



REPORT ON LEGISLATION

COMMITTEE ON CIVIL RIGHTS

A.6927

M.A. Eve

AN ACT to amend the penal law and the civil rights law, in relation to strengthening civil rights protections and to provide criminal remedies against bias related violence, intimidation, vandalism and harassment and to repeal Section 240.3l of the penal law relating thereto.

THIS BILL IS NOT APPROVED

This bill, introduced jointly at the request of Governor Cuomo and Attorney General Robert Abrams, adds a new Article 470 to the Penal Law entitled Bias Related Violence and Intimidation Act. The bill increases the penalties for specified crimes against persons and property which are motivated in whole or in part by the race, creed, color, national origin, sex, disability, age or sexual orientation of a person or group of persons. The bill defines these offenses as "bias related violence and intimidation" and punishes their commission

one degree more severely than the punishment for the underlying criminal act.

In addition, the bill makes an amendment to the Civil Rights Law which mirrors the Penal Law amendment. This amendment provides that anyone who violates Section 240.30 or 240.31 (aggravated harassment) of the Penal Law, or who aids or incites the violation of these provisions shall for each and every violation be liable to a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), to be recovered by the person aggrieved. Also, any person who violates any of the provisions of this Section shall be deemed guilty of a Class A misdemeanor.

The bill gives the District Attorney exclusive jurisdiction to prosecute the crime of bias related violence and intimidation, and these crimes may not be prosecuted by the Attorney General pursuant to the power granted under Section 63 (10) of the Executive Law.

Finally, the bill clearly states its intent not to enlarge, diminish or impair any right guaranteed by the law of this State or federal law. Section 9 of this bill states that "nothing contained in this Act shall be construed to establish any new category of civil right or civil rights coverage not currently protected by the laws of this State or federal laws or to enlarge, diminish or impair any right guaranteed by the laws of this State or federal law."

The Committee on Civil Rights recognizes the continued and increasing acts of violence stemming from bias against minorities, women, gay men, lesbian women and other groups . Although there is

no accurate data regarding the number of bias crimes committed year after year, there is growing evidence to suggest that the problem is widespread, that it is turning more violent, and that it increasingly involves personal injury as opposed to property damage. Between 1982-1986, the police departments of New York City, Nassau County, and Suffolk County investigated 2140 complaints of bias motivated crimes. This resulted in 768 arrests. Figures provided by the New York Police Department Bias Incident Investigative Unit show that as of August 31, 1987 there were 65 cases in which the victim was Jewish; 122 incidents involving black victims; 64 cases where the victim was white; 26 cases in which the victim was Hispanic; 5 cases in which the victim was Asian; and 12 victims identified as gay or lesbian. However, bias crime incidents are grossly under-reported. For example, in 1987 alone the New York City Gay and Lesbian Anti-Violence Project reported 517 new cases of bias related incidents, compared to the 7 cases reported by the NYPD in 1986. Of these 517 cases, 108 or 21% were incidents involving physical assault.

We are well aware that such violent incidents, which have been rising in recent years, not only cause physical and psychological harm to the victim but exacerbate the enormous social harm caused by the climate of opinion that tolerates second class citizenship for many Americans. However, although we are fully in accord with the need for action to counteract this trend, and believe that appropriate legislation is necessary, we cannot approve this legislation for the reasons enumerated below.

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We are also concerned that, in order to establish bias, the proposed legislation would permit the lifting of traditional evidentiary barriers that bar the introduction of prejudicial material during the course of a trial. For example, introduction of prior similar crimes committed by the accused is now circumscribed, because of the danger that such evidence might spawn the impermissible inference of criminal propensity. Yet, this safeguard may well vanish under the proposed legislation: the fact that the present victim and a past victim were similar -- for example, both over sixty (60) years of age as specified in the bill - - could be urged as probative of guilt. Another evidentiary concern is that the accused's mere affiliation with certain organizations, generally inadmissible under current law, might be used to establish bias. In short, the danger that a trial might be permeated by evidence of such inflammatory impact is not acceptable.

Finally, we are concerned that the addition of the possibility of adding a charge of impermissible bias to an indictment would further skew the plea bargaining process. A defendant threatened with the prospect of an additional charge and greatly enhanced penalties would be in a much weaker bargaining position. Coupled with the possibility of abusing the statute to the detriment of black and other minority defendants, this could create an even greater imbalance in the criminal justice system than already exists.

We believe that the answer to violence and intimidation motivated by bias is to (1) draft stronger legislation; (2) enhance enforcement of current laws; (3) equip the agencies responsible for enforcing the criminal law to better serve the goal of fighting bias;

and (4) improve community oversight of agency operations in this area.

Our recommendations are:

1. We believe that an appropriate statute would be a state analog of 42 U.S.C. ss1985, not limited to acts committed under color of law. Section 1985 defines a civil rights crime and does not rely on any underlying criminal offense and therefore is not prone to abuse outlined above. A carefully drafted legislative finding should limit the application of the statute to violence or conspiracies intended to deprive protected classes of their civil rights --the type of case we believe the legislature intends to address.

2. A permanent special prosecutor should be appointed to investigate and prosecute allegations of bias motivated violence and intimidation. This prosecutor should have the authority (1) to handle matters brought directly to his/her attention; (2) to assume jurisdiction over cases in which a conflict of interest threatens the neutrality of local law enforcement or where the prosecutor believes that the law enforcement authorities who would ordinarily have jurisdiction are unable or unwilling to pursue an investigation or prosecution; and (3) to handle cases when assigned to do so by the Governor. Unlike bias units of a District Attorney's office a special prosecutor will be highly visible and accountable to the appointing authority, the legislature, and to the people.

3. In addition each prosecutor, throughout the state, should have concurrent jurisdiction over bias related violence and appoint a special unit to investigate and prosecute allegations of bias

motivated violence or intimidation. Prosecutors should give consideration to appointing an attorney who is sensitive to the problems of the protected classes to direct the unit.

4. New York State's police departments should have similar units under the direction of an officer who is sensitive to the problems of the protected classes. In large cities that unit should be under the direct command of the Commissioner and be part of the headquarters contingent.

5. All Law enforcement agencies, including prosecutors and the judiciary, should make vigorous efforts to hire and appoint members of protected classes to ensure sensitivity to the issue of bias and discrimination in their offices. It is difficult to gauge the impact of past discrimination on the failure to notice and prosecute instances of present day violence and intimidation motivated by bias. This problem is analagous to the failure to use the law to protect victims of wife battering and child abuse, where the police and prosecutors have often elected to use their discretion not to arrest or charge in many of these cases and excuse the violence as a domestic dispute or parental discipline.

The presence in law enforcement agencies of a significant number of persons with an appreciation of the problems of classes of people that suffer from discrimination and bias will bring a new perspective to these occurrences. They will heighten the awareness of law enforcement officials and help them better understand the point of view of the victims of the violence and the social consequences of neglecting to enforce the laws against violence and bias.

6. The staffs and budgets of state and local human rights commissions should be dramatically enlarged to speed up the investigation of complaints of bias and discrimination.

7. An appropriate State agency, such as the Attorney General's office, should conduct training sessions to sensitize law enforcement agencies to the serious social consequences of bias and discrimination and the importance of enforcing the law. In the case of the judiciary, judges should be educated as may be necessary for them to treat such cases with appropriate seriousness and severity when considering punishment.