STATE OF NEW YORK

8546

IN SENATE

May 9, 2018

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

AN ACT to amend the penal law and the criminal procedure law, in relation to increasing the penalties of various crimes

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

Section 1. Section 120.00 of the penal law is amended to read as follows:

§ 120.00 Assault in the third degree.

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

2. He recklessly causes physical injury to another person; or

3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class [~~A misdemeanor~~] E felony.

§ 2. Section 120.12 of the penal law, as amended by chapter 172 of the laws of 2013, is amended to read as follows:

§ 120.12 Aggravated assault upon a person less than eleven years old.

A person is guilty of aggravated assault upon a person less than eleven years old when being eighteen years old or more the defendant commits the crime of assault in the third degree as defined in section 120.00 of this article upon a person less than eleven years old and has been previously convicted of such crime upon a person less than eleven years old within the preceding ten years.

Aggravated assault upon a person less than eleven years old is a class [~~E~~] D felony.

§ 3. 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

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

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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.

§ 4. Section 120.14 of the penal law, as amended by chapter 222 of the laws of 1994 and subdivision 3 as amended by chapter 597 of the laws of 1998, is amended to read as follows:

§ 120.14 Menacing in the second degree.

A person is guilty of menacing in the second degree when:

1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or

3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, 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 directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

Menacing in the second degree is a class [~~A misdemeanor~~] E felony.

§ 5. Section 120.15 of the penal law, as amended by chapter 345 of the laws of 1992, is amended to read as follows:

§ 120.15 Menacing in the third degree.

A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.

Menacing in the third degree is a class [~~B~~] A misdemeanor.

§ 6. Section 121.11 of the penal law, as added by chapter 405 of the laws of 2010, is amended to read as follows:

§ 121.11 Criminal obstruction of breathing or blood circulation.

A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she:

a. applies pressure on the throat or neck of such person; or

b. blocks the nose or mouth of such person.

Criminal obstruction of breathing or blood circulation is a class [~~A misdemeanor~~] E felony.

§ 7. Section 135.05 of the penal law is amended to read as follows:

§ 135.05 Unlawful imprisonment in the second degree.

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class [~~A misdemeanor~~] E felony.

§ 8. Section 135.10 of the penal law is amended to read as follows:

§ 135.10 Unlawful imprisonment in the first degree.

A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury.

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

§ 9. Section 135.60 of the penal law, as amended by section 1 of part NN of chapter 55 of the laws of 2018, is amended to read as follows:

§ 135.60 Coercion in the third degree.

A person is guilty of coercion in the third degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining, by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or

2. Cause damage to property; or

3. Engage in other conduct constituting a crime; or

4. Accuse some person of a crime or cause criminal charges to be instituted against him or her; or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

8. Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the third degree is a class [~~A misdemeanor~~] **E felony**.

§ 10. Section 135.61 of the penal law, as added by section 2 of part NN of chapter 55 of the laws of 2018, is amended to read as follows:

§ 135.61 Coercion in the second degree.

A person is guilty of coercion in the second degree when he or she commits the crime of coercion in the third degree as defined in section 135.60 of this article and thereby compels or induces a person to engage in sexual intercourse, oral sexual conduct or anal sexual conduct as such terms are defined in section [~~130 of the penal law~~] **130.00 of this title**.

Coercion in the second degree is a class [~~E~~] **D** felony.

§ 11. Section 135.65 of the penal law, as amended by section 3 of part NN of chapter 55 of the laws of 2018, is amended to read as follows:

§ 135.65 Coercion in the first degree.

A person is guilty of coercion in the first degree when he or she commits the crime of coercion in the third degree, and when:

1. He or she commits such crime by instilling in the victim a fear that he or she will cause physical injury to a person or cause damage to property; or

2. He or she thereby compels or induces the victim to:

(a) Commit or attempt to commit a felony; or

(b) Cause or attempt to cause physical injury to a person; or

(c) Violate his or her duty as a public servant.

Coercion in the first degree is a class [~~D~~] C felony.

§ 12. Section 140.17 of the penal law, as added by chapter 341 of the laws of 1969, is amended to read as follows:

§ [~~140.17.~~] 140.17 Criminal trespass in the first degree.

A person is guilty of criminal trespass in the first degree when he knowingly enters or remains unlawfully in a building, and when, in the course of committing such crime, he:

1. Possesses, or knows that another participant in the crime possesses, an explosive or a deadly weapon; or

2. Possesses a firearm, rifle or shotgun, as those terms are defined in section 265.00 of this part, and also possesses or has readily accessible a quantity of ammunition which is capable of being discharged from such firearm, rifle or shotgun; or

3. Knows that another participant in the crime possesses a firearm, rifle or shotgun under circumstances described in subdivision two of this section.

Criminal trespass in the first degree is a class [~~D~~] C felony.

§ 13. Section 145.15 of the penal law, as amended by chapter 585 of the laws of 2006, is amended to read as follows:

§ 145.15 Criminal tampering in the second degree.

A person is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he or she tampers or makes connection with property of a gas, electric, sewer, steam or water-works corporation, telephone or telegraph corporation, common carrier, nuclear powered electric generating facility, or public utility operated by a municipality or district; except that in any prosecution under this section, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Criminal tampering in the second degree is a class [~~A misdemeanor~~] E felony.

§ 14. Section 150.05 of the penal law, as amended by chapter 225 of the laws of 1979, is amended to read as follows:

§ 150.05 Arson in the fourth degree.

1. A person is guilty of arson in the fourth degree when he recklessly damages a building or motor vehicle by intentionally starting a fire or causing an explosion.

2. In any prosecution under this section, it is an affirmative defense that no person other than the defendant had a possessory or proprietary interest in the building or motor vehicle.

Arson in the fourth degree is a class [~~E~~] D felony.

§ 15. Section 215.50 of the penal law, as amended by chapter 702 of the laws of 1972, is amended to read as follows:

§ 215.50 Criminal contempt in the second degree.

A person is guilty of criminal contempt in the second degree when he engages in any of the following conduct:

1. Disorderly, contemptuous, or insolent behavior, committed during the sitting of a court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

2. Breach of the peace, noise, or other disturbance, directly tending to interrupt a court's proceedings; or

3. Intentional disobedience or resistance to the lawful process or other mandate of a court except in cases involving or growing out of labor disputes as defined by subdivision two of section seven hundred fifty-three-a of the judiciary law; or

4. Contumacious and unlawful refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any legal and proper interrogatory; or

5. Knowingly publishing a false or grossly inaccurate report of a court's proceedings; or

6. Intentional failure to obey any mandate, process or notice, issued pursuant to articles sixteen, seventeen, eighteen, or eighteen-a of the judiciary law, or to rules adopted pursuant to any such statute or to any special statute establishing commissioners of jurors and prescribing their duties or who refuses to be sworn as provided therein; or

7. On or along a public street or sidewalk within a radius of two hundred feet of any building established as a courthouse, he calls aloud, shouts, holds or displays placards or signs containing written or printed matter, concerning the conduct of a trial being held in such courthouse or the character of the court or jury engaged in such trial or calling for or demanding any specified action or determination by such court or jury in connection with such trial.

Criminal contempt in the second degree is a class [~~A misdemeanor~~] **E felony**.

§ 16. Section 215.51 of the penal law, as amended by chapter 222 of the laws of 1994, subdivision (b) as added by chapter 353 of the laws of 1996, the opening paragraph of subdivision (b) and subdivision (d) as amended by chapter 597 of the laws of 1998, and subdivision (c) as amended by chapter 349 of the laws of 2006, is amended to read as follows:

§ 215.51 Criminal contempt in the first degree.

A person is guilty of criminal contempt in the first degree when:

(a) he contumaciously and unlawfully refuses to be sworn as a witness before a grand jury, or, when after having been sworn as a witness before a grand jury, he refuses to answer any legal and proper interrogatory; or

(b) in violation 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, or an order of protection issued by a court of competent jurisdiction in this or another state, territorial or tribal jurisdiction, he or she:

(i) intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm or by means of a threat or threats; or

(ii) intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death by repeatedly following such person or engaging in a course of conduct or repeatedly committing acts over a period of time; or

(iii) intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death when he or she communicates or causes a communication to be initiated with such person by mechanical or electronic means or otherwise, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication; or

(iv) with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, repeatedly makes telephone calls to such person, whether or not a conversation ensues, with no purpose of legitimate communication; or

(v) with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, strikes, shoves, kicks or otherwise subjects such other person to physical contact or attempts or threatens to do the same; or

(vi) by physical menace, intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of death, imminent serious physical injury or physical injury.

(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 years; or

(d) in violation 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, or an order issued by a court of competent jurisdiction in this or another state, territorial or tribal jurisdiction, he or she intentionally or recklessly damages the property of a person for whose protection such order was issued in an amount exceeding two hundred fifty dollars.

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

§ 17. Section 240.25 of the penal law as amended by chapter 109 of the laws of 1994, is amended to read as follows:

§ 240.25 Harassment in the first degree.

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the first degree is a class [~~B~~] A misdemeanor.

§ 18. Section 240.30 of the penal law, as amended by chapter 188 of the laws of 2014, is amended to read as follows:

§ 240.30 Aggravated harassment in the second degree.

A person is guilty of aggravated harassment in the second degree when:

1. With intent to harass another person, the actor either:

(a) communicates, anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to

the physical safety or property of a member of such person's same family or household; or

(b) causes a communication to be initiated anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or

2. With intent to harass or threaten another person, he or she makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or

3. With the intent to harass, annoy, threaten or alarm another person, he or she 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 origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or

4. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law; or

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

Aggravated harassment in the second degree is a class [~~A misdemeanor~~] **E felony**.

§ 19. Section 240.31 of the penal law, as amended by chapter 49 of the laws of 2006 and subdivisions 3 and 4 as amended and subdivision 5 as added by chapter 74 of the laws of 2008, is amended to read as follows:

§ 240.31 Aggravated harassment in the first degree.

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, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or

2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or

3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real

property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;

4. Sets on fire a cross in public view; or

5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

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

§ 20. Subdivision 1 of section 370.15 of the criminal procedure law is REPEALED and a new subdivision 1 is added to read as follows:

1. When a defendant has been charged with assault in the third degree, menacing in the third degree, menacing in the second degree, criminal obstruction of breathing or blood circulation, unlawful imprisonment in the second degree, coercion in the third degree, criminal contempt in the second degree, harassment in the first degree, aggravated harassment in the second degree, or attempt to commit any of the above-listed offenses, the people may, at arraignment or no later than forty-five days after arraignment, serve on the defendant and file with the court a notice alleging that the defendant and the person alleged to be the victim of such crime were members of the same family or household as defined in subdivision one of section 530.11 of this chapter.

§ 21. Section 380.97 of the criminal procedure law is REPEALED and a new section 380.97 is added to read as follows:

§ 380.97 Notification to division of criminal justice services of certain misdemeanor convictions.

Upon judgement of conviction of assault in the third degree, menacing in the third degree, menacing in the second degree, criminal obstruction of breathing or blood circulation, unlawful imprisonment in the second degree, coercion in the third degree, criminal contempt in the second degree, harassment in the first degree, or aggravated harassment in the second degree, or attempt to commit any of the above-listed offenses, when the defendant and victim have been determined, pursuant to section 370.15 of this part, to be members of the same family or household as defined in subdivision one of section 530.11 of this chapter, the clerk of the court shall include notification and a copy of the written determination in a report of such conviction to the division of criminal justice services to enable the division to report such determination to the Federal Bureau of Investigation and assist the bureau in identifying persons prohibited from purchasing and possessing a firearm or other weapon due to conviction of an offense specified in paragraph (c) of subdivision seventeen of section 265.00 of the penal law.

§ 22. This act shall take effect immediately; provided that sections nine, ten and eleven of this act shall take effect on the same date as part NN of chapter 55 of the laws of 2018 takes effect.