

7468

2011-2012 Regular Sessions

I N A S S E M B L Y

May 5, 2011

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the civil rights law, in relation to enacting the "free speech protection act"

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

1 Section 1. This act shall be known and may be cited as the "free
2 speech protection act".
3 S 2. Legislative intent. The legislature finds and declares that there
4 is a worldwide epidemic of intimidation, harassment and threats of phys-
5 ical violence by religious extremists against those who exercise their
6 right of free expression, particularly as it relates to issues concern-
7 ing the war on terrorism. Examples include threats against authors who
8 have written critically of religious movements, legislators who have
9 spoken out against religious extremism or cast votes opposed by reli-
10 gious extremists, satirists and artists who have drawn purportedly
11 unflattering renderings of religious figures, and even private citizens
12 who have expressed views on religious extremism on social networking web
13 sites. These threats frequently include posting the victim's home and
14 office address and other personal identification information on the
15 internet, for the purpose of encouraging harassment and violence against
16 the victim. Often enough, such threats are enough to scare the victim--
17 be it an individual or a major television network--into self-censorship
18 out of fear of being physically attacked. The purpose of this legis-
19 lation is to give both victims and law enforcement agencies the tools
20 necessary to defend against such intimidation, harassment and threats,
21 and to preserve the rights of New Yorkers to speak freely on issues of
22 public importance.
23 S 3. Section 240.70 of the penal law, as added by chapter 635 of the
24 laws of 1999, is amended to read as follows:

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

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S 240.70 Criminal interference with health care services [or], religious worship OR FREE SPEECH in the second degree.

1. A person is guilty of criminal interference with health services [or], religious worship OR FREE SPEECH in the second degree when:

(a) by force or threat of force or by physical obstruction, he or she intentionally injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person because such other person was or is obtaining or providing reproductive health services; or

(b) by force or threat of force or by physical obstruction, he or she intentionally injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person in order to discourage such other person or any other person or persons from obtaining or providing reproductive health services; or

(c) by force or threat of force or by physical obstruction, he or she intentionally injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with, another person because such person was or is seeking to exercise the right of religious freedom at a place of religious worship; or

(d) BY FORCE OR THREAT OF FORCE OR BY PHYSICAL OBSTRUCTION, HE OR SHE INTENTIONALLY INJURES, INTIMIDATES OR INTERFERES WITH, OR ATTEMPTS TO INJURE, INTIMIDATE OR INTERFERE WITH, ANOTHER PERSON BECAUSE SUCH PERSON WAS OR IS SEEKING TO EXERCISE THE RIGHT OF FREE SPEECH; OR

(E) he or she intentionally damages the property of a health care facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages the property of a place of religious worship.

2. A parent or legal guardian of a minor shall not be subject to prosecution for conduct otherwise prohibited by paragraph (a) or (b) of subdivision one of this section which is directed exclusively at such minor.

3. For purposes of this section:

(a) the term "health care facility" means a hospital, clinic, physician's office or other facility that provides reproductive health services, and includes the building or structure in which the facility is located;

(b) the term "interferes with" means to restrict a person's freedom of movement;

(c) the term "intimidates" means to place a person in reasonable apprehension of physical injury to himself or herself or to another person;

(d) the term "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility or place of religious worship unreasonably difficult or hazardous; [and]

(e) the term "reproductive health services" means health care services provided in a hospital, clinic, physician's office or other facility and includes medical, surgical, counseling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy; AND

(F) THE TERM "FREE SPEECH" MEANS SUCH SPEECH AS WOULD BE PROTECTED FROM GOVERNMENTAL RESTRAINT OR ABRIDGEMENT BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OR BY SECTION EIGHT OF ARTICLE ONE OF THE CONSTITUTION OF THE STATE OF NEW YORK, AS INTERPRETED BY THE COURTS OF THE UNITED STATES OR THE STATE OF NEW YORK.

1 Criminal interference with health care services [or], religious
2 worship OR FREE SPEECH in the second degree is a class A misdemeanor.

3 S 4. Section 240.71 of the penal law, as amended by chapter 493 of the
4 laws of 2009, is amended to read as follows:

5 S 240.71 Criminal interference with health care services [or], religious
6 worship OR FREE SPEECH in the first degree.

7 A person is guilty of criminal interference with health care services
8 [or], religious worship OR FREE SPEECH in the first degree when he or
9 she commits the crime of criminal interference with health care services
10 [or], religious worship OR FREE SPEECH in the second degree and has been
11 previously convicted of the crime of criminal interference with health
12 care services [or], religious worship OR FREE SPEECH in the first or
13 second degree or aggravated interference with health care services in
14 the first or second degree.

15 Criminal interference with health care services [or], religious
16 worship OR FREE SPEECH in the first degree is a class E felony.

17 S 5. Section 79-m of the civil rights law, as amended by chapter 566
18 of the laws of 2008, is amended to read as follows:

19 S 79-m. Criminal interference with health care services, religious
20 worship, FREE SPEECH, funeral, burial or memorial service; injunction.
21 Whenever the attorney general or district attorney of the county where
22 the affected health care facility, place of religious worship, PERSON
23 EXERCISING HIS OR HER FREE SPEECH or site of a funeral, burial or memo-
24 rial service is located has reasonable cause to believe that any person
25 or group of persons is being, has been, or may be injured by conduct
26 constituting a violation of section 240.21, 240.70 or 240.71 of the
27 penal law, the attorney general or district attorney may bring an action
28 in the name of the people of the state of New York to permanently enjoin
29 such violation. In such action preliminary and temporary relief may be
30 granted under article sixty-three of the civil practice law and rules.

31 S 6. The civil rights law is amended by adding a new section 79-p to
32 read as follows:

33 S 79-P. FREE SPEECH-RELATED VIOLENCE OR INTIMIDATION; CIVIL REMEDY. 1.
34 ANY PERSON WHO ENGAGES IN CONDUCT CONSTITUTING A VIOLATION OF SECTION
35 240.70 OR 240.71 OF THE PENAL LAW WITH RESPECT TO INTERFERING WITH A
36 PERSON'S FREE SPEECH, SHALL BE LIABLE, IN A CIVIL ACTION OR PROCEEDING
37 MAINTAINED BY SUCH PERSON, FOR INJUNCTIVE RELIEF, DAMAGES, OR ANY OTHER
38 APPROPRIATE RELIEF IN LAW OR EQUITY. IF IT SHALL APPEAR TO THE SATISFAC-
39 TION OF THE COURT OR JUSTICE THAT THE RESPONDENT HAS, IN FACT, VIOLATED
40 SECTION 240.70 OR 240.71 OF THE PENAL LAW, AN INJUNCTION MAY BE ISSUED
41 BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
42 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN
43 INJURED OR DAMAGED THEREBY.

44 2. IN ANY SUCH ACTION OR PROCEEDING, THE COURT, IN ITS DISCRETION, MAY
45 ALLOW THE PARTY COMMENCING SUCH ACTION OR PROCEEDING, IF SUCH PARTY
46 PREVAILS, REASONABLE ATTORNEYS' FEES AS PART OF THE COSTS.

47 S 7. This act shall take effect immediately.