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5738

2011-2012 Regular Sessions

I N   S E N A T E

June 14, 2011
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Introduced by Sen. PARKER -- read twice and ordered printed, and when
  printed to be committed to the Committee on Rules

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 ASSEM-
  BLY, DO ENACT AS FOLLOWS:

 1   Section 1. The legislature hereby finds and declares all of the
 2 following:
 3   (a) New York law defines a hate crime as a specified criminal offense
 4 intentionally committed because of the actual or perceived race, color,
 5 national origin, ancestry, gender, religion, religious practice, age,
 6 disability or sexual orientation of a person, regardless of whether the
 7 belief or perception is correct.
 8   (b) It is the right of every person regardless of actual or perceived
 9 race, color, national origin, ancestry, gender, religion, religious
10 practice, age, disability, gender identity or sexual orientation to be
11 secure and protected from fear, intimidation, and physical harm caused
12 by the actions of violent groups and individuals.
13   (c) "Bias" includes bias based upon the victim's actual or perceived
14 race, color, national origin, ancestry, gender, religion, religious
15 practice, age, disability, gender identity or sexual orientation.
16   (d) It is against public policy as expressed in rules of court on
17 judicial conduct for members of the judiciary or lawyers in judicial
18 proceedings to manifest bias based upon characteristics of parties,
19 including the actual or perceived age, race, creed, color, sex, sexual
20 orientation or disability of a crime victim.
21   (e) "Panic strategies" are those strategies that try to explain a
22 defendant's actions or emotional reactions based upon the knowledge or
23 discovery of the fact that the victim possesses one or more of the char-
24 acteristics listed above or associates with a person or group with one
25 or more of those characteristics.

1   (f) The legislature is concerned about the use of societal bias in
2   criminal proceedings and the susceptibility of juries to such bias. The
3   use of so-called "panic strategies" by defendants in criminal trials
4   opens the door for bias against victims based on one or more of the
5   characteristics listed above or an association with a person or group
6   with one or more of those characteristics.
7   (g) It is against public policy for a defendant to be acquitted of a
8   charged offense or convicted of a lesser included offense based upon an
9   appeal to the societal bias that may be possessed by members of a jury.
10   S 2. Subdivision 3 of section 300.10 of the criminal procedure law, as
11 amended by chapter 668 of the laws of 1984, is amended to read as
12 follows:
13   3. (A) Where a defendant has raised the affirmative defense of lack of
14 criminal responsibility by reason of mental disease or defect, as
15 defined in section 40.15 of the penal law, the court must, without elab-
16 oration, instruct the jury as follows: "A jury during its deliberations
17 must never consider or speculate concerning matters relating to the
18 consequences of its verdict. However, because of the lack of common
19 knowledge regarding the consequences of a verdict of not responsible by
20 reason of mental disease or defect, I charge you that if this verdict is
21 rendered by you there will be hearings as to the defendant's present
22 mental condition and, where appropriate, involuntary commitment
23 proceedings."
24   (B) IN ANY CRIMINAL TRIAL OR PROCEEDING, UPON THE REQUEST OF A PARTY,
25 THE COURT SHALL INSTRUCT THE JURY AS FOLLOWS: "DO NOT LET BIAS, SYMPA-
26 THY, PREJUDICE, OR PUBLIC OPINION INFLUENCE YOUR DECISION. BIAS INCLUDES
27 BIAS AGAINST THE VICTIM OR VICTIMS OR WITNESS OR WITNESSES, BASED UPON
28 HIS OR HER RACE, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER, RELIGION,
29 RELIGIOUS PRACTICE, AGE, DISABILITY, GENDER   IDENTITY   OR   GENDER
30 EXPRESSION, OR SEXUAL ORIENTATION."
31   S 3. This act shall take effect on the sixtieth day after it shall
32 have become a law.