STATE OF NEW YORK

7740

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

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

AN ACT to amend the penal law, in relation to presumptive evidence that a person committed a hate crime

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

Section 1. Subdivision 2 of section 485.05 of the penal law, as amended by chapter 8 of the laws of 2019, is amended to read as follows:

2. **(a)** Proof of race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, 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.

(b) If it is established that a person committed a specified offense as defined in subdivision three of this section, the following facts and circumstances, either individually or in combination with each other, is presumptive evidence that such person committed a hate crime pursuant to subdivision one of this section:

(i) the defendant made declarations or statements contemporaneously with committing the specified offense regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct;

(ii) the people have established the defendant's pattern of prior prejudice regarding race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, and the offense committed by such defendant was against the same protected class as the defendant's established prior prejudice;

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

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(iii) the person against whom the offense was committed is a member of a perceived group that was outnumbered by members of another group in the area where the offense was committed; or

(iv) the people have established that the defendant made bias-related drawings, markings, symbols or graffiti at or near where the offense was committed.

§ 2. This act shall take effect immediately.