

**The New York State Statute on Bias-Related Crime: Consolidated Law 485,
as Amended August 2003; Relevant CUNY Policies**

§ 485.00 Legislative findings.

The legislature finds and determines as follows: criminal acts involving violence, intimidation and destruction of property based upon bias and prejudice have become more prevalent in New York state in recent years. The intolerable truth is that in these crimes, commonly and justly referred to as "hate crimes", victims are intentionally selected, in whole or in part, because of their race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation. Hate crimes do more than threaten the safety and welfare of all citizens. They inflict on victims incalculable physical and emotional damage and tear at the very fabric of free society. Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes. In a democratic society, citizens cannot be required to approve of the beliefs and practices of others, but must never commit criminal acts on account of them. Current law does not adequately recognize the harm to public order and individual safety that hate crimes cause. Therefore, our laws must be strengthened to provide clear recognition of the gravity of hate crimes and the compelling importance of preventing their recurrence.

Accordingly, the legislature finds and declares that hate crimes should be prosecuted and punished with appropriate severity.

§ 485.05 Hate crimes.

1. A person commits a hate crime when he or she commits a specified offense and either:
 - (a) intentionally selects the person against whom the offense is committed or intended to be committed 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, or

(b) intentionally commits the act or acts constituting the offense 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.

2. Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

3. A "specified offense" is an offense defined by any of the following provisions of this chapter:

section 120.00 (assault in the third degree);

section 120.05 (assault in the second degree);

section 120.10 (assault in the first degree);

section 120.12 (aggravated assault upon a person less than eleven years old);

section 120.13 (menacing in the first degree);

section 120.14 (menacing in the second degree);

section 120.15 (menacing in the third degree);

section 120.20 (reckless endangerment in the second degree);

section 120.25 (reckless endangerment in the first degree);

subdivision one of section 125.15 (manslaughter in the second degree);

subdivision one, two or four of section 125.20 (manslaughter in the first degree) section 125.25 (murder in the second degree);

section 120.45 (stalking in the fourth degree);

section 120.50 (stalking in the third degree);

section 120.55 (stalking in the second degree);

section 120.60 (stalking in the first degree);

subdivision one of section 130.35 (rape in the first degree);

subdivision one of section 130.50 (criminal sexual act in the first degree);

subdivision one of section 130.65 (sexual abuse in the first degree);

paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree);

paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree);

section 135.05 (unlawful imprisonment in the second degree);

section 135.10 (unlawful imprisonment in the first degree);

section 135.20 (kidnapping in the second degree);

section 135.25 (kidnapping in the first degree);
section 135.60 (coercion in the second degree);
section 135.65 (coercion in the first degree);
section 140.10 (criminal trespass in the third degree);
section 140.15 (criminal trespass in the second degree);
section 140.17 (criminal trespass in the first degree);
section 140.20 (burglary in the third degree);
section 140.25 (burglary in the second degree);
section 140.30 (burglary in the first degree);
section 145.00 (criminal mischief in the fourth degree);
section 145.05 (criminal mischief in the third degree);
section 145.10 (criminal mischief in the second degree);
section 145.12 (criminal mischief in the first degree);
section 150.05 (arson in the fourth degree);
section 150.10 (arson in the third degree);
section 150.15 (arson in the second degree);
section 150.20 (arson in the first degree);
section 155.25 (petit larceny);
section 155.30 (grand larceny in the fourth degree);
section 155.35 (grand larceny in the third degree);
section 155.40 (grand larceny in the second degree);
section 155.42 (grand larceny in the first degree);
section 160.05 (robbery in the third degree);
section 160.10 (robbery in the second degree);
section 160.15 (robbery in the first degree);
section 240.25 (harassment in the first degree);
subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); or any attempt or conspiracy to commit any of the foregoing offenses.

4. For purposes of this section: (a) the term "age" means sixty years old or more; (b) the term "disability" means a physical or mental impairment that substantially limits a major life activity.

§ 485.10 Sentencing.

1. When a person is convicted of a hate crime pursuant to this article, and the specified offense is a violent felony offense, as defined in section 70.02 of this chapter, the hate crime shall be deemed a violent felony offense.

2. When a person is convicted of a hate crime pursuant to this article and the specified offense is a misdemeanor or a class C, D or E felony, the hate crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant's conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.

3. Notwithstanding any other provision of law, when a person is convicted of a hate crime pursuant to this article and the specified offense is a class B felony:

(a) the maximum term of the indeterminate sentence must be at least six years if the defendant is sentenced pursuant to section 70.00 of this chapter;

(b) the term of the determinate sentence must be at least eight years if the defendant is sentenced pursuant to section 70.02 of this chapter;

(c) the term of the determinate sentence must be at least twelve years if the defendant is sentenced pursuant to section 70.04 of this chapter;

(d) the maximum term of the indeterminate sentence must be at least four years if the defendant is sentenced pursuant to section 70.05 of this chapter; and

(e) the maximum term of the indeterminate sentence or the term of the determinate sentence must be at least ten years if the defendant is sentenced pursuant to section 70.06 of this chapter.

4. Notwithstanding any other provision of law, when a person is convicted of a hate crime pursuant to this article and the specified offense is a class A-1 felony, the minimum period of the indeterminate sentence shall be not less than twenty years.