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

831

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. KRUGER -- 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 criminal procedure law, in relation to bias related crime

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

Section 1. The penal law is amended by adding a new article 491 to read as follows:

ARTICLE 491

BIAS RELATED CRIMES

SECTION 491.00 BIAS RELATED CRIME.

S 491.00 BIAS RELATED CRIME.

1. AS USED IN THIS SECTION, THE TERM "DESIGNATED OFFENSE" SHALL MEAN: ASSAULT IN THE THIRD DEGREE PURSUANT TO SECTION 120.00; ASSAULT IN THE SECOND DEGREE PURSUANT TO SECTION 120.05; ASSAULT IN THE FIRST DEGREE PURSUANT TO SECTION 120.10; MANSLAUGHTER IN THE SECOND DEGREE PURSUANT TO SECTION 125.15; MANSLAUGHTER IN THE FIRST DEGREE PURSUANT TO SECTION 125.20; MURDER IN THE SECOND DEGREE PURSUANT TO SECTION 125.25; RAPE IN THE THIRD DEGREE PURSUANT TO SECTION 130.25; RAPE IN THE SECOND DEGREE PURSUANT TO SECTION 130.30; RAPE IN THE FIRST DEGREE PURSUANT TO SECTION 130.35; ARSON IN THE THIRD DEGREE PURSUANT TO SECTION 150.10; ARSON IN THE SECOND DEGREE PURSUANT TO SECTION 150.15; ARSON IN THE FIRST DEGREE PURSUANT TO SECTION 150.20; ROBBERY IN THE THIRD DEGREE PURSUANT TO SECTION 160.05; ROBBERY IN THE SECOND DEGREE PURSUANT TO SECTION 160.10; ROBBERY IN THE FIRST DEGREE PURSUANT TO SECTION 160.15; BURGLARY IN THE THIRD DEGREE PURSUANT TO SECTION 140.20; BURGLARY IN THE SECOND DEGREE PURSUANT TO SECTION 140.25; BURGLARY IN THE FIRST DEGREE PURSUANT TO SECTION 140.30; CRIMINAL TRESPASS IN THE THIRD DEGREE PURSUANT TO SECTION 140.10; CRIMINAL TRESPASS IN THE SECOND DEGREE PURSUANT TO SECTION 140.15; CRIMINAL TRESPASS IN THE FIRST DEGREE PURSUANT TO SECTION 140.17; CRIMINAL MISCHIEF IN THE THIRD DEGREE PURSUANT TO

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

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SECTION 145.05; CRIMINAL MISCHIEF IN THE FOURTH DEGREE PURSUANT TO SECTION 145.00; CRIMINAL MISCHIEF IN THE SECOND DEGREE PURSUANT TO SECTION 145.10; CRIMINAL MISCHIEF IN THE FIRST DEGREE PURSUANT TO SECTION 145.12; UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE PURSUANT TO SECTION 135.05; UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE PURSUANT TO SECTION 135.10; KIDNAPPING IN THE SECOND DEGREE PURSUANT TO SECTION 135.20; KIDNAPPING IN THE FIRST DEGREE PURSUANT TO SECTION 135.25; RIOT IN THE SECOND DEGREE PURSUANT TO SECTION 240.05; RIOT IN THE FIRST DEGREE PURSUANT TO SECTION 240.06; AND INCITING TO RIOT PURSUANT TO SECTION 240.08 OF THIS CHAPTER.

2. A PERSON IS GUILTY OF BIAS RELATED CRIME WHEN HE OR SHE HAS COMMITTED A DESIGNATED OFFENSE THAT DEMONSTRATES A PREJUDICE BASED ON THE ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, NATIONAL ORIGIN, AGE, ETHNICITY, DISABILITY, GENDER OR SEXUAL ORIENTATION OF THE VICTIM OF SUCH DESIGNATED OFFENSE.

BIAS RELATED CRIME IS A CLASSIFICATION OF FELONY OR MISDEMEANOR ONE DEGREE HIGHER THAN THE UNDERLYING OFFENSE.

S 2. Subdivision 2 of section 720.10 of the criminal procedure law, as amended by chapter 416 of the laws of 1986, paragraph (a) as amended by chapter 316 of the laws of 2006, is amended to read as follows:

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or (IV) A BIAS RELATED CRIME AS DEFINED IN SUBDIVISION TWO OF SECTION 491.00 OF THE PENAL LAW, OR

(b) such youth has previously been convicted and sentenced for a felony, or

(c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.

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