

STATE OF NEW YORK

4059

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

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

AN ACT to amend the penal law and the criminal procedure law, in relation to bias related crime

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

1 Section 1. The penal law is amended by adding a new article 491 to
2 read as follows:

ARTICLE 491

BIAS RELATED CRIMES

Section 491.00 Bias related crime.

§ 491.00 Bias related crime.

3 1. As used in this section, the term "designated offense" shall mean:
4 assault in the third degree pursuant to section 120.00; assault in the
5 second degree pursuant to section 120.05; assault in the first degree
6 pursuant to section 120.10; manslaughter in the second degree pursuant
7 to section 125.15; manslaughter in the first degree pursuant to section
8 125.20; murder in the second degree pursuant to section 125.25; rape in
9 the third degree pursuant to section 130.25; rape in the second degree
10 pursuant to section 130.30; rape in the first degree pursuant to section
11 130.35; arson in the third degree pursuant to section 150.10; arson in
12 the second degree pursuant to section 150.15; arson in the first degree
13 pursuant to section 150.20; robbery in the third degree pursuant to
14 section 160.05; robbery in the second degree pursuant to section 160.10;
15 robbery in the first degree pursuant to section 160.15; burglary in the
16 third degree pursuant to section 140.20; burglary in the second degree
17 pursuant to section 140.25; burglary in the first degree pursuant to
18 section 140.30; criminal trespass in the third degree pursuant to
19 section 140.10; criminal trespass in the second degree pursuant to
20 section 140.15; criminal trespass in the first degree pursuant to
21 section 140.17; criminal mischief in the third degree pursuant to
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 section 145.05; criminal mischief in the fourth degree pursuant to
2 section 145.00; criminal mischief in the second degree pursuant to
3 section 145.10; criminal mischief in the first degree pursuant to
4 section 145.12; unlawful imprisonment in the second degree pursuant to
5 section 135.05; unlawful imprisonment in the first degree pursuant to
6 section 135.10; kidnapping in the second degree pursuant to section
7 135.20; kidnapping in the first degree pursuant to section 135.25; riot
8 in the second degree pursuant to section 240.05; riot in the first
9 degree pursuant to section 240.06; and inciting to riot pursuant to
10 section 240.08 of this chapter.

11 2. A person is guilty of bias related crime when he or she has commit-
12 ted a designated offense that demonstrates a prejudice based on the
13 actual or perceived race, color, religion, national origin, age, ethnic-
14 ity, disability, gender or sexual orientation of the victim of such
15 designated offense.

16 Bias related crime is a classification of felony or misdemeanor one
17 degree higher than the underlying offense.

18 § 2. Subdivision 2 of section 720.10 of the criminal procedure law, as
19 amended by chapter 416 of the laws of 1986 and paragraph (a) as amended
20 by chapter 316 of the laws of 2006, is amended to read as follows:

21 2. "Eligible youth" means a youth who is eligible to be found a youth-
22 ful offender. Every youth is so eligible unless:

23 (a) the conviction to be replaced by a youthful offender finding is
24 for (i) a class A-I or class A-II felony, or (ii) an armed felony as
25 defined in subdivision forty-one of section 1.20 of this chapter, except
26 as provided in subdivision three of this section, or (iii) rape in the
27 first degree, criminal sexual act in the first degree, or aggravated
28 sexual abuse, except as provided in subdivision three of this section,
29 or (iv) a bias related crime as defined in subdivision two of section
30 491.00 of the penal law, or

31 (b) such youth has previously been convicted and sentenced for a felo-
32 ny, or

33 (c) such youth has previously been adjudicated a youthful offender
34 following conviction of a felony or has been adjudicated on or after
35 September first, nineteen hundred seventy-eight a juvenile delinquent
36 who committed a designated felony act as defined in the family court
37 act.

38 § 3. This act shall take effect on the one hundred eightieth day after
39 it shall have become a law.