STATE OF NEW YORK

1906

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

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

AN ACT to amend the penal law, in relation to establishing the crime of assault of a protester in the first, second, and third degrees

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

Section 1. The penal law is amended by adding a new section 120.80 to read as follows:

§ 120.80 Assault of a protester in the third degree.

A person is guilty of assault of a protester in the third degree when, with intent to cause physical injury to another person who is engaged in protest activities, he or she causes such injury to such person or to a third person.

For the purposes of this section, "protest activities" shall mean peaceful picketing or other peaceful demonstration, protected from legal prohibition by the federal and state constitutions.

Assault of a protester in the third degree is a class E felony.

§ 2. The penal law is amended by adding a new section 120.85 to read as follows:

§ 120.85 Assault of a protester in the second degree.

A person is guilty of assault of a protester in the second degree when:

1. With intent to cause serious physical injury to another person who is engaged in protest activities, he or she causes such injury to such person or to a third person; or

2. With intent to cause physical injury to another person who is engaged in protest activities, he or she causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument.

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

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For the purposes of this section, "protest activities" shall mean peaceful picketing or other peaceful demonstration, protected from legal prohibition by the federal and state constitutions.

Assault of a protester in the second degree is a class C felony.

§ 3. The penal law is amended by adding a new section 120.90 to read as follows:

§ 120.90 Assault of a protester in the first degree.

A person is guilty of assault of a protester in the first degree when, with intent to cause serious physical injury to another person who is engaged in protest activities, he or she causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument.

For the purposes of this section, "protest activities" shall mean peaceful picketing or other peaceful demonstration, protected from legal prohibition by the federal and state constitutions.

Assault of a protester in the first degree is a class B felony.

§ 4. The opening paragraph of subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981, is amended and a new subdivision 6 is added to read as follows:

Except as provided in subdivisions two, two-a [~~and~~], five, and six of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

6. When a person is convicted of assault of a protester in the first degree, as defined in section 120.90 of this chapter, any term of imprisonment which may be imposed as a sentence upon such conviction shall run consecutively to any undischarged term of imprisonment to which the defendant was subject and for which he was confined at the time of the assault.

§ 5. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 189 of the laws of 2018 and paragraph (b) as amended by chapter 94 of the laws of 2020, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, sex trafficking of a child as defined in section 230.34-a, incest in the first degree as defined in

section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, **assault of a protester in the first degree as defined in section 120.90,** intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(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, firefighter 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, **assault of a protester in the second degree as defined in section 120.85,** strangulation in the first degree as defined in section 121.13, aggravated strangulation as defined in section 121.13-a, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, 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.

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