STATE OF NEW YORK

8774

IN SENATE

March 11, 2024

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to aggravated harassment in the first degree

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

Section 1. 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 harassment in the first degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, **or to incite violence** because of a belief or perception regarding such **other** 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~~] **such person**:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation 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 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 subdivision three of section 240.30 or [~~he or she~~] **such person** has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or

3. Etches, paints, draws upon or otherwise places **or displays** 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~~

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

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~~permission of the owner or operator of such building or real property~~] or other symbol associated with or derived from Nazi Germany, in a public location in a manner that is likely to cause another person to feel harassed, annoyed, threatened or alarmed, or to incite violence; or

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 harassment in the first degree is a class E felony.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.