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

881

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KELLNER, GLICK, HOYT, PEOPLES-STOKES, O'DONNELL -- Multi-Sponsored by -- M. of A. BOYLE -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to instructions to the jury relating to certain defenses

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

Section 1. The legislature hereby finds and declares all of the following:

(a) New York law defines a hate crime as a specified criminal offense intentionally committed because of the actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

(b) It is the right of every person regardless of actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability, gender identity or sexual orientation to be secure and protected from fear, intimidation, and physical harm caused by the actions of violent groups and individuals.

(c) "Bias" includes bias based upon the victim's actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability, gender identity or sexual orientation.

(d) It is against public policy as expressed in rules of court on judicial conduct for members of the judiciary or lawyers in judicial proceedings to manifest bias based upon characteristics of parties, including the actual or perceived age, race, creed, color, sex, sexual orientation or disability of a crime victim.

(e) "Panic strategies" are those strategies that try to explain a defendant's actions or emotional reactions based upon the knowledge or discovery of the fact that the victim possesses one or more of the char-

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

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acteristics listed above or associates with a person or group with one or more of those characteristics.

(f) The legislature is concerned about the use of societal bias in criminal proceedings and the susceptibility of juries to such bias. The use of so-called "panic strategies" by defendants in criminal trials opens the door for bias against victims based on one or more of the characteristics listed above or an association with a person or group with one or more of those characteristics.

(g) It is against public policy for a defendant to be acquitted of a charged offense or convicted of a lesser included offense based upon an appeal to the societal bias that may be possessed by members of a jury.

S 2. Subdivision 3 of section 300.10 of the criminal procedure law, as amended by chapter 668 of the laws of 1984, is amended to read as follows:

3. (A) Where a defendant has raised the affirmative defense of lack of criminal responsibility by reason of mental disease or defect, as defined in section 40.15 of the penal law, the court must, without elaboration, instruct the jury as follows: "A jury during its deliberations must never consider or speculate concerning matters relating to the consequences of its verdict. However, because of the lack of common knowledge regarding the consequences of a verdict of not responsible by reason of mental disease or defect, I charge you that if this verdict is rendered by you there will be hearings as to the defendant's present mental condition and, where appropriate, involuntary commitment proceedings."

(B) IN ANY CRIMINAL TRIAL OR PROCEEDING, UPON THE REQUEST OF A PARTY, THE COURT SHALL INSTRUCT THE JURY AS FOLLOWS: "DO NOT LET BIAS, SYMPATHY, PREJUDICE, OR PUBLIC OPINION INFLUENCE YOUR DECISION. BIAS INCLUDES BIAS AGAINST THE VICTIM OR VICTIMS OR WITNESS OR WITNESSES, BASED UPON HIS OR HER RACE, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER, RELIGION, RELIGIOUS PRACTICE, AGE, DISABILITY, GENDER IDENTITY OR GENDER EXPRESSION, OR SEXUAL ORIENTATION."

S 3. This act shall take effect on the sixtieth day after it shall have become a law.