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

2236

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

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:

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

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

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

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

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

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

5. "NON-DEPARTMENTAL APPOINTMENTS" SHALL MEAN ANY INDIVIDUAL OR REPRESENTATIVE INDEPENDENT OF A LEGAL, POLITICAL OR GOVERNMENTAL ENTITY, OR SUBDIVISION THEREOF.

(B) BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. 1. THERE IS HEREBY CREATED A BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. SUCH PANEL SHALL CONSIST OF THIRTEEN VOTING MEMBERS. THE FOLLOWING EIGHT MEMBERS SHALL BE APPOINTED BY THE MAYOR: THREE WHO SHALL BE NON-DEPARTMENTAL APPOINTMENTS, WHO SHALL BE REPRESENTATIVE OF VARIOUS GROUPS WHO HAVE BEEN TRADITIONALLY VICTIMIZED OR MAY BE VICTIMIZED BASED ON THEIR ACTUAL OR PERCEIVED AFFILIATION WITH OR ORIENTATION TO A PARTICULAR GROUP OR

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

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CLASSIFICATION ENUMERATED IN, BUT NOT LIMITED TO THOSE GROUPS AND CLASSIFICATIONS SPECIFIED IN PARAGRAPH THREE OF SUBDIVISION (A) OF THIS SECTION. THE REMAINING FIVE APPOINTMENTS SHALL BE DEPARTMENTAL APPOINTMENTS: ONE WHO SHALL BE AN ATTORNEY ON THE STAFF OF A LEGAL AID SOCIETY UPON THE NOMINATION OF THE LEGAL AID SOCIETY; ONE POLICE REPRESENTATIVE UPON THE NOMINATION OF THE COMMISSIONER OF POLICE; ONE WHO SHALL BE AN ATTORNEY ON THE STAFF OF A DISTRICT ATTORNEY'S OFFICE UPON THE JOINT NOMINATION OF THE FIVE DISTRICT ATTORNEYS WITHIN NEW YORK CITY; ONE SHALL BE THE CHAIRPERSON OF THE HUMAN RIGHTS COMMISSION OF THE CITY OF NEW YORK OR HIS DESIGNEE AND ONE SHALL BE THE NEW YORK CITY CRIMINAL JUSTICE COORDINATOR OR HIS DESIGNEE. OF THE FIVE DEPARTMENTAL APPOINTMENTS, TWO SHALL BE REPRESENTATIVE OF VARIOUS GROUPS WHO HAVE BEEN TRADITIONALLY VICTIMIZED OR MAY BE VICTIMIZED BASED ON THEIR ACTUAL OR PERCEIVED AFFILIATION WITH OR ORIENTATION TO A PARTICULAR GROUP OR CLASSIFICATION ENUMERATED IN, BUT NOT LIMITED TO, THOSE GROUPS AND CLASSIFICATIONS SPECIFIED IN PARAGRAPH THREE OF SUBDIVISION (A) OF THIS SECTION. THE FOLLOWING SHALL ALSO BE MEMBERS OF THE PANEL: THE CHAIRPERSON OF THE CRIME VICTIMS BOARD OR HIS DESIGNEE; THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS DESIGNEE AND THE NEW YORK STATE COMMISSIONER OF HUMAN RIGHTS OR HIS DESIGNEE. THE TWO REMAINING MEMBERS OF THE PANEL SHALL BE NON-DEPARTMENTAL MEMBERS AND SHALL BE APPOINTED BY A MAJORITY VOTE OF THE FIVE NEW YORK STATE AND NEW YORK CITY MEMBERS OF THE PANEL AS FOLLOWS: THE CHAIRPERSON OF THE NEW YORK STATE CRIME VICTIMS BOARD OR HIS DESIGNEE, THE COMMISSIONER OF THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES OR HIS DESIGNEE, THE NEW YORK STATE COMMISSIONER OF THE DIVISION OF HUMAN RIGHTS OR HIS DESIGNEE, THE CHAIRPERSON OF THE HUMAN RIGHTS COMMISSION OF THE CITY OF NEW YORK OR HIS DESIGNEE AND THE NEW YORK CITY CRIMINAL JUSTICE COORDINATOR OR HIS DESIGNEE. AT LEAST ONE OF THESE TWO MEMBERS SHALL BE AN ACADEMICIAN WHOSE KNOWLEDGE, EXPERIENCE AND ACADEMIC DEGREE AND/OR DEGREES FOCUS ON THE STUDY OF SOCIAL SCIENCES INCLUDING, BUT NOT LIMITED TO, CRIMINAL JUSTICE, SOCIAL WORK, PSYCHOLOGY AND/OR POLITICAL SCIENCE. IN ADDITION, ONE INVESTIGATOR AND SUPPORT STAFF FROM THE CRIME VICTIMS BOARD SHALL REGULARLY ASSIST THE PANEL IN PERFORMING ITS FIELD WORK AND GENERAL ADMINISTRATIVE TASKS. ALL MAILINGS, NOTICES AND SCHEDULING OF MEETINGS SHALL BE THE RESPONSIBILITY OF THE BIAS-RELATED CRIME INVESTIGATOR, ASSISTED BY SUPPORT STAFF, AT THE DIRECTION OF THE CHAIRPERSON OF THE BIAS-RELATED CRIME CLASSIFICATION REVIEW PANEL. ALL DUTIES ASSIGNED TO THE INVESTIGATOR BY THE PANEL SHALL TAKE PRECEDENCE OVER ANY TASKS OR DUTIES ASSIGNED BY THE CRIME VICTIMS BOARD. EVERY DEPARTMENT, BOARD, BUREAU, COMMISSION (INCLUDING ANY PUBLIC BENEFIT CORPORATION) OR POLITICAL SUBDIVISION OF THE CITY AND/OR STATE SHALL PROVIDE TO THE PANEL EVERY ASSISTANCE AND COOPERATION, INCLUDING USE OF CITY AND/OR STATE FACILITIES, WHICH MAY BE NECESSARY OR DESIRABLE FOR THE ACCOMPLISHMENT OF THE DUTIES OR PURPOSES OF THIS PANEL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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