

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

6648--B

2011-2012 Regular Sessions

I N A S S E M B L Y

March 24, 2011

Introduced by M. of A. BENEDETTO, MARKEY, P. RIVERA, ROBERTS, M. MILLER, GALEF, REILLY, STEVENSON, MOYA -- Multi-Sponsored by -- M. of A. ABBATE, GUNTHER, HOOPER, SIMOTAS -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to bias-related graffiti, the disposition of graffiti offenses, graffiti for the purpose of promoting gang related activities and graffiti upon religious property

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

1 Section 1. The penal law is amended by adding a new section 60.31 to
2 read as follows:
3 S 60.31 AUTHORIZED DISPOSITION; AGGRAVATED HARASSMENT IN THE FIRST
4 DEGREE.
5 WHEN A PERSON IS CONVICTED OF AGGRAVATED HARASSMENT IN THE FIRST
6 DEGREE AS DEFINED IN SECTION 240.31 OF THIS CHAPTER, OR OF AN ATTEMPT TO
7 COMMIT SUCH AN OFFENSE, OR OF A LESSER INCLUDED OFFENSE, IN ADDITION TO
8 ANY OTHER SENTENCE IMPOSED OR AS A CONDITION OF PROBATION OR CONDITIONAL
9 DISCHARGE THE COURT MAY ORDER SUCH PERSON TO PARTICIPATE IN, AT HIS OR
10 HER OWN EXPENSE, A DIVERSITY TRAINING PROGRAM THAT IS DESIGNED TO OVER-
11 COME DISCRIMINATION, PREJUDICE AND INTOLERANCE, AND THAT PROMOTES COMMU-
12 NICATION, UNDERSTANDING AND RESPECT AMONG DIVERSE RACIAL, RELIGIOUS AND
13 ETHNIC GROUPS.
14 S 2. Paragraph (h) of subdivision 2 of section 65.10 of the penal law,
15 as amended by chapter 508 of the laws of 2001, is amended to read as
16 follows:

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

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1 (h) Perform services for a public or not-for-profit corporation, asso-
2 ciation, institution or agency, including but not limited to services
3 for the [division] OFFICE of ALCOHOLISM AND substance abuse services,
4 [services in an appropriate community program for removal of graffiti
5 from public or private property, including any property damaged in the
6 underlying offense,] or services for the maintenance and repair of real
7 or personal property maintained as a cemetery plot, grave, burial place
8 or other place of interment of human remains. Provided however, that the
9 performance of any such services shall not result in the displacement of
10 employed workers or in the impairment of existing contracts for
11 services, nor shall the performance of any such services be required or
12 permitted in any establishment involved in any labor strike or lockout.
13 The court may establish provisions for the early termination of a
14 sentence of probation or conditional discharge pursuant to the
15 provisions of subdivision three of section 410.90 of the criminal proce-
16 dure law after such services have been completed. Such sentence may only
17 be imposed upon conviction of a misdemeanor, violation, or class D or
18 class E felony, or a youthful offender finding replacing any such
19 conviction, where the defendant has consented to the amount and condi-
20 tions of such service;

21 S 3. Section 65.10 of the penal law is amended by adding a new subdi-
22 vision 6 to read as follows:

23 6. GRAFFITI REMOVAL. WHEN IMPOSING A SENTENCE OF PROBATION OR OF
24 CONDITIONAL DISCHARGE IN CONNECTION WITH A VIOLATION OF SECTION 145.60,
25 145.62 OR 145.65 OF THIS CHAPTER, THE COURT SHALL AS A CONDITION OF THE
26 SENTENCE, REQUIRE THAT THE DEFENDANT REMOVE GRAFFITI FROM PUBLIC OR
27 PRIVATE PROPERTY, INCLUDING ANY PROPERTY DAMAGED IN THE UNDERLYING
28 OFFENSE, UNLESS THE COURT SHALL DETERMINE THAT AN APPROPRIATE PROGRAM TO
29 SUPERVISE SUCH REMOVAL IS NOT AVAILABLE OR THAT SUCH GRAFFITI REMOVAL
30 WOULD BE UNREASONABLY DANGEROUS; PROVIDED, HOWEVER, THAT GRAFFITI
31 REMOVAL FROM PRIVATE PROPERTY PURSUANT TO THIS SUBDIVISION SHALL BE
32 SUBJECT TO CONSENT OF THE OWNER OF SUCH PROPERTY.

33 S 4. Section 145.60 of the penal law, as added by chapter 458 of the
34 laws of 1992, is amended to read as follows:

35 S 145.60 Making graffiti IN THE SECOND DEGREE.

36 1. For purposes of this section AND SECTION 145.62 OF THIS ARTICLE,
37 the term "graffiti" shall mean the etching, painting, covering, drawing
38 upon or otherwise placing of a mark upon public or private property with
39 intent to damage such property.

40 2. [No person shall make] A PERSON IS GUILTY OF MAKING GRAFFITI IN THE
41 SECOND DEGREE WHEN HE OR SHE MAKES graffiti of any type on any building,
42 public or private, or any other property real or personal owned by any
43 person, firm or corporation or any public agency or instrumentality,
44 without the express permission of the owner or operator of said proper-
45 ty.

46 Making graffiti IN THE SECOND DEGREE is a class A misdemeanor.

47 S 5. The penal law is amended by adding a new section 145.62 to read
48 as follows:

49 S 145.62 MAKING GRAFFITI IN THE FIRST DEGREE.

50 A PERSON IS GUILTY OF MAKING GRAFFITI IN THE FIRST DEGREE WHEN SUCH
51 PERSON DAMAGES THE PROPERTY OF ANOTHER PERSON IN THE MANNER DESCRIBED IN
52 SECTION 145.60 OF THIS ARTICLE, BY MEANS OF MAKING GRAFFITI OF ANY TYPE:

53 1. IN A MANNER TO PROMOTE OR ENCOURAGE GANG RELATED ACTIVITIES; OR

54 2. HAVING KNOWLEDGE THAT SUCH PROPERTY IS USED AS A PLACE OF RELIGIOUS
55 WORSHIP, HE OR SHE DAMAGES A BUILDING, STRUCTURE OR THE CURTILAGE OF
56 SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A

1 RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS
2 LAW; OR
3 3. HAVING KNOWLEDGE THAT SUCH PROPERTY COMPRISES A DISPLAY OF RELI-
4 GIOUS SYMBOLS WHICH ARE FOR A REPRESENTATIVE EXPRESSION OF FAITH, HE OR
5 SHE DAMAGES A SCROLL, RELIGIOUS VESTMENT, VESSEL, ITEM COMPRISING A
6 DISPLAY OF RELIGIOUS SYMBOLS WHICH ARE A REPRESENTATIVE EXPRESSION OF
7 FAITH OR A MISCELLANEOUS ITEM OF PROPERTY KEPT OR USED IN OR UPON A
8 BUILDING, STRUCTURE OR CURTILAGE THEREOF DESCRIBED IN SUBDIVISION TWO OF
9 THIS SECTION.
10 MAKING GRAFFITI IN THE FIRST DEGREE IS A CLASS E FELONY.
11 S 6. Section 240.31 of the penal law is amended by adding a new subdi-
12 vision 1-a to read as follows:
13 1-A. ETCHES, PAINTS, COVERS, DRAWS UPON OR OTHERWISE PLACES A MARK
14 UPON ANY BUILDING OR ANY OTHER REAL PROPERTY, PUBLIC OR PRIVATE, WITHOUT
15 THE EXPRESS PERMISSION OF THE OWNER OR OPERATOR OF SUCH BUILDING OR REAL
16 PROPERTY; OR
17 S 7. This act shall take effect on the first of November next succeed-
18 ing the date on which it shall have become a law.