLINE TO REVIEW ANY INCIDENT.

19 2. THE PANEL MAY REVIEW ANY CLASSIFICATION OF A CASE OR CASES DETER-
20 MINED TO BE NON-BIAS BY THE NEW YORK CITY POLICE DEPARTMENT AND RETURN
21 ANY INCIDENT TO THE POLICE DEPARTMENT FOR RECONSIDERATION PURSUANT TO
22 THE PROCEDURE DESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION. ALL DETER-
23 MINATIONS OF THE PANEL SHALL BE FINAL AND NOT SUBJECT TO APPEAL.

24 3. THE PANEL MAY TAKE TESTIMONY, REVIEW DOCUMENTS AND OTHERWISE
25 CONSIDER ALL ELEMENTS WHICH IT DEEMS NECESSARY TO DETERMINE WHETHER AN
26 INCIDENT WAS PROPERLY CLASSIFIED AS NON-BIAS RELATED. UPON WRITTEN
27 REQUEST OF THE PANEL, THE NEW YORK CITY POLICE DEPARTMENT SHALL BE
28 REQUIRED TO SUBMIT, PROVIDE OR RELINQUISH ANY INFORMATION, MATERIALS,
29 DOCUMENTS OR, EVIDENCE THAT THE PANEL DEEMS NECESSARY FOR REVIEW IN
30 FURTHERANCE OF ITS INVESTIGATION. IN ADDITION, ANY INDIVIDUAL WHO MAY
31 HAVE KNOWLEDGE OF, OR INFORMATION REGARDING, ANY INCIDENT DEEMED PERTI-
32 NENT TO THE PANEL'S INVESTIGATION SHALL BE REQUIRED TO TESTIFY BEFORE
33 THE PANEL. A PROSECUTOR AND/OR THE NEW YORK CITY POLICE DEPARTMENT MAY
34 DELAY SUBMISSION, THROUGH WRITTEN NOTIFICATION TO THE CHAIRPERSON OF THE
35 PANEL, OF INFORMATION REQUESTED BY THE PANEL UNTIL COMPLETION OF THE
36 PROSECUTORIAL OR POLICE DEPARTMENT'S INVESTIGATION BUT UPON IMMEDIATE
37 COMPLETION OF SUCH INVESTIGATION, THE PANEL SHALL BE GRANTED ACCESS TO
38 ANY REQUESTED INFORMATION.

39 4. THE PANEL SHALL NOTIFY THE VICTIM, THE FAMILY OF A VICTIM OR THE
40 REPRESENTATIVE OF A VICTIM IN WRITING NO LESS THAN SEVEN DAYS PRIOR TO
41 THE DATE A HEARING IS TO BE HELD, OR, IF NO HEARING IS TO BE HELD, SEVEN
42 DAYS PRIOR TO THE DATE A DETERMINATION IS TO BE MADE (I) OF THE DATE,
43 TIME AND PLACE OF THE HEARING OR DETERMINATION AND (II) THAT THE VICTIM
44 HAS THE RIGHT TO SUBMIT INFORMATION RELATING TO THE INCIDENT FOR CONSID-
45 ERATION BY THE PANEL. IF THE VICTIM IS DECEASED OR OTHERWISE UNABLE TO
46 EXERCISE THIS RIGHT, THE FAMILY OR REPRESENTATIVE OF THE VICTIM MAY
47 SUBMIT INFORMATION RELATING TO THE INCIDENT FOR CONSIDERATION BY THE
48 PANEL.

49 5. THE PANEL SHALL NOTIFY THE VICTIM, THE FAMILY OF A VICTIM OR THE
50 REPRESENTATIVE OF A VICTIM OF ITS DETERMINATION IN WRITING. THIS
51 NOTIFICATION SHALL INCLUDE INFORMATION AS TO WHETHER THE DETERMINATION
52 OF NON-BIAS BY THE POLICE DEPARTMENT WAS CONFIRMED OR IF THE INCIDENT
53 WAS SENT BACK TO THE POLICE FOR RECONSIDERATION.

54 6. THE PANEL SHALL ESTABLISH RULES OF PROCEDURE WHICH MAY PROVIDE FOR
55 THE ESTABLISHMENT OF SUBPANELS OF AT LEAST THREE MEMBERS, INCLUDING AT
56 LEAST ONE NON-DEPARTMENTAL MEMBER, WHICH MAY ACT ON BEHALF OF THE PANEL.

1 7. THE PANEL MAY ASSIST VICTIMS IN REPORTING BIAS-RELATED CRIME TO THE
2 POLICE.

3 8. THE PANEL MAY EXAMINE AND REVIEW POLICE DEPARTMENT BIAS-RELATED
4 CRIME CLASSIFICATION POLICIES AND PROCEDURES AND MAKE RECOMMENDATIONS AS
5 TO THOSE POLICIES AND PROCEDURES TO THE POLICE DEPARTMENT.

6 9. THE PANEL SHALL MAKE AN ONGOING DETERMINATION OF WHICH GROUPS OTHER
7 THAN THOSE ENUMERATED IN PARAGRAPH THREE OF SUBDIVISION (A) OF THIS
8 SECTION AND NOT TRADITIONALLY AFFORDED PROTECTED CLASS STATUS, SHOULD BE
9 AFFORDED THE PROTECTION PURSUANT TO THIS SECTION. THESE DETERMINATIONS
10 SHALL BE REPORTED TO THE NEW YORK CITY POLICE DEPARTMENT AND THE STATE
11 LEGISLATURE.

12 10. THE PANEL, ASSISTED BY THE CRISIS PREVENTION UNIT WITHIN THE DIVI-
13 SION OF HUMAN RIGHTS, SHALL PERFORM COMMUNITY OUTREACH TO FAMILIARIZE
14 THE COMMUNITY WITH THE NATURE OF BIAS-RELATED CRIME, THE FUNCTIONS OF
15 THE PANEL AND HOW THE PANEL CAN BE ACCESSED.

16 (D) PROCEDURES. 1. IN UNDERTAKING AN INVESTIGATION PURSUANT TO THIS
17 SECTION, THE PANEL SHALL NOT INTERFERE, OBSTRUCT OR OTHERWISE HINDER ANY
18 INVESTIGATIONS UNDERTAKEN BY THE DISTRICT ATTORNEY.

19 2. UPON WRITTEN REQUEST OF A PROSECUTOR, THE PANEL SHALL STAY ITS
20 INVESTIGATION UNTIL THE PROSECUTORIAL INVESTIGATION HAS BEEN COMPLETED.
21 THE BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL SHALL BE NOTIFIED, IN
22 WRITING, UPON COMPLETION OF THE PROSECUTORIAL INVESTIGATION AND MAY THEN
23 COMMENCE ITS OWN INVESTIGATION.

24 (E) REPORTS. THE PANEL SHALL ANNUALLY TRANSMIT A REPORT ON ITS ACTIV-
25 ITIES TO THE STATE LEGISLATURE, THE MAYOR OF THE CITY OF NEW YORK AND
26 THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH REPORTS SHALL INCLUDE,
27 BUT NOT BE LIMITED TO: INFORMATION BY PRECINCT, SHOWING THE TOTAL NUMBER
28 OF BIAS-RELATED INCIDENTS, (DETERMINED TO BE NON-BIAS BY THE NEW YORK
29 CITY POLICE DEPARTMENT) REVIEWED BY THE PANEL, THE NUMBER OF INCIDENTS
30 RETURNED BY THE PANEL TO THE NEW YORK CITY POLICE DEPARTMENT FOR RECON-
31 sideration AND THE NUMBER OF INCIDENTS RECLASSIFIED AS BIAS BY THE
32 POLICE DEPARTMENT AS A RESULT OF RECONSIDERATION.

33 S 439-A. REPORT OF CRIME STATISTICS. WHERE THE ULTIMATE FINDINGS OF
34 THE BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL AND THE POLICE
35 DEPARTMENT DIFFER AS TO WHETHER A CRIME IS BIAS-RELATED, A NOTATION OF
36 THIS DIFFERENCE SHALL ACCOMPANY ALL BIAS-RELATED CRIME STATISTICS
37 REPORTED BY THE POLICE DEPARTMENT. THE DIVISION OF CRIMINAL JUSTICE
38 SERVICES SHALL ALSO NOTE AND PUBLISH ANY SUCH DISCREPANCY THAT EXISTS
39 BETWEEN WHAT WAS REPORTED BY THE POLICE CLASSIFICATION UNIT AND THE
40 BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL.

41 S 2. Subdivision 2 of section 837-a of the executive law, as amended
42 by chapter 459 of the laws of 1975, is amended to read as follows:

43 2. Present to the governor, temporary president of the senate, minori-
44 ty leader of the senate, speaker of the assembly and the minority leader
45 of the assembly a quarterly report containing the statistics and other
46 information required by subdivision one [hereof. The initial report
47 required by this paragraph shall be for the period beginning September
48 first, nineteen hundred seventy-three and ending December thirty-first,
49 nineteen hundred seventy-three and shall be presented no later than
50 January fifteen, nineteen hundred seventy-four. Thereafter, each quar-
51 terly report shall be presented no later than thirty days after the
52 close of each quarter] OF THIS SECTION AND SHALL ALSO REPORT ALL STATIS-
53 TICS RECEIVED PURSUANT TO SECTION FOUR HUNDRED THIRTY-NINE-A OF THE NEW
54 YORK CITY CHARTER.

55 S 3. This act shall take effect on the first of May next succeeding
56 the date on which it shall have become a law.