STATE OF NEW YORK

8457

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

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

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing the crimes of aggravated threat of mass harm in the first degree and aggravated threat of mass harm in the second degree, and making such crimes hate crimes

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

Section 1. Section 240.79 of the penal law, as added by chapter 206 of the laws of 2022, is renumbered 240.80 and is amended to read as follows:

§ 240.80 Aggravated threat of mass harm **in the first degree**.

1. A person is guilty of aggravated threat of mass harm **in the first degree** when such person engages in conduct as defined in section 240.78 **or 240.79** of this article and has made any overt act in furtherance of the commission of such crime.

2. For purposes of this section, an overt act may include making a plan to carry out such threat, compiling a list of targets, possession of any weapon or device that can be used to carry out such threat, or other preparatory action.

Aggravated threat of mass harm **in the first degree** is a class [~~A misdemeanor~~] **E felony**.

§ 2. The penal law is amended by adding a new section 240.79 to read as follows:

§ 240.79 Aggravated threat of mass harm in the second degree.

1. A person is guilty of aggravated threat of mass harm in the second degree when such person engages in conduct as defined in section 240.78 of this article and the threat is made because of a belief or perception regarding the group's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age disa-

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

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bility or sexual orientation, regardless of whether the belief or perception is correct.

2. 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 subdivision one of this section.

3. For purposes of this section, the terms "age", "disability" and "gender identity or expression" shall be afforded the meaning of those terms as described in subdivision four of section 485.05 of this chapter.

Aggravated threat of mass harm in the second degree is a class A misdemeanor.

§ 3. 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 120.10 (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 four of section 240.30 (aggravated harassment in the second degree); **section 240.31 (aggravated harassment in the first degree); section 240.79 (aggravated threat of mass harm in the second degree); section 240.80 (aggravated threat of mass harm 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.

§ 4. Paragraph (a) of subdivision 1 of section 530.13 of the criminal procedure law, as amended by chapter 794 of the laws of 1986, is amended to read as follows:

(a) stay away from the home, school, business or place of employment of the victims of, or designated witnesses to, the alleged offense**, or stay away from the places or events subject to threats of mass harm in an alleged offense defined in section 240.78, 240.79, or 240.80 of the penal law, as shall be specifically named by the court in such order**;

§ 5. Paragraph (a) of subdivision 4 of section 530.13 of the criminal procedure law, as amended by chapter 610 of the laws of 1998, is amended to read as follows:

(a) stay away from the home, school, business or place of employment of the victim or victims, or of any witness designated by the court, of such offense**; or stay away from the places or events subject to threats of mass harm in an alleged offense defined in section 240.78, 240.79, or 240.80 of the penal law, as shall be specifically named by the court in such order**;

§ 6. This act shall take effect immediately.