

STATE OF NEW YORK

3385

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. GALLAHAN -- read once and referred 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, the section heading and closing paragraph as amended by chapter 49 of the laws of 2006 and the opening paragraph as amended by chapter 8 of the laws of 2019, 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, gender identity or expression, 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:

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

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§ 240.29 Aggravated harassment in the first degree.

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 third degree); section 135.61 (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

1 violating an order of protection [~~as described herein~~] within the
2 preceding [~~five~~] ten years; or

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

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

7 § 9. Subdivisions 1, 2 and 3 of section 60.35 of the penal law, as
8 amended by section 1 of part E of chapter 56 of the laws of 2004,
9 subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision 1 as
10 amended by section 1 of part DD of chapter 56 of the laws of 2008 and
11 paragraph (b) of subdivision 1 as amended by chapter 320 of the laws of
12 2006, are amended to read as follows:

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

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

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

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

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

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

42 (vi) a person convicted of any offense where the complainant of such
43 offense is a member of the same family or household as the convicted
44 person shall, in addition to a mandatory surcharge and crime victim
45 assistance fee, pay any other fee required by this article, and pay a
46 domestic violence victim assistance fee in the amount of two hundred
47 fifty dollars. For the purposes of this subdivision, "member of the same
48 family or household" shall have the same meaning as defined in section
49 530.11 of the criminal procedure law.

50 (b) When the felony or misdemeanor conviction in subparagraphs (i),
51 (ii) or (iv) of paragraph (a) of this subdivision results from an
52 offense contained in article one hundred thirty of this chapter, incest
53 in the third, second or first degree as defined in sections 255.25,
54 255.26 and 255.27 of this chapter or an offense contained in article two
55 hundred sixty-three of this chapter, the person convicted shall pay a

1 supplemental sex offender victim fee of one thousand dollars in addition
2 to the mandatory surcharge and any other fee.

3 2. Where a person is convicted of two or more crimes or violations
4 committed through a single act or omission, or through an act or omis-
5 sion which in itself constituted one of the crimes or violations and
6 also was a material element of the other, the court shall impose a
7 mandatory surcharge and a crime victim assistance fee, and where appro-
8 priate a supplemental sex offender victim fee or domestic violence
9 victim assistance fee, in accordance with the provisions of this section
10 for the crime or violation which carries the highest classification, and
11 no other sentence to pay a mandatory surcharge, crime victim assistance
12 fee ~~[or]~~, supplemental sex offender victim fee or domestic violence
13 victim assistance fee required by this section shall be imposed. Where a
14 person is convicted of two or more sex offenses or sexually violent
15 offenses, as defined by subdivisions two and three of section one
16 hundred sixty-eight-a of the correction law, committed through a single
17 act or omission, or through an act or omission which in itself consti-
18 tuted one of the offenses and also was a material element of the other,
19 the court shall impose only one sex offender registration fee. Where a
20 person is convicted of two or more designated offenses, as defined by
21 subdivision seven of section nine hundred ninety-five of the executive
22 law, committed through a single act or omission, or through an act or
23 omission which in itself constituted one of the offenses and also was a
24 material element of the other, the court shall impose only one DNA data-
25 bank fee.

26 3. The mandatory surcharge, sex offender registration fee, DNA data-
27 bank fee, crime victim assistance fee, ~~[and]~~ supplemental sex offender
28 victim fee and domestic violence victim assistance fee provided for in
29 subdivision one of this section shall be paid to the clerk of the court
30 or administrative tribunal that rendered the conviction. Within the
31 first ten days of the month following collection of the mandatory
32 surcharge, crime victim assistance fee, and supplemental sex offender
33 victim fee, the collecting authority shall determine the amount of
34 mandatory surcharge, crime victim assistance fee, ~~[and]~~ supplemental sex
35 offender victim fee and domestic violence victim assistance fee
36 collected and, if it is an administrative tribunal, or a town or village
37 justice court, it shall then pay such money to the state comptroller who
38 shall deposit such money in the state treasury pursuant to section one
39 hundred twenty-one of the state finance law to the credit of the crimi-
40 nal justice improvement account established by section ninety-seven-bb
41 of the state finance law. Within the first ten days of the month follow-
42 ing collection of the sex offender registration fee and DNA databank
43 fee, the collecting authority shall determine the amount of the sex
44 offender registration fee and DNA databank fee collected and, if it is
45 an administrative tribunal, or a town or village justice court, it shall
46 then pay such money to the state comptroller who shall deposit such
47 money in the state treasury pursuant to section one hundred twenty-one
48 of the state finance law to the credit of the general fund. If such
49 collecting authority is any other court of the unified court system, it
50 shall, within such period, pay such money attributable to the mandatory
51 surcharge or crime victim assistance fee to the state commissioner of
52 taxation and finance to the credit of the criminal justice improvement
53 account established by section ninety-seven-bb of the state finance law.
54 If such collecting authority is any other court of the unified court
55 system, it shall, within such period, pay such money attributable to the
56 sex offender registration fee and the DNA databank fee to the state

1 commissioner of taxation and finance to the credit of the general fund.
2 Notwithstanding any other provision of this subdivision, all monies paid
3 to the state comptroller or to the commissioner of taxation and finance
4 which are attributable to monies collected for the domestic violence
5 victim assistance fee shall be credited to the office for the prevention
6 of domestic violence and shall be used for training of law enforcement
7 personnel in issues involving domestic violence.

8 § 10. Subdivision 8 of section 60.35 of the penal law, as amended by
9 section 121 of subpart B of part C of chapter 62 of the laws of 2011, is
10 amended to read as follows:

11 8. Subdivision one of section 130.10 of the criminal procedure law
12 notwithstanding, at the time that the mandatory surcharge, sex offender
13 registration fee or DNA databank fee, crime victim assistance fee,
14 domestic violence victim assistance fee or supplemental sex offender
15 victim fee is imposed a town or village court may, and all other courts
16 shall, issue and cause to be served upon the person required to pay the
17 mandatory surcharge, sex offender registration fee or DNA databank fee,
18 crime victim assistance fee, domestic violence victim assistance fee or
19 supplemental sex offender victim fee, a summons directing that such
20 person appear before the court regarding the payment of the mandatory
21 surcharge, sex offender registration fee or DNA databank fee, crime
22 victim assistance fee, domestic violence victim assistance fee or
23 supplemental sex offender victim fee, if after sixty days from the date
24 it was imposed it remains unpaid. The designated date of appearance on
25 the summons shall be set for the first day court is in session falling
26 after the sixtieth day from the imposition of the mandatory surcharge,
27 sex offender registration fee or DNA databank fee, crime victim assist-
28 ance fee, domestic violence victim assistance fee or supplemental sex
29 offender victim fee. The summons shall contain the information required
30 by subdivision two of section 130.10 of the criminal procedure law
31 except that in substitution for the requirement of paragraph (c) of such
32 subdivision the summons shall state that the person served must appear
33 at a date, time and specific location specified in the summons if after
34 sixty days from the date of issuance the mandatory surcharge, sex offen-
35 der registration fee or DNA databank fee, crime victim assistance fee,
36 domestic violence victim assistance fee or supplemental sex offender
37 victim fee remains unpaid. The court shall not issue a summons under
38 this subdivision to a person who is being sentenced to a term of
39 confinement in excess of sixty days in jail or in the department of
40 corrections and community supervision. The mandatory surcharges, sex
41 offender registration fee and DNA databank fees, crime victim assistance
42 fees, domestic violence victim assistance fees and supplemental sex
43 offender victim fees for those persons shall be governed by the
44 provisions of section 60.30 of this article.

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

48 3. he or she commits the crime of criminal contempt in the first
49 degree, as defined in paragraph (i), (ii), (iii), (v) or (vi) of subdi-
50 vision (b) or subdivision (c) of section 215.51 of this article, and has
51 been previously convicted of the crime of criminal contempt in the first
52 degree, as defined in such subdivision (b), (c) or (d) of section 215.51
53 of this article, within the preceding [~~five~~] ten years.

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

55 § 12. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
56 penal law, paragraph (b) as amended by chapter 94 of the laws of 2020

1 and paragraph (c) as amended by chapter 134 of the laws of 2019, are
2 amended to read as follows:

3 (b) Class C violent felony offenses: an attempt to commit any of the
4 class B felonies set forth in paragraph (a) of this subdivision; aggra-
5 vated criminally negligent homicide as defined in section 125.11, aggra-
6 vated manslaughter in the second degree as defined in section 125.21,
7 aggravated sexual abuse in the second degree as defined in section
8 130.67, assault on a peace officer, police officer, firefighter or emer-
9 gency medical services professional as defined in section 120.08,
10 assault on a judge as defined in section 120.09, gang assault in the
11 second degree as defined in section 120.06, strangulation in the first
12 degree as defined in section 121.13, aggravated strangulation as defined
13 in section 121.13-a, burglary in the second degree as defined in section
14 140.25, robbery in the second degree as defined in section 160.10,
15 aggravated criminal contempt as defined in section 215.52, criminal
16 possession of a weapon in the second degree as defined in section
17 265.03, criminal use of a firearm in the second degree as defined in
18 section 265.08, criminal sale of a firearm in the second degree as
19 defined in section 265.12, criminal sale of a firearm with the aid of a
20 minor as defined in section 265.14, aggravated criminal possession of a
21 weapon as defined in section 265.19, soliciting or providing support for
22 an act of terrorism in the first degree as defined in section 490.15,
23 hindering prosecution of terrorism in the second degree as defined in
24 section 490.30, and criminal possession of a chemical weapon or biolog-
25 ical weapon in the third degree as defined in section 490.37.

26 (c) Class D violent felony offenses: an attempt to commit any of the
27 class C felonies set forth in paragraph (b); reckless assault of a child
28 as defined in section 120.02, assault in the second degree as defined in
29 section 120.05, menacing a police officer or peace officer as defined in
30 section 120.18, stalking in the first degree, as defined in subdivision
31 one of section 120.60, strangulation in the second degree as defined in
32 section 121.12, rape in the second degree as defined in section 130.30,
33 criminal sexual act in the second degree as defined in section 130.45,
34 sexual abuse in the first degree as defined in section 130.65, course of
35 sexual conduct against a child in the second degree as defined in
36 section 130.80, aggravated sexual abuse in the third degree as defined
37 in section 130.66, facilitating a sex offense with a controlled
38 substance as defined in section 130.90, labor trafficking as defined in
39 paragraphs (a) and (b) of subdivision three of section 135.35, criminal
40 contempt in the first degree as defined in subdivision (b), (c) or (d)
41 of section 215.51, criminal possession of a weapon in the third degree
42 as defined in subdivision five, six, seven, eight, nine or ten of
43 section 265.02, criminal sale of a firearm in the third degree as
44 defined in section 265.11, intimidating a victim or witness in the
45 second degree as defined in section 215.16, soliciting or providing
46 support for an act of terrorism in the second degree as defined in
47 section 490.10, ~~and~~ making a terroristic threat as defined in section
48 490.20, falsely reporting an incident in the first degree as defined in
49 section 240.60, placing a false bomb or hazardous substance in the first
50 degree as defined in section 240.62, placing a false bomb or hazardous
51 substance in a sports stadium or arena, mass transportation facility or
52 enclosed shopping mall as defined in section 240.63, aggravated unper-
53 mitted use of indoor pyrotechnics in the first degree as defined in
54 section 405.18, and criminal manufacture, sale, or transport of an unde-
55 tectable firearm, rifle or shotgun as defined in section 265.50.

1 § 13. The opening paragraph of subdivision 2 of section 510.30 of the
2 criminal procedure law is designated paragraph (a) and a new paragraph
3 (b) is added to read as follows:

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

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

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

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

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

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

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