

# STATE OF NEW YORK

7737

2023-2024 Regular Sessions

## IN SENATE

November 3, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

1 Section 1. Subdivision 3 of section 485.05 of the penal law, as  
2 amended by section 3 of part R of chapter 55 of the laws of 2020, is  
3 amended to read as follows:  
4 3. A "specified offense" is an offense defined by any of the following  
5 provisions of this chapter: section 120.00 (assault in the third  
6 degree); section 120.05 (assault in the second degree); section 120.06  
7 (gang assault in the second degree); section 120.07 (gang assault in the  
8 first degree); section 120.10 (assault in the first degree); section  
9 120.12 (aggravated assault upon a person less than eleven years old);  
10 section 120.13 (menacing in the first degree); section 120.14 (menacing  
11 in the second degree); section 120.15 (menacing in the third degree);  
12 section 120.20 (reckless endangerment in the second degree); section  
13 120.25 (reckless endangerment in the first degree); section 121.11  
14 (criminal obstruction of breathing or blood circulation); section 121.12  
15 (strangulation in the second degree); section 121.13 (strangulation in  
16 the first degree); subdivision one of section 125.15 (manslaughter in  
17 the second degree); subdivision one, two or four of section 125.20  
18 (manslaughter in the first degree); section 125.25 (murder in the second  
19 degree); section 125.26 (aggravated murder); section 125.27 (murder in  
20 the first degree); section 120.45 (stalking in the fourth degree);  
21 section 120.50 (stalking in the third degree); section 120.55 (stalking  
22 in the second degree); section 120.60 (stalking in the first degree);  
23 [~~subdivision one of~~] section 130.20 (sexual misconduct); section 130.25  
24 (rape in the third degree); section 130.30 (rape in the second degree);  
25 section 130.35 (rape in the first degree); [~~subdivision one of~~] section  
26 130.40 (criminal sexual act in the third degree); section 130.45 (crimi-  
27 nal 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.

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1 act in the first degree); [~~subdivision one of~~] section 130.52 (forcible  
2 touching); section 130.53 (persistent sexual abuse); section 130.55  
3 (sexual abuse in the third degree); section 130.60 (sexual abuse in the  
4 second degree); section 130.65 (sexual abuse in the first degree);  
5 [~~paragraph (a) of subdivision one of~~] section 130.65-a (aggravated sexu-  
6 al abuse in the fourth degree); section 130.66 (aggravated sexual abuse  
7 in the third degree); section 130.67 (aggravated sexual abuse in the  
8 second degree); [~~paragraph (a) of subdivision one of~~] section 130.70  
9 (aggravated sexual abuse in the first degree); section 135.05 (unlawful  
10 imprisonment in the second degree); section 135.10 (unlawful imprison-  
11 ment in the first degree); section 135.20 (kidnapping in the second  
12 degree); section 135.25 (kidnapping in the first degree); section 135.35  
13 (labor trafficking); section 135.37 (aggravated labor trafficking);  
14 section 135.60 (coercion in the third degree); section 135.61 (coercion  
15 in the second degree); section 135.65 (coercion in the first degree);  
16 section 140.10 (criminal trespass in the third degree); section 140.15  
17 (criminal trespass in the second degree); section 140.17 (criminal tres-  
18 pass in the first degree); section 140.20 (burglary in the third  
19 degree); section 140.25 (burglary in the second degree); section 140.30  
20 (burglary in the first degree); section 145.00 (criminal mischief in the  
21 fourth degree); section 145.05 (criminal mischief in the third degree);  
22 section 145.10 (criminal mischief in the second degree); section 145.12  
23 (criminal mischief in the first degree); section 145.60 (making graffi-  
24 ti); section 150.01 (arson in the fifth degree); section 150.05 (arson  
25 in the fourth degree); section 150.10 (arson in the third degree);  
26 section 150.15 (arson in the second degree); section 150.20 (arson in  
27 the first degree); section 155.25 (petit larceny); section 155.30 (grand  
28 larceny in the fourth degree); section 155.35 (grand larceny in the  
29 third degree); section 155.40 (grand larceny in the second degree);  
30 section 155.42 (grand larceny in the first degree); section 160.05  
31 (robbery in the third degree); section 160.10 (robbery in the second  
32 degree); section 160.15 (robbery in the first degree); section 165.25  
33 (jostling); section 230.34 (sex trafficking); section 230.34-a (sex  
34 trafficking of a child); section 240.25 (harassment in the first  
35 degree); subdivision one, two or four of section 240.30 (aggravated  
36 harassment [~~in the second degree~~]); section 240.50 (falsely reporting an  
37 incident in the third degree); section 240.55 (falsely reporting an  
38 incident in the second degree); section 240.60 (falsely reporting an  
39 incident in the first degree); section 260.10 (endangering the welfare  
40 of a child); subdivision two of section 265.01 (criminal possession of a  
41 weapon in the fourth degree); subdivision one of section 265.02 (crimi-  
42 nal possession of a weapon in the third degree); subdivision one of  
43 section 265.03 (criminal possession of a weapon in the second degree);  
44 subdivision one of section 265.04 (criminal possession of a weapon in  
45 the first degree); section 490.10 (soliciting or providing support for  
46 an act of terrorism in the second degree); section 490.15 (soliciting or  
47 providing support for an act of terrorism in the first degree); section  
48 490.20 (making a terroristic threat); section 490.25 (crime of terror-  
49 ism); section 490.30 (hindering prosecution of terrorism in the second  
50 degree); section 490.35 (hindering prosecution of terrorism in the first  
51 degree); section 490.37 (criminal possession of a chemical weapon or  
52 biological weapon in the third degree); section 490.40 (criminal  
53 possession of a chemical weapon or biological weapon in the second  
54 degree); section 490.45 (criminal possession of a chemical weapon or  
55 biological weapon in the first degree); section 490.47 (criminal use of  
56 a chemical weapon or biological weapon in the third degree); section

1 490.50 (criminal use of a chemical weapon or biological weapon in the  
2 second degree); section 490.55 (criminal use of a chemical weapon or  
3 biological weapon in the first degree); or any attempt or conspiracy to  
4 commit any of the foregoing offenses.

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

6 § 3. Section 240.31 of the penal law, as amended by chapter 49 of the  
7 laws of 2006, the opening paragraph as amended by chapter 8 of the laws  
8 of 2019, subdivisions 3 and 4 as amended and subdivision 5 as added by  
9 chapter 74 of the laws of 2008, is amended to read as follows:

10 § 240.31 [~~Aggravated~~] Bias harassment in the first degree.

11 A person is guilty of [~~aggravated~~] bias harassment in the first degree  
12 when with intent to harass, annoy, threaten or alarm another person,  
13 because of a belief or perception regarding such person's race, color,  
14 national origin, ancestry, gender, gender identity or expression, reli-  
15 gion, religious practice, age, disability or sexual orientation, regard-  
16 less of whether the belief or perception is correct, he or she:

17 1. Damages premises primarily used for religious purposes, or acquired  
18 pursuant to section six of the religious [~~corporation~~] corporations law  
19 and maintained for purposes of religious instruction, and the damage to  
20 the premises exceeds fifty dollars; or

21 2. Commits the crime of [~~aggravated harassment in the second degree in~~  
22 ~~the manner proscribed by the provisions of subdivision three of section~~  
23 ~~240.30 of this article~~] bias harassment in the second degree and has  
24 been previously convicted of the crime of aggravated harassment in the  
25 second degree for the commission of conduct proscribed by the provisions  
26 of the former subdivision three of section 240.30 or bias harassment in  
27 the second degree, or he or she has been previously convicted of the  
28 crime of aggravated harassment in the first degree or bias harassment in  
29 the first degree within the preceding ten years; or

30 3. Etches, paints, draws upon or otherwise places a swastika, commonly  
31 exhibited as the emblem of Nazi Germany, on any building or other real  
32 property, public or private, owned by any person, firm or corporation or  
33 any public agency or instrumentality, without express permission of the  
34 owner or operator of such building or real property;

35 4. Sets on fire a cross in public view; or

36 5. Etches, paints, draws upon or otherwise places or displays a noose,  
37 commonly exhibited as a symbol of racism and intimidation, on any build-  
38 ing or other real property, public or private, owned by any person, firm  
39 or corporation or any public agency or instrumentality, without express  
40 permission of the owner or operator of such building or real property.

41 [~~Aggravated~~] Bias harassment in the first degree is a class E felony.

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

44 § 240.30-a Bias harassment in the second degree.

45 A person is guilty of bias harassment in the second degree when, with  
46 intent to harass, annoy, threaten or alarm another person, he or she  
47 strikes, shoves, kicks or otherwise subjects another person to physical  
48 contact, or attempts or threatens to do the same because of a belief or  
49 perception regarding such person's race, color, national origin, ances-  
50 try, gender, gender identity or expression, religion, religious prac-  
51 tice, age, disability or sexual orientation, regardless of whether the  
52 belief or perception is correct.

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

54 § 5. This act shall take effect immediately.