Memorandum in Support

January 30, 2024

S. 7737   By: Senator Hoylman-Sigal
A. 8261   By: M. of A. Lee
                          Senate Committee: Codes
                          Assembly Committee: Codes
                          Effective Date: Immediately

AN ACT to amend the penal law, in relation to facilitating the prosecution of hate crimes

LAW AND SECTIONS REFERRED TO: Section 240.30 of the penal law

This bill would modernize the offenses eligible for hate crime prosecution by updating the list of eligible offenses and by further delineating the umbrella offense of aggravated harassment.

The New York State Bar Association's Task Force on Combatting Anti-Semitism and Anti-Asian Hate completed the attached report, providing a number of recommendations, including support for the Hate Crimes Modernization Act. This report was adopted as policy by NYSBA's House of Delegates at their January 2024 meeting.

Currently, the hate crimes statute applies only to offenders who commit a list of "specified offenses." This list of "specified offenses" is narrow and, and many of the omissions appear to be arbitrary. For instance, rape in the First Degree can be a hate crime, but lesser degrees of rape cannot. As history teaches, and as recent events have made clear, rape in any of its degrees can be used as a weapon of hate. There is no justification for excluding second- and third-degree rape from the ambit of the hate crime statute.

Similarly, while Criminal Mischief in the Fourth Degree (intentionally or recklessly damaging property) can be a hate crime, the related offense of Making Graffiti cannot. This makes little sense, because as graffiti can (and too often does) include racist, anti-Semitic, or anti-gay content or can otherwise target disadvantaged groups. Other excluded offenses, which could easily be motivated by bias, include: Criminal Obstruction of Breathing, Endangering the Welfare of a Child, Endangering the Welfare of an Incompetent or Physically Disabled Person, Unlawful Dissemination of an Intimate Image, or Forcible Touching.[1] The current hate crime statute is thus plainly underinclusive, as it does not cover a large panoply of bias crimes.

The legislative findings in Penal Law 485.00, which explain the reasons for New York's hate crime laws, do not justify those arbitrary distinctions. The new bill would address this problem by allowing 30 additional offenses to qualify as hate crimes if motivated by bias.

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[1] EC-AND-HOD-AMENDED-Task-Force-on-Antisemitism-and-Anti-Asian-Hate-FINAL-1.22.24.pdf (nysba.org)

Expanding the list of offenses eligible for hate crime prosecution would bring the New York statute closer in alignment with the federal statute, in which "[t]he hate crime enhancements are available for virtually any serious federal offense, even for violations of statutes generally not considered hate crime laws."[2] It would also put New York further in line with the laws of most other states.

In October 2023, the FBI released data that shows hate crimes in the U.S. at their highest since data collection began in 1991. Not enough attention has been devoted to hate crimes despite the gravity of the problem. This legislation would help to combat a glaring gap in the hate crime statute.

For the above reasons and the attached report, the New York State Bar Association **SUPPORTS** this legislation.

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[2] https://crsreports.congress.gov/product/pdf/R/R47060