

S T A T E O F N E W Y O R K

8749

2017-2018 Regular Sessions

I N A S S E M B L Y

October 25, 2017

Introduced by M. of A. QUART -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, the executive law, the penal law and the civil practice laws and rules, in relation to harassment through electronic communication; and to amend the penal law, in relation to increasing the penalties for falsely reporting an incident and stalking

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature hereby declares that in order to protect the physical and emotional well-being of citizens to the fullest extent, it is necessary to acknowledge and punish harassment that occurs through electronic communication. Technological innovations have resulted in various platforms for personal sharing, many of which are often misused maliciously. Current penal laws are centered on harm that occurs within a public setting, which fails to account for the expansive and dynamic nature of modern technology. Harassment, intimidation, and other such crimes now occur through many mediums including, but not limited to, telephone, e-mail, webcam, and social media. Though virtual harassment may not directly result in physical injuries, the potential threat to one's sense of safety and mental health is just as concerning. Further, online harassment often leads to offline harassment and violence. Thus, it is the responsibility of the legislature to ensure that abuses enacted via technology are punished accordingly, just as abuses enacted in person are.

S 2. The civil rights law is amended by adding a new section 16 to read as follows:

S 16. PROTECTION OF RIGHTS. IT IS UNLAWFUL FOR ANY PERSON TO WILLFULLY INJURE, INTIMIDATE OR INTERFERE WITH, OR ATTEMPT TO INJURE, INTIMIDATE OR INTERFERE WITH, OR OPPRESS OR THREATEN ANY OTHER PERSON IN THE EXERCISE OF ANY RIGHT SECURED BY THE CONSTITUTION OR LAWS OF NEW YORK STATE

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

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OR BY THE CONSTITUTION OR LAWS OF THE UNITED STATES. A VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONMENT OF NOT MORE THAN ONE YEAR OR BOTH; AND IF BODILY INJURY RESULTS, A VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN TEN THOUSAND DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN TEN YEARS, OR BOTH.

S 3. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. ONLINE PRIVACY. 1. NO PERSON SHALL PUBLICLY DISCLOSE INFORMATION ABOUT ANOTHER PERSON THAT:

A. IS PRIVATE AND NOT A MATTER OF PUBLIC RECORD OR OTHERWISE OPEN TO

THE PUBLIC EYE;

- B. IS NOT A LEGITIMATE MATTER OF PUBLIC CONCERN; AND
- C. WOULD BE CONSIDERED OFFENSIVE OR PRIVATE TO A REASONABLE PERSON.

2. NO PERSON SHALL PUBLICLY DISCLOSE INFORMATION ABOUT ANOTHER PERSON THAT:

- A. IS PERSONALLY IDENTIFIABLE;
- B. PLACES THE PERSON IN A FALSE LIGHT;
- C. IS HIGHLY OBJECTIONABLE BY A REASONABLE PERSON; AND
- D. IS DONE WITH ACTUAL MALICE.

3. NO PERSON SHALL PUBLICLY USE ANOTHER PERSON'S NAME, PICTURE, PORTRAIT, VOICE OR LIKENESS TO THEIR OWN BENEFIT WITHOUT CONSENT, OR UNLESS THE USE IS FOR NEWS OR COMMENTARY.

4. ANYONE AGGRIEVED UNDER THIS SECTION HAS A CAUSE OF ACTION FOR LEGAL AND INJUNCTIVE RELIEF.

S 4. The executive law is amended by adding a new section 837-t to read as follows:

S 837-T. OFFICE FOR THE PREVENTION OF INTERNET CRIME AND HARASSMENT.

1. ESTABLISHMENT OF OFFICE. THERE IS HEREBY ESTABLISHED WITHIN THE DIVISION OF CRIMINAL JUSTICE SERVICES AN OFFICE FOR THE PREVENTION OF INTERNET CRIME AND HARASSMENT.

2. DUTIES AND RESPONSIBILITIES. THE OFFICE SHALL COORDINATE STATE AND MUNICIPAL EFFORTS TO PREVENT THE USE OF THE INTERNET FOR HARASSMENT AND OTHER CRIMES. THE OFFICE'S DUTIES SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(A) DEVELOPING OR HIRING A CONTRACTOR TO DEVELOP A TRAINING CURRICULUM FOR ALL LAW ENFORCEMENT AGENCIES TO TRAIN OFFICERS IN CURRENT INTERNET TECHNOLOGIES AND HOW THAT TECHNOLOGY IS USED TO PERPETRATE HARASSMENT AND OTHER CRIME. SUCH TRAINING CURRICULUM MUST BE IMPLEMENTED BY TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION AND MUST INCLUDE ONE COMPREHENSIVE COURSE AND ANNUAL UPDATE COURSES. CURRENT OFFICERS ARE REQUIRED TO COMPLETE THE COMPREHENSIVE COURSE NO LATER THAN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND THE ANNUAL UPDATE COURSES WITHIN EACH CALENDAR YEAR BEGINNING WITH THE YEAR TWO THOUSAND TWENTY. NEW OFFICERS ARE REQUIRED TO COMPLETE THE COMPREHENSIVE COURSE WITHIN SIX MONTHS OF HIRING AND THE ANNUAL UPDATE COURSE EACH FOLLOWING YEAR.

(B) PRESCRIBING GENERAL GUIDELINES TO ENABLE STATE AGENCIES TO COLLABORATE IN PREVENTING, INVESTIGATING AND PROSECUTING INTERNET HARASSMENT AND OTHER INTERNET CRIMES.

S 5. Section 240.25 of the penal law, as amended by chapter 109 of the laws of 1994, is amended to read as follows:

S 240.25 Harassment in the first degree.

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in

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reasonable fear of physical injury IN A PUBLIC PLACE, A PRIVATE PLACE OR BY USING ELECTRONIC COMMUNICATION, INCLUDING BUT NOT LIMITED TO E-MAIL, WEBCAM, TELEPHONE, OR SOCIAL MEDIA. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the first degree is a class B misdemeanor.

S 6. Subdivision 3 of section 240.26 of the penal law, as amended by chapter 109 of the laws of 1994, is amended to read as follows:

3. He or she engages in a course of conduct or repeatedly commits acts IN A PUBLIC PLACE, A PRIVATE PLACE OR BY USING ELECTRONIC COMMUNICATION, INCLUDING BUT NOT LIMITED TO E-MAIL, WEBCAM, TELEPHONE, OR SOCIAL MEDIA which alarm or seriously annoy such other person and which serve no legitimate purpose.

S 7. The closing paragraph of section 240.50 of the penal law, as amended by chapter 301 of the laws of 2001, is amended to read as follows:

Falsely reporting an incident in the third degree is a class [A misdemeanor] E FELONY.

S 8. The closing paragraph of section 240.55 of the penal law, as amended by chapter 301 of the laws of 2001, is amended to read as follows:

Falsely reporting an incident in the second degree is a class [E] D felony.

S 9. The closing paragraph of section 240.60 of the penal law, as amended by chapter 301 of the laws of 2001, is amended to read as follows:

Falsely reporting an incident in the first degree is a class [D] C felony.

S 10. The closing paragraph of section 120.55 of the penal law, as added by chapter 635 of the laws of 1999, is amended to read as follows:

Stalking in the second degree is a class [E] D felony.

S 11. The closing paragraph of section 120.60 of the penal law, as amended by chapter 434 of the laws of 2000, is amended to read as follows:

Stalking in the first degree is a class [D] C felony.

S 12. Subdivision 2 of section 79-n of the civil rights law, as added by chapter 227 of the laws of 2010, is amended to read as follows:

2. Any person who intentionally selects a person or property for harm or causes damage to the property of another [or], causes physical injury or death to another OR COMMITS HARASSMENT AS DEFINED IN SECTION 240.25 OF THE PENAL LAW in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, shall be liable, in a civil action or proceeding maintained by such individual or group of individuals, for injunctive relief, damages, or any other appropriate relief in law or equity. If it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

S 13. Section 213-c of the civil practice laws and rules, as added by chapter 3 of the laws of 2006, is amended to read as follows:

S 213-c. Action by victim of conduct constituting certain sexual offenses. Notwithstanding any other limitation set forth in this arti-

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cle, a civil claim or cause of action to recover from a defendant as hereinafter defined, for physical, psychological or other injury or condition suffered by a person as a result of acts by such defendant of rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law may be brought within five years, OR HARASSMENT IN THE SECOND DEGREE AS DEFINED IN SECTION 240.26 OF THE PENAL LAW, OR HARASSMENT IN THE FIRST DEGREE AS DEFINED IN SECTION 240.25 OF THE PENAL LAW. As used in this section, the term "defendant" shall mean only a person who commits the acts described in this section or who, in a criminal proceeding, could be charged with criminal liability for the commission of such acts pursuant to section 20.00 of the penal law and shall not apply to any related civil claim or cause of action arising from such acts. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action.

S 14. This act shall take effect on the first of November next

succeeding the date on which it shall have become a law.