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

6489

2011-2012 Regular Sessions

I N A S S E M B L Y

March 21, 2011

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

AN ACT to amend the penal law and the criminal procedure law, in relation to including military or veteran status in the descriptions of hate crimes

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

Section 1. Section 240.00 of the penal law is amended by adding two new subdivisions 7 and 8 to read as follows:

7. "MILITARY STATUS" MEANS A PERSON'S PARTICIPATION IN THE MILITARY SERVICE OF THE UNITED STATES OR THE MILITARY SERVICE OF THE STATE, INCLUDING BUT NOT LIMITED TO, THE ARMED FORCES OF THE UNITED STATES, THE ARMY NATIONAL GUARD, THE AIR NATIONAL GUARD, THE NEW YORK NAVAL MILITIA, THE NEW YORK GUARD, AND SUCH ADDITIONAL FORCES AS MAY BE CREATED BY THE FEDERAL OR STATE GOVERNMENT AS AUTHORIZED BY LAW.

8. "VETERAN STATUS" MEANS A PERSON, MALE OR FEMALE, RESIDENT OF THIS STATE, WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE OF THE UNITED STATES DURING A PERIOD OF WAR, OR WHO HAS RECEIVED A COMPENSATION RATING FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE CONNECTED DISABILITY OR WHO HAS RECEIVED A DISABILITY PENSION OR DISABILITY BENEFITS FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR WHO WAS A RECIPIENT OF THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, AND WHO HAS BEEN RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE DISCHARGE.

S 2. Subdivision 3 of section 240.30 of the penal law, as amended by chapter 510 of the laws of 2008, is amended to read as follows:

3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national

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

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origin, ancestry, gender, religion, religious practice, age, MILITARY STATUS, VETERAN STATUS, disability or sexual orientation, regardless of whether the belief or perception is correct; or

S 3. The opening paragraph of section 240.31 of the penal law, as amended by chapter 49 of the laws of 2006, is amended to read as follows:

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, MILITARY STATUS, VETERAN STATUS, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

S 4. Paragraph (b) of subdivision 1 and subdivision 2 of section 485.05 of the penal law, as added by chapter 107 of the laws of 2000, are amended to read as follows:

(b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, MILITARY STATUS, VETERAN STATUS, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

2. Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, MILITARY STATUS, VETERAN STATUS, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

S 5. Paragraph (b) of subdivision 4 of section 485.05 of the penal law, as added by chapter 107 of the laws of 2000, is amended and two new paragraphs (c) and (d) are added to read as follows:

(b) the term "disability" means a physical or mental impairment that substantially limits a major life activity[.];

(C) THE TERM "MILITARY STATUS" MEANS A PERSON'S PARTICIPATION IN THE MILITARY SERVICE OF THE UNITED STATES OR THE MILITARY SERVICE OF THE STATE, INCLUDING BUT NOT LIMITED TO, THE ARMED FORCES OF THE UNITED STATES, THE ARMY NATIONAL GUARD, THE AIR NATIONAL GUARD, THE NEW YORK NAVAL MILITIA, THE NEW YORK GUARD, AND SUCH ADDITIONAL FORCES AS MAY BE CREATED BY THE FEDERAL OR STATE GOVERNMENT AS AUTHORIZED BY LAW;

(D) THE TERM "VETERAN STATUS" MEANS A PERSON, MALE OR FEMALE, RESIDENT OF THIS STATE, WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE OF THE UNITED STATES DURING A PERIOD OF WAR, OR WHO HAS RECEIVED A COMPENSATION RATING FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR FROM THE UNITED STATES DEPARTMENT OF DEFENSE BECAUSE OF A SERVICE CONNECTED DISABILITY OR WHO HAS RECEIVED A DISABILITY PENSION OR DISABILITY BENEFITS FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR WHO WAS A RECIPIENT OF THE ARMED FORCES EXPEDITIONARY MEDAL, NAVAL EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, AND WHO HAS BEEN RELEASED FROM SUCH SERVICE OTHERWISE THAN BY DISHONORABLE DISCHARGE.

S 6. Paragraph (c) of subdivision 7 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts

constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, MILITARY STATUS, VETERAN STATUS, disability or sexual orientation of a person; and

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