STATE OF NEW YORK

3133

2025-2026 Regular Sessions

IN ASSEMBLY

January 23, 2025

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

AN ACT to amend the penal law, in relation to the crime of masked harassment and aggravated harassment

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

Section 1. Legislative intent. During the COVID-19 pandemic, when masks became essential for public health reasons, many anti-masked harassment laws across the country were suspended, modified, or in New York state's case, completely repealed.

The original intent behind these late 19th and early 20th century laws - to prevent masked individuals and groups from engaging in public intimidation or violence - remains wholly relevant today. New York state currently faces a new era of masked harassment and intimidation. Individuals who are targeting others with violence and intimidation are using masks and other face coverings as a tool to place their targets in fear of physical harm. This anti-masked harassment legislation would reinstate an anti-masked harassment law in New York following its repeal because of public health considerations during the COVID-19 pandemic, and has been modified to address these health and safety concerns.

The recent insurrection at the U.S. Capitol in 2021, is a quintessential example of how individuals who threaten and intimidate their targets have worn masks to place others in fear for their physical safety, including during the commission of violent criminal acts. Masked actors, like the KKK in the past, frequently rely on their anonymity to intimidate, provoke violence, and carry out acts of terrorism.

Anti-masked harassment laws can serve as an effective deterrent against such identity-based violence.

In the effort to continue to uphold free speech protections enshrined in the U.S. and New York Constitutions -- while also protecting the

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

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safety of all New Yorkers -- this legislation acknowledges that masks are worn for many lawful purposes, including to protect one's health and safety or for religious reasons, and accordingly provides appropriate carveouts.

This measure is not only a legal necessity, but a moral imperative to ensure the rights of all New Yorkers are protected to the fullest extent of the law. With this legislation, New York will send a clear message: masked harassment and violence will not be tolerated in our state.

§ 2. The penal law is amended by adding a new section 240.12 to read as follows:

§ 240.12 Masked harassment.

1. A person is guilty of the crime of masked harassment when such person wears a mask or other face covering that intentionally hides or conceals their face for the primary purpose of menacing or threatening violence against another person or placing another person or group of persons in reasonable fear for their physical safety.

2. It shall not constitute an offense of masked harassment under this section where a person is not wearing a mask or face covering for the primary purpose of menacing or threatening violence against another person or placing another person or group of persons in reasonable fear for their physical safety, including:

(a) wearing a mask or face covering on or near the occasion of a holiday, celebration or other event involving costumes;

(b) wearing a mask or face covering for the purpose of ensuring the physical safety of the wearer or because of the nature of the person's occupation, trade, or profession;

(c) wearing a mask or face covering for the purpose of protection from the weather elements or while participating in a winter sport;

(d) wearing a mask or face covering in an artistic or theatrical production or celebration;

(e) wearing a gas mask or other protective facial covering for the purposes of protection during or related to an emergency situation, or during emergency management drills;

(f) wearing a medical mask, face shield, or other similar face covering with the intention of ensuring one's physical health and safety or the health and safety of others, including but not limited to limiting the spread of airborne illnesses; or

(g) wearing a mask or face covering for religious purposes.

Masked harassment is a violation.

§ 3. Subdivision 3 of section 240.30 of the penal law, as amended by chapter 545 of the laws of 2024, is amended to read as follows:

3. **(a)** With the intent to harass, annoy, threaten or alarm another person, **or while wearing a mask or face covering to intentionally conceal one's identity and for the primary purpose of placing another person or group in reasonable fear for their physical safety**, [~~he or she~~] **such person** strikes, shoves, kicks, or otherwise subjects another person to physical contact, including removing a religious clothing article or headdress from such person, 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**.**

(b) It shall not constitute the offense of aggravated harassment in the second degree under this section where a person is not wearing a mask or face covering for the primary purpose of placing another person or group in reasonable fear for their physical safety while striking,

shoving, kicking, or otherwise subjecting another person to physical contact, including removing a religious clothing article or headdress from such person, or attempting or threatening 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, including:

(i) wearing a mask or face covering on or near the occasion of a holiday, celebration or other event involving costumes;

(ii) wearing a mask or face covering for the purpose of ensuring the physical safety of the wearer or because of the nature of the person's occupation, trade, or profession;

(iii) wearing a mask or face covering for the purpose of protection from the weather elements or while participating in a winter sport;

(iv) wearing a mask or face covering in an artistic or theatrical production or celebration;

(v) wearing a gas mask or other protective facial covering for the purposes of protection during or related to an emergency situation, or during emergency management drills;

(vi) wearing a medical mask, face shield, or other similar face covering with the intention of ensuring one's physical health and safety or the health and safety of others, including but not limited to limiting the spread of airborne illnesses; or

(vii) wearing a mask or face covering for religious purposes; or

§ 4. This act shall take effect immediately.