

7734--A

Cal. No. 1224

I N   S E N A T E

June 3, 2014

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Introduced by Sens. NOZZOLIO, DeFRANCISCO, MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law and the executive law, in relation to aggravated harassment in the second degree

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

1     Section 1. Section 240.30 of the penal law, as amended by chapter 510  
2     of the laws of 2008, subdivision 4 as added and subdivisions 5 and 6 as  
3     renumbered by section 4 of part D of chapter 491 of the laws of 2012, is  
4     amended to read as follows:  
5     S 240.30 Aggravated harassment in the second degree.  
6     A person is guilty of aggravated harassment in the second degree  
7     when[, with intent to harass, annoy, threaten or alarm another person,  
8     he or she]:  
9     1. [Either] WITH INTENT TO HARASS ANOTHER PERSON, THE ACTOR EITHER:  
10    (a) communicates [with a person], anonymously or otherwise, by tele-  
11    phone, by [telegraph,] COMPUTER or ANY OTHER ELECTRONIC MEANS, OR by  
12    mail, or by transmitting or delivering any other form of [written]  
13    communication, [in a manner likely to cause annoyance or alarm] A THREAT  
14    TO CAUSE PHYSICAL HARM TO, OR UNLAWFUL HARM TO THE PROPERTY OF, SUCH  
15    PERSON, OR A MEMBER OF SUCH PERSON'S SAME FAMILY OR HOUSEHOLD AS DEFINED  
16    IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW, AND  
17    THE ACTOR KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION WILL  
18    CAUSE SUCH PERSON TO REASONABLY FEAR HARM TO SUCH PERSON'S PHYSICAL  
19    SAFETY OR PROPERTY, OR TO THE PHYSICAL SAFETY OR PROPERTY OF A MEMBER OF  
20    SUCH PERSON'S SAME FAMILY OR HOUSEHOLD; or  
21    (b) causes a communication to be initiated [by mechanical or electron-  
22    ic means or otherwise with a person,] anonymously or otherwise, by tele-  
23    phone, by [telegraph,] COMPUTER or ANY OTHER ELECTRONIC MEANS, OR by

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

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1 mail, or by transmitting or delivering any other form of [written]  
2 communication, [in a manner likely to cause annoyance or alarm] A THREAT  
3 TO CAUSE PHYSICAL HARM TO, OR UNLAWFUL HARM TO THE PROPERTY OF, SUCH  
4 PERSON, A MEMBER OF SUCH PERSON'S SAME FAMILY OR HOUSEHOLD AS DEFINED IN  
5 SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE LAW, AND THE  
6 ACTOR KNOWS OR REASONABLY SHOULD KNOW THAT SUCH COMMUNICATION WILL CAUSE  
7 SUCH PERSON TO REASONABLY FEAR HARM TO SUCH PERSON'S PHYSICAL SAFETY OR  
8 PROPERTY, OR TO THE PHYSICAL SAFETY OR PROPERTY OF A MEMBER OF SUCH  
9 PERSON'S SAME FAMILY OR HOUSEHOLD; or

10 2. [Makes] WITH INTENT TO HARASS OR THREATEN ANOTHER PERSON, HE OR SHE  
11 MAKES a telephone call, whether or not a conversation ensues, with no  
12 purpose of legitimate communication; or

13 3. [Strikes] WITH THE INTENT TO HARASS, ANNOY, THREATEN OR ALARM  
14 ANOTHER PERSON, HE OR SHE STRIKES, shoves, kicks, or otherwise subjects  
15 another person to physical contact, or attempts or threatens to do the  
16 same because of a belief or perception regarding such person's race,  
17 color, national origin, ancestry, gender, religion, religious practice,  
18 age, disability or sexual orientation, regardless of whether the belief  
19 or perception is correct; or

20 4. [Strikes] WITH THE INTENT TO HARASS, ANNOY, THREATEN OR ALARM  
21 ANOTHER PERSON, HE OR SHE STRIKES, shoves, kicks or otherwise subjects  
22 another person to physical contact thereby causing physical injury to  
23 such person or to a family or household member of such person as defined  
24 in section 530.11 of the criminal procedure law[.]; OR

25 5. [Commits] HE OR SHE COMMITS the crime of harassment in the first  
26 degree and has previously been convicted of the crime of harassment in  
27 the first degree as defined by section 240.25 of this article within the  
28 preceding ten years.

29 [6. For the purposes of subdivision one of this section, "form of  
30 written communication" shall include, but not be limited to, a recording  
31 as defined in subdivision six of section 275.00 of this part.]

32 Aggravated harassment in the second degree is a class A misdemeanor.

33 S 2. Subdivision 12 of section 631 of the executive law, as amended by  
34 chapter 534 of the laws of 2011, is amended to read as follows:

35 12. Notwithstanding the provisions of subdivisions one, two and three  
36 of this section, an individual who was a victim of either the crime of  
37 menacing in the second degree as defined in subdivision two or three of  
38 section 120.14 of the penal law, menacing in the first degree as defined  
39 in section 120.13 of the penal law, criminal obstruction of breathing or  
40 blood circulation as defined in section 121.11 of the penal law, harass-  
41 ment in the second degree as defined in subdivision two or three of  
42 section 240.26 of the penal law, harassment in the first degree as  
43 defined in section 240.25 of the penal law, aggravated harassment in the  
44 second degree as defined in subdivision [four] FIVE of section 240.30 of  
45 the penal law, aggravated harassment in the first degree as defined in  
46 subdivision two of section 240.31 of the penal law, criminal contempt in  
47 the first degree as defined in paragraph (ii) or (iv) of subdivision (b)  
48 or subdivision (c) of section 215.51 of the penal law, or stalking in  
49 the fourth, third, second or first degree as defined in sections 120.45,  
50 120.50, 120.55 and 120.60 of the penal law, respectively, who has not  
51 been physically injured as a direct result of such crime shall only be  
52 eligible for an award that includes loss of earning or support, the  
53 unreimbursed cost of repair or replacement of essential personal proper-  
54 ty that has been lost, damaged or destroyed as a direct result of such  
55 crime, the unreimbursed cost for security devices to enhance the  
56 personal protection of such victim, transportation expenses incurred for

1 necessary court expenses in connection with the prosecution of such  
2 crime, the unreimbursed costs of counseling provided to such victim on  
3 account of mental or emotional stress resulting from the incident in  
4 which the crime occurred, reasonable relocation expenses, and for occu-  
5 pational or job training.

6 S 3. This act shall take effect immediately.