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

3740

2013-2014 Regular Sessions

I N A S S E M B L Y

January 29, 2013

Introduced by M. of A. BENEDETTO -- read once and referred to the Committee on Consumer Affairs and Protection

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:

Section 1. The penal law is amended by adding a new section 60.31 to read as follows:

S 60.31 AUTHORIZED DISPOSITION; AGGRAVATED HARASSMENT IN THE FIRST DEGREE.

WHEN A PERSON IS CONVICTED OF AGGRAVATED HARASSMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 240.31 OF THIS CHAPTER, OR OF AN ATTEMPT TO COMMIT SUCH AN OFFENSE, OR OF A LESSER INCLUDED OFFENSE, IN ADDITION TO ANY OTHER SENTENCE IMPOSED OR AS A CONDITION OF PROBATION OR CONDITIONAL DISCHARGE THE COURT MAY ORDER SUCH PERSON TO PARTICIPATE IN, AT HIS OR HER OWN EXPENSE, A DIVERSITY TRAINING PROGRAM THAT IS DESIGNED TO OVERCOME DISCRIMINATION, PREJUDICE AND INTOLERANCE, AND THAT PROMOTES COMMUNICATION, UNDERSTANDING AND RESPECT AMONG DIVERSE RACIAL, RELIGIOUS AND ETHNIC GROUPS.

S 2. Paragraph (h) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 508 of the laws of 2001, is amended to read as follows:

(h) Perform services for a public or not-for-profit corporation, association, institution or agency, including but not limited to services for the [division] OFFICE of ALCOHOLISM AND substance abuse services, [services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense,] or services for the maintenance and repair of real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains. Provided however, that the

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

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performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service;

S 3. Section 65.10 of the penal law is amended by adding a new subdivision 6 to read as follows:

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

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

S 145.60 Making graffiti IN THE SECOND DEGREE.

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

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

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

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

S 145.62 MAKING GRAFFITI IN THE FIRST DEGREE.

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

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

2. HAVING KNOWLEDGE THAT SUCH PROPERTY IS USED AS A PLACE OF RELIGIOUS WORSHIP, HE OR SHE DAMAGES A BUILDING, STRUCTURE OR THE CURTILAGE OF SUCH BUILDING OR STRUCTURE USED AS A PLACE OF RELIGIOUS WORSHIP BY A RELIGIOUS CORPORATION, AS INCORPORATED UNDER THE RELIGIOUS CORPORATIONS LAW; OR

3. HAVING KNOWLEDGE THAT SUCH PROPERTY COMPRISES A DISPLAY OF RELIGIOUS SYMBOLS WHICH ARE FOR A REPRESENTATIVE EXPRESSION OF FAITH, HE OR SHE DAMAGES A SCROLL, RELIGIOUS VESTMENT, VESSEL, ITEM COMPRISING A DISPLAY OF RELIGIOUS SYMBOLS WHICH ARE A REPRESENTATIVE EXPRESSION OF FAITH OR A MISCELLANEOUS ITEM OF PROPERTY KEPT OR USED IN OR UPON A

BUILDING, STRUCTURE OR CURTILAGE THEREOF DESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

MAKING GRAFFITI IN THE FIRST DEGREE IS A CLASS E FELONY.

S 6. Section 240.31 of the penal law is amended by adding a new subdivision 1-a to read as follows:

1-A. ETCHES, PAINTS, COVERS, DRAWS UPON OR OTHERWISE PLACES A MARK UPON ANY BUILDING OR ANY OTHER REAL PROPERTY, PUBLIC OR PRIVATE, WITHOUT THE EXPRESS PERMISSION OF THE OWNER OR OPERATOR OF SUCH BUILDING OR REAL PROPERTY; OR

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.