STATE OF NEW YORK

294

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to enhancing punishment for crimes involving domestic violence; and to amend the criminal procedure law, in relation to the consideration of certain factors when determining the issuance of an order of recognizance or bail

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 240.30 of the penal law, as amended by chapter 188 of the laws of 2014, is amended to read as follows:

5. He or she commits the crime of harassment in the first degree **or second degree** and has previously been convicted of the crime of harassment in the first degree **or second degree** as defined by section 240.25 **or 240.26** of this article within the preceding ten years.

§ 2. The section heading, opening paragraph and closing paragraph of section 240.31 of the penal law, as amended by chapter 49 of the laws of 2006, are amended to read as follows:

[~~Aggravated~~] **Bias related aggravated** harassment [~~in the first degree~~].

A person is guilty of **bias related** 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, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

[~~Aggravated~~] **Bias related aggravated** harassment [~~in the first degree~~] is a class E felony.

§ 3. The penal law is amended by adding a new section 240.29 to read as follows:

§ 240.29 Aggravated harassment in the first degree.

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

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A person is guilty of a aggravated harassment in the first degree when with intent to harass, annoy, threaten, or alarm another person, he or she commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision one, two or five of section 240.30 of this article and has previously been convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision one, two or five of section 240.30 of this article within the preceding ten years and such person is a member of the same family or household as the person upon whom the present offense is committed. For the purposes of this subdivision "members of the same family or household" shall have the same meaning as is defined in section 530.11 of the criminal procedure law.

Aggravated harassment in the first degree is a class E felony.

§ 4. Section 120.05 of the penal law is amended by adding a new subdivision 15 to read as follows:

15. Such person commits the crime of assault in the third degree as defined in section 120.00 of this article against another person and such person has been previously convicted of any offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third

degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 160.05 (robbery in the third degree); section 160.10 (robbery in the second degree); section 160.15 (robbery in the first degree); section 240.25 (harassment in the first degree); subdivision one, two or five of section 240.30 (aggravated harassment in the second degree); or any attempt or conspiracy to commit any of the foregoing offenses, within the preceding ten years and such person is a member of the same family or household as the person upon whom the present offense is committed. For the purposes of this subdivision "members of the same family or household" shall have the same meaning as is defined in section 530.11 of the criminal procedure law.

§ 5. Section 121.12 of the penal law, as added by chapter 405 of the laws of 2010, is amended to read as follows:

§ 121.12 Strangulation in the second degree.

A person is guilty of strangulation in the second degree when he or she: (1) commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment[~~.~~]; or

(2) commits the crime of criminal obstruction of breathing or blood circulation as defined in section 121.11 of this article and such person has previously been convicted within the preceding ten years of criminal obstruction of breathing or blood circulation; and such person is a member of the same family or household as the person upon whom the present crime of criminal obstruction of breathing or blood circulation is committed. For the purposes of this subdivision "members of the same family or household" shall have the same meaning as is defined in section 530.11 of the criminal procedure law.

Strangulation in the second degree is a class D felony.

§ 6. Section 120.13 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

§ 120.13 Menacing in the first degree.

A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer within the preceding ten years.

Menacing in the first degree is a class [~~E~~] D felony.

§ 7. Subdivision (c) of section 215.51 of the penal law, as amended by chapter 349 of the laws of 2006, is amended to read as follows:

(c) he or she commits the crime of criminal contempt in the second degree as defined in subdivision three of section 215.50 of this article by violating [~~that part of~~] a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued, under sections two hundred forty and two hundred fifty-two of the domestic relations law, articles four, five, six and eight of the family court act and section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, [~~which requires the respondent or defendant to stay away from the person or persons on whose behalf the order was issued,~~] and where the defendant has been previously convicted of the crime of aggravated criminal contempt or criminal contempt in the first or second degree for violating an order of protection [~~as described herein~~] within the preceding [~~five~~] ten years; or

§ 8. The closing paragraph of section 215.51 of the penal law, as amended by chapter 222 of the laws of 1994, is amended to read as follows:

Criminal contempt in the first degree is a class [~~E~~] D felony.

§ 9. Subdivisions 1, 2 and 3 of section 60.35 of the penal law, as amended by section 1 of part E of chapter 56 of the laws of 2004, subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as amended by section 1 of part DD of chapter 56 of the laws of 2008 and paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of 2006, are amended to read as follows:

1. (a) Except as provided in section eighteen hundred nine of the vehicle and traffic law and section 27.12 of the parks, recreation and historic preservation law, whenever proceedings in an administrative tribunal or a court of this state result in a conviction for a felony, a misdemeanor, or a violation, as these terms are defined in section 10.00 of this chapter, there shall be levied at sentencing a mandatory surcharge, sex offender registration fee, DNA databank fee [~~and~~], a crime victim assistance fee and a domestic violence victim assistance fee in addition to any sentence required or permitted by law, in accordance with the following schedule:

(i) a person convicted of a felony shall pay a mandatory surcharge of three hundred dollars and a crime victim assistance fee of twenty-five dollars;

(ii) a person convicted of a misdemeanor shall pay a mandatory surcharge of one hundred seventy-five dollars and a crime victim assistance fee of twenty-five dollars;

(iii) a person convicted of a violation shall pay a mandatory surcharge of ninety-five dollars and a crime victim assistance fee of twenty-five dollars;

(iv) a person convicted of a sex offense as defined by subdivision two of section one hundred sixty-eight-a of the correction law or a sexually violent offense as defined by subdivision three of section one hundred sixty-eight-a of the correction law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a sex offender registration fee of fifty dollars[~~.~~];

(v) a person convicted of a designated offense as defined by subdivision seven of section nine hundred ninety-five of the executive law shall, in addition to a mandatory surcharge and crime victim assistance fee, pay a DNA databank fee of fifty dollars[~~.~~];

(vi) a person convicted of any offense where the complainant of such offense is a member of the same family or household as the convicted person shall, in addition to a mandatory surcharge and crime victim assistance fee, pay any other fee required by this article, and pay a domestic violence victim assistance fee in the amount of two hundred fifty dollars. For the purposes of this subdivision, "member of the same family or household" shall have the same meaning as defined in section 530.11 of the criminal procedure law.

(b) When the felony or misdemeanor conviction in subparagraphs (i), (ii) or (iv) of paragraph (a) of this subdivision results from an offense contained in article one hundred thirty of this chapter, incest in the third, second or first degree as defined in sections 255.25, 255.26 and 255.27 of this chapter or an offense contained in article two hundred sixty-three of this chapter, the person convicted shall pay a supplemental sex offender victim fee of one thousand dollars in addition to the mandatory surcharge and any other fee.

2. Where a person is convicted of two or more crimes or violations committed through a single act or omission, or through an act or omission which in itself constituted one of the crimes or violations and also was a material element of the other, the court shall impose a mandatory surcharge and a crime victim assistance fee, and where appropriate a supplemental sex offender victim fee **or domestic violence victim assistance fee**, in accordance with the provisions of this section for the crime or violation which carries the highest classification, and no other sentence to pay a mandatory surcharge, crime victim assistance fee [~~or~~], supplemental sex offender victim fee **or domestic violence victim assistance fee** required by this section shall be imposed. Where a person is convicted of two or more sex offenses or sexually violent offenses, as defined by subdivisions two and three of section one hundred sixty-eight-a of the correction law, committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the court shall impose only one sex offender registration fee. Where a person is convicted of two or more designated offenses, as defined by subdivision seven of section nine hundred ninety-five of the executive law, committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the court shall impose only one DNA databank fee.

3. The mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, [~~and~~] supplemental sex offender victim fee **and domestic violence victim assistance fee** provided for in subdivision one of this section shall be paid to the clerk of the court or administrative tribunal that rendered the conviction. Within the first ten days of the month following collection of the mandatory surcharge, crime victim assistance fee, and supplemental sex offender victim fee, the collecting authority shall determine the amount of mandatory surcharge, crime victim assistance fee, [~~and~~] supplemental sex offender victim fee **and domestic violence victim assistance fee** collected and, if it is an administrative tribunal, or a town or village justice court, it shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law. Within the first ten days of the month following collection of the sex offender registration fee and DNA databank fee, the collecting authority shall determine the amount of the sex offender registration fee and DNA databank fee collected and, if it is an administrative tribunal, or a town or village justice court, it shall then pay such money to the state comptroller who shall deposit such money in the state treasury pursuant to section one hundred twenty-one of the state finance law to the credit of the general fund. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the mandatory surcharge or crime victim assistance fee to the state commissioner of taxation and finance to the credit of the criminal justice improvement account established by section ninety-seven-bb of the state finance law. If such collecting authority is any other court of the unified court system, it shall, within such period, pay such money attributable to the sex offender registration fee and the DNA databank fee to the state commissioner of taxation and finance to the credit of the general fund. **Notwithstanding any other provision of this subdivision, all monies paid**

to the state comptroller or to the commissioner of taxation and finance which are attributable to monies collected for the domestic violence victim assistance fee shall be credited to the office for the prevention of domestic violence and shall be used for training of law enforcement personnel in issues involving domestic violence.

§ 10. Subdivisions 8 and 10 of section 60.35 of the penal law, subdivision 8 as amended by section 121 of subpart B of part C of chapter 62 of the laws of 2011 and subdivision 10 as amended by section 2 of part Y of chapter 56 of the laws of 2008, are amended to read as follows:

8. Subdivision one of section 130.10 of the criminal procedure law notwithstanding, at the time that the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee, domestic violence victim assistance fee or supplemental sex offender victim fee is imposed a town or village court may, and all other courts shall, issue and cause to be served upon the person required to pay the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee, domestic violence victim assistance fee or supplemental sex offender victim fee, a summons directing that such person appear before the court regarding the payment of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee, domestic violence victim assistance fee or supplemental sex offender victim fee, if after sixty days from the date it was imposed it remains unpaid. The designated date of appearance on the summons shall be set for the first day court is in session falling after the sixtieth day from the imposition of the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee, domestic violence victim assistance fee or supplemental sex offender victim fee. The summons shall contain the information required by subdivision two of section 130.10 of the criminal procedure law except that in substitution for the requirement of paragraph (c) of such subdivision the summons shall state that the person served must appear at a date, time and specific location specified in the summons if after sixty days from the date of issuance the mandatory surcharge, sex offender registration fee or DNA databank fee, crime victim assistance fee, domestic violence victim assistance fee or supplemental sex offender victim fee remains unpaid. The court shall not issue a summons under this subdivision to a person who is being sentenced to a term of confinement in excess of sixty days in jail or in the department of corrections and community supervision. The mandatory surcharges, sex offender registration fee and DNA databank fees, crime victim assistance fees, domestic violence victim assistance fees and supplemental sex offender victim fees for those persons shall be governed by the provisions of section 60.30 of this article.

10. The provisions of this section shall apply to sentences imposed upon a youthful offender finding; provided, however that the court shall not impose the sex offender registration fee, DNA databank fee [~~or~~], supplemental sex offender victim fee, or domestic violence victim assistance fee as defined in subparagraphs (iv) [~~and~~], (v) and (vi) of paragraph (a) and paragraph (b) of subdivision one of this section, for an offense in which the conviction was substituted with a youthful offender finding.

§ 11. Subdivision 3 and the closing paragraph of section 215.52 of the penal law, subdivision 3 as added and the closing paragraph as amended by chapter 350 of the laws of 2006, are amended to read as follows:

3. he or she commits the crime of criminal contempt in the first degree, as defined in paragraph (i), (ii), (iii), (v) or (vi) of subdi-

vision (b) or subdivision (c) of section 215.51 of this article, and has been previously convicted of the crime of criminal contempt in the first degree, as defined in such subdivision (b), (c) or (d) of section 215.51 of this article, within the preceding [~~five~~] ten years.

Aggravated criminal contempt is a class [~~D~~] C felony.

§ 12. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as amended by chapter 1 of the laws of 2013 and paragraph (c) as amended by chapter 368 of the laws of 2015, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, aggravated criminal contempt as defined in section 215.52, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, criminal contempt in the first degree as defined in subdivision (b), (c) or (d) of section 215.51, labor trafficking as defined in paragraphs (a) and (b) of subdivision three of section 135.35, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous

substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

§ 13. Paragraph (b) of subdivision 2 of section 510.30 of the criminal procedure law is relettered paragraph (c) and a new paragraph (b) is added to read as follows:

(b) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the court must, on the basis of available information, consider and take into account the danger of intimidation or injury by the principal to a witness in the case, including the following factors:

(i) any history of prior acts of violence or threats of violence against a witness in the pending criminal action; and

(ii) any order of protection issued by any court against the principal for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order is currently in effect; and

(iii) any prior arrest or conviction for a crime or violation against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title; and

(iv) any violation of an order of protection issued by any court against the principal for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title; and

(v) the principal's history of use or possession of a firearm.

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