

# PROGRAM BILL # 43

## GOVERNOR'S PROGRAM BILL 2014

### MEMORANDUM

AN ACT to amend the penal law and the executive law in relation to aggravated harassment in the second degree.

#### Purpose:

Recently, in the case of People v. Golb, the New York State Court of Appeals struck down as unconstitutional subsection 1 of the Aggravated Harassment in the Second Degree statute (Penal Law §240.30(1)).<sup>1</sup> This bill would cure the constitutional defect of the original statute by amending Penal Law §240.30 thereby reviving that law. This bill would also amend the Executive Law as it relates to the physical injury requirement exceptions for award eligibility from the Office of Victims Services ("OVS").

#### Summary of Provisions:

Section 1 would amend Penal Law §240.30 to address the constitutional issues raised in the Golb decision by expressly addressing harassing communications that threaten to cause physical harm or harm to property of another which a defendant knows or reasonably should know will cause a victim to fear such harm.

Section 2 would amend Executive Law §631(12) to make a conforming change in light of amendments made to the law in 2012.

Section 3 would provide for an immediate effective date.

#### Existing Law:

Currently, subdivision 1 of Penal Law §240.30 criminalizes communications intended to harass, annoy, threaten, or alarm another person. The Court of Appeals found this subdivision to be unconstitutionally vague and overbroad under the First Amendment.

Currently, subdivision 12 of Executive Law §631 provides exceptions to the physical injury requirement related to the OVS award eligibility for victims of certain crimes. Penal Law

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<sup>1</sup> A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she: 1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or (b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm.

§240.30(4) is listed as one of these exceptions. A 2012 amendment renumbered the subsections in §240.30, however, there was no corresponding amendment to the Executive Law.

**Justification:**

In People v. Golb, the Court of Appeals struck down as unconstitutional subsection 1 of Aggravated Harassment in the Second Degree (Penal Law §240.30(1)). The Court found the statute “unconstitutionally vague and overbroad” under the First Amendments of both State and federal constitutions, because it “criminalizes, in broad strokes, any communication that has the intent to annoy.” This bill would cure that defect.

There are approximately 7,600 open matters statewide where Penal Law §230.40(1) is the most serious charge; it is a crime that impacts many people. Moreover, an alleged violation of this law is an important tool for domestic violence victims, where it forms the predicate for issuing an order of protection by a court to protect such victims.

Executive Law §631(12) provides compensation to victims, who are often victims of domestic violence-related crimes, who suffer harm that is not “physical injury” but nonetheless are injured. In 2012 the Penal Law was amended without making certain technical, conforming changes to the Executive Law to ensure the continued viability of this compensation. This legislation would correct that omission.

**Legislative History:**

This is a new bill.

**Budget Implications:**

None.

**Effective Date:**

This bill would take effect immediately.