STATE OF NEW YORK

8261

2023-2024 Regular Sessions

IN ASSEMBLY

November 15, 2023

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

AN ACT to amend the penal law, in relation to facilitating the prosecution of hate crimes; and to repeal subdivision 3 of section 240.30 of the penal law

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

Section 1. Subdivision 3 of section 485.05 of the penal law, as amended by section 3 of part R of chapter 55 of the laws of 2020, is amended to read as follows:

3. A "specified offense" is an 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 120.06 (gang assault in the second degree); section 120.07 (gang assault in the first 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 121.11 (criminal obstruction of breathing or blood circulation);** 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 125.26 (aggravated murder); section 125.27 (murder in the first 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 130.20 (sexual misconduct); section 130.25 (rape in the third degree); section 130.30 (rape in the second degree);** section 130.35 (rape in the first degree); [~~subdivision one of~~] **section 130.40 (criminal sexual act in the third degree); section 130.45 (criminal sexual act in the second degree);** section 130.50 (criminal sexual

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

LBD13389-02-3

act in the first degree); [~~subdivision one of~~] **section 130.52 (forcible touching); section 130.53 (persistent sexual abuse); section 130.55 (sexual abuse in the third degree); section 130.60 (sexual abuse in the second degree);** section 130.65 (sexual abuse in the first degree); [~~paragraph (a) of subdivision one of~~] **section 130.65-a (aggravated sexual abuse in the fourth degree); section 130.66 (aggravated sexual abuse in the third degree);** 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 135.35 (labor trafficking); section 135.37 (aggravated labor trafficking);** 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 145.60 (making graffiti); section 150.01 (arson in the fifth 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 165.25 (jostling); section 230.34 (sex trafficking); section 230.34-a (sex trafficking of a child);** section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment [~~in the second degree~~]); **section 240.50 (falsely reporting an incident in the third degree); section 240.55 (falsely reporting an incident in the second degree); section 240.60 (falsely reporting an incident in the first degree); section 260.10 (endangering the welfare of a child); subdivision two of section 265.01 (criminal possession of a weapon in the fourth degree); subdivision one of section 265.02 (criminal possession of a weapon in the third degree); subdivision one of section 265.03 (criminal possession of a weapon in the second degree); subdivision one of section 265.04 (criminal possession of a weapon in the first degree);** section 490.10 (soliciting or providing support for an act of terrorism in the second degree); section 490.15 (soliciting or providing support for an act of terrorism in the first degree); section 490.20 (making a terroristic threat); section 490.25 (crime of terrorism); section 490.30 (hindering prosecution of terrorism in the second degree); section 490.35 (hindering prosecution of terrorism in the first degree); section 490.37 (criminal possession of a chemical weapon or biological weapon in the third degree); section 490.40 (criminal possession of a chemical weapon or biological weapon in the second degree); section 490.45 (criminal possession of a chemical weapon or biological weapon in the first degree); section 490.47 (criminal use of a chemical weapon or biological weapon in the third degree); section

490.50 (criminal use of a chemical weapon or biological weapon in the second degree); section 490.55 (criminal use of a chemical weapon or biological weapon in the first degree); or any attempt or conspiracy to commit any of the foregoing offenses.

§ 2. Subdivision 3 of section 240.30 of the penal law is REPEALED.

§ 3. Section 240.31 of the penal law, as amended by chapter 49 of the laws of 2006, the opening paragraph as amended by chapter 8 of the laws of 2019, 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~~] **Bias** harassment in the first degree.

A person is guilty of [~~aggravated~~] **bias** 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:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious [~~corporation~~] **corporations** 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~~] **bias harassment in the second degree** 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 **the former** subdivision three of section 240.30 **or bias harassment in the second degree,** or he or she has been previously convicted of the crime of aggravated harassment in the first degree **or bias 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~~] **Bias** harassment in the first degree is a class E felony.

§ 4. The penal law is amended by adding a new section 240.30-a to read as follows:

§ 240.30-a Bias harassment in the second degree.

A person is guilty of bias harassment in the second degree when, with 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, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct.

Bias harassment in the second degree is a class A misdemeanor.

§ 5. This act shall take effect immediately.