

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the crime of committing an offense while impersonating a police officer or peace officer

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

1     Section 1. The penal law is amended by adding a new section 190.28 to  
2     read as follows:  
3     S 190.28 COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER OR  
4     PEACE OFFICER.  
5     1. A PERSON IS GUILTY OF COMMITTING AN OFFENSE WHILE IMPERSONATING A  
6     POLICE OFFICER OR PEACE OFFICER WHEN HE OR SHE COMMITS A SPECIFIED  
7     OFFENSE AND DURING THE COURSE OF SUCH SPECIFIED OFFENSE EITHER:  
8     (A) PRETENDS TO BE A POLICE OFFICER OR PEACE OFFICER, OR WEARS OR  
9     DISPLAYS WITHOUT AUTHORITY, ANY UNIFORM, BADGE OR OTHER INSIGNIA OR  
10    FACSIMILE THEREOF, BY WHICH SUCH POLICE OFFICER OR PEACE OFFICER IS  
11    LAWFULLY DISTINGUISHED OR EXPRESSES BY HIS OR HER WORDS OR ACTIONS THAT  
12    HE OR SHE IS ACTING WITH THE APPROVAL OR AUTHORITY OF ANY POLICE DEPART-  
13    MENT OR LAW ENFORCEMENT AGENCY; OR  
14    (B) WITHOUT AUTHORITY TO DISPLAY ON A MOTOR VEHICLE LIGHTS OR MARKINGS  
15    BY WHICH A MOTOR VEHICLE OPERATED BY A POLICE DEPARTMENT OR LAW ENFORCE-  
16    MENT AGENCY IS IDENTIFIED, DISPLAYS SUCH LIGHTS OR MARKINGS; OR DISPLAYS  
17    UPON A MOTOR VEHICLE A RED LIGHT, WHETHER CONTINUOUS OR FLASHING, VISI-  
18    BLE FROM THE FRONT OF SUCH VEHICLE.  
19    2. FOR THE PURPOSES OF THIS SECTION A "SPECIFIED OFFENSE" IS AN  
20    OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER:  
21    SECTION 100.00 (CRIMINAL SOLICITATION IN THE FIFTH DEGREE); SECTION  
22    100.05 (CRIMINAL SOLICITATION IN THE FOURTH DEGREE); SECTION 100.08  
23    (CRIMINAL SOLICITATION IN THE THIRD DEGREE); SECTION 100.10 (CRIMINAL

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

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1 SOLICITATION IN THE SECOND DEGREE); SECTION 100.13 (CRIMINAL SOLICITA-  
2 TION IN THE FIRST DEGREE); SECTION 115.00 (CRIMINAL FACILITATION IN THE  
3 FOURTH DEGREE); SECTION 115.01 (CRIMINAL FACILITATION IN THE THIRD  
4 DEGREE); SECTION 115.05 (CRIMINAL FACILITATION IN THE SECOND DEGREE);  
5 SECTION 115.08 (CRIMINAL FACILITATION IN THE FIRST DEGREE); SECTION  
6 120.00 (ASSAULT IN THE THIRD DEGREE); SECTION 120.05 (ASSAULT IN THE  
7 SECOND DEGREE); SECTION 120.10 (ASSAULT IN THE FIRST DEGREE); SECTION  
8 120.12 (AGGRAVATED ASSAULT UPON A PERSON LESS THAN ELEVEN YEARS OLD);  
9 SECTION 120.13 (MENACING IN THE FIRST DEGREE); SECTION 120.14 (MENACING  
10 IN THE SECOND DEGREE); SECTION 120.15 (MENACING IN THE THIRD DEGREE);  
11 SECTION 120.20 (RECKLESS ENDANGERMENT IN THE SECOND DEGREE); SECTION  
12 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE); SECTION 120.45  
13 (STALKING IN THE FOURTH DEGREE); SECTION 120.50 (STALKING IN THE THIRD  
14 DEGREE); SECTION 120.55 (STALKING IN THE SECOND DEGREE); SECTION 120.60  
15 (STALKING IN THE FIRST DEGREE); SECTION 125.10 (CRIMINALLY NEGLIGENT  
16 HOMICIDE); SECTION 125.15 (MANSLAUGHTER IN THE SECOND DEGREE); SECTION  
17 125.20 (MANSLAUGHTER IN THE FIRST DEGREE); SECTION 125.25 (MURDER IN THE  
18 SECOND DEGREE); SUBDIVISION ONE OF SECTION 130.35 (RAPE IN THE FIRST  
19 DEGREE); SUBDIVISION ONE OF SECTION 130.50 (CRIMINAL SEXUAL ACT IN THE  
20 FIRST DEGREE); SUBDIVISION ONE OF SECTION 130.65 (SEXUAL ABUSE IN THE  
21 FIRST DEGREE); PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION 130.67  
22 (AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE); PARAGRAPH (A) OF SUBDI-  
23 VISION ONE OF SECTION 130.70 (AGGRAVATED SEXUAL ABUSE IN THE FIRST  
24 DEGREE); SECTION 135.05 (UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE);  
25 SECTION 135.10 (UNLAWFUL IMPRISONMENT IN THE FIRST DEGREE); SECTION  
26 135.20 (KIDNAPPING IN THE SECOND DEGREE); SECTION 135.25 (KIDNAPPING IN  
27 THE FIRST DEGREE); SECTION 135.45 (CUSTODIAL INTERFERENCE IN THE SECOND  
28 DEGREE); SECTION 135.50 (CUSTODIAL INTERFERENCE IN THE FIRST DEGREE);  
29 SECTION 135.60 (COERCION IN THE SECOND DEGREE); SECTION 135.65 (COERCION  
30 IN THE FIRST DEGREE); SECTION 140.10 (CRIMINAL TRESPASS IN THE THIRD  
31 DEGREE); SECTION 140.15 (CRIMINAL TRESPASS IN THE SECOND DEGREE);  
32 SECTION 140.17 (CRIMINAL TRESPASS IN THE FIRST DEGREE); SECTION 140.20  
33 (BURGLARY IN THE THIRD DEGREE); SECTION 140.25 (BURGLARY IN THE SECOND  
34 DEGREE); SECTION 140.30 (BURGLARY IN THE FIRST DEGREE); SECTION 145.00  
35 (CRIMINAL MISCHIEF IN THE FOURTH DEGREE); SECTION 145.05 (CRIMINAL  
36 MISCHIEF IN THE THIRD DEGREE); SECTION 145.10 (CRIMINAL MISCHIEF IN THE  
37 SECOND DEGREE); SECTION 145.12 (CRIMINAL MISCHIEF IN THE FIRST DEGREE);  
38 SECTION 145.14 (CRIMINAL TAMPERING IN THE THIRD DEGREE); SECTION 145.15  
39 (CRIMINAL TAMPERING IN THE SECOND DEGREE); SECTION 145.20 (CRIMINAL  
40 TAMPERING IN THE FIRST DEGREE); SECTION 145.40 (TAMPERING WITH A CONSUM-  
41 ER PRODUCT IN THE SECOND DEGREE); SECTION 145.45 (TAMPERING WITH A  
42 CONSUMER PRODUCT IN THE FIRST DEGREE); SECTION 150.05 (ARSON IN THE  
43 FOURTH DEGREE); SECTION 150.10 (ARSON IN THE THIRD DEGREE); SECTION  
44 150.15 (ARSON IN THE SECOND DEGREE); SECTION 150.20 (ARSON IN THE FIRST  
45 DEGREE); SECTION 155.25 (PETIT LARCENY); SECTION 155.30 (GRAND LARCENY  
46 IN THE FOURTH DEGREE); SECTION 155.35 (GRAND LARCENY IN THE THIRD  
47 DEGREE); SECTION 155.40 (GRAND LARCENY IN THE SECOND DEGREE); SECTION  
48 155.42 (GRAND LARCENY IN THE FIRST DEGREE); SECTION 160.05 (ROBBERY IN  
49 THE THIRD DEGREE); SECTION 160.10 (ROBBERY IN THE SECOND DEGREE);  
50 SECTION 160.15 (ROBBERY IN THE FIRST DEGREE); SECTION 165.00 (MISAPPLI-  
51 CATION OF PROPERTY); SECTION 165.05 (UNAUTHORIZED USE OF A VEHICLE IN  
52 THE THIRD DEGREE); SECTION 165.15 (THEFT OF SERVICES); SECTION 165.20  
53 (FRAUDULENTLY OBTAINING A SIGNATURE); SECTION 165.30 (FRAUDULENT ACCOST-  
54 ING); SECTION 195.05 (OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE  
55 SECOND DEGREE); SECTION 195.07 (OBSTRUCTING GOVERNMENTAL ADMINISTRATION  
56 IN THE FIRST DEGREE); SECTION 195.08 (OBSTRUCTING GOVERNMENTAL ADMINIS-

1 TRATION BY MEANS OF A SELF-DEFENSE SPRAY DEVICE); SECTION 195.15  
2 (OBSTRUCTING FIREFIGHTING OPERATIONS); SECTION 195.16 (OBSTRUCTING EMER-  
3 GENCY MEDICAL SERVICES); SECTION 195.20 (DEFRAUDING THE GOVERNMENT);  
4 SECTION 205.05 (ESCAPE IN THE THIRD DEGREE); SECTION 205.10 (ESCAPE IN  
5 THE SECOND DEGREE); SECTION 205.15 (ESCAPE IN THE FIRST DEGREE); SECTION  
6 205.30 (RESISTING ARREST); SECTION 205.55 (HINDERING PROSECUTION IN THE  
7 THIRD DEGREE); SECTION 205.60 (HINDERING PROSECUTION IN THE SECOND  
8 DEGREE); SECTION 205.65 (HINDERING PROSECUTION IN THE FIRST DEGREE);  
9 SECTION 215.10 (TAMPERING WITH A WITNESS IN THE FOURTH DEGREE); SECTION  
10 215.11 (TAMPERING WITH A WITNESS IN THE THIRD DEGREE); SECTION 215.12  
11 (TAMPERING WITH A WITNESS IN THE SECOND DEGREE); SECTION 215.13 (TAMPER-  
12 ING WITH A WITNESS IN THE FIRST DEGREE); SECTION 215.15 (INTIMIDATING A  
13 VICTIM OR WITNESS IN THE THIRD DEGREE); SECTION 215.16 (INTIMIDATING A  
14 VICTIM OR WITNESS IN THE SECOND DEGREE); SECTION 215.17 (INTIMIDATING A  
15 VICTIM OR WITNESS IN THE FIRST DEGREE); SECTION 215.23 (TAMPERING WITH A  
16 JUROR IN THE SECOND DEGREE); SECTION 215.25 (TAMPERING WITH A JUROR IN  
17 THE FIRST DEGREE); SECTION 215.40 (TAMPERING WITH PHYSICAL EVIDENCE);  
18 SECTION 215.45 (COMPOUNDING A CRIME); SECTION 215.50 (CRIMINAL CONTEMPT  
19 IN THE SECOND DEGREE); SECTION 215.51 (CRIMINAL CONTEMPT IN THE FIRST  
20 DEGREE); SECTION 215.52 (AGGRAVATED CRIMINAL CONTEMPT); SECTION 240.21  
21 (DISRUPTION OR DISTURBANCE OF RELIGIOUS SERVICE, FUNERAL, BURIAL OR  
22 MEMORIAL SERVICE); SECTION 240.26 (HARASSMENT IN THE SECOND DEGREE);  
23 SECTION 240.48 (DISSEMINATING A FALSE REGISTERED SEX OFFENDER NOTICE);  
24 SECTION 240.50 (FALSELY REPORTING AN INCIDENT IN THE THIRD DEGREE);  
25 SECTION 240.55 (FALSELY REPORTING AN INCIDENT IN THE SECOND DEGREE);  
26 SECTION 240.60 (FALSELY REPORTING AN INCIDENT IN THE FIRST DEGREE);  
27 SECTION 240.70 (CRIMINAL INTERFERENCE WITH HEALTH CARE SERVICES OR RELI-  
28 GIOUS WORSHIP IN THE SECOND DEGREE); SECTION 240.71 (CRIMINAL INTERFER-  
29 ENCE WITH HEALTH CARE SERVICES OR RELIGIOUS WORSHIP IN THE FIRST  
30 DEGREE); SECTION 241.05 (HARASSMENT OF A RENT REGULATED TENANT); SECTION  
31 250.05 (EAVESDROPPING); SECTION 250.25 (TAMPERING WITH PRIVATE COMMUNI-  
32 CATIONS); SECTION 250.30 (UNLAWFULLY OBTAINING COMMUNICATIONS INFORMA-  
33 TION); SECTION 250.45 (UNLAWFUL SURVEILLANCE IN THE SECOND DEGREE);  
34 SECTION 250.50 (UNLAWFUL SURVEILLANCE IN THE FIRST DEGREE); SECTION  
35 265.01 (CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE); SECTION  
36 265.02 (CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE); SECTION  
37 265.03 (CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE); SECTION  
38 265.04 (CRIMINAL POSSESSION OF A DANGEROUS WEAPON IN THE FIRST DEGREE);  
39 SECTION 265.06 (UNLAWFUL POSSESSION OF A WEAPON UPON SCHOOL GROUNDS);  
40 SECTION 265.08 (CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE); SECTION  
41 265.09 (CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE); SUBDIVISION  
42 THREE OF SECTION 265.10 (MANUFACTURE, TRANSPORT, DISPOSITION AND DEFACE-  
43 MENT OF WEAPONS AND DANGEROUS INSTRUMENTS AND APPLIANCES); SECTION  
44 270.20 (UNLAWFUL WEARING OF A BODY VEST); SECTION 485.05 (HATE CRIMES);  
45 SECTION 490.25 (CRIME OF TERRORISM); SECTION 490.30 (HINDERING PROSE-  
46 CUTION OF TERRORISM IN THE SECOND DEGREE); SECTION 490.35 (HINDERING  
47 PROSECUTION OF TERRORISM IN THE FIRST DEGREE); SECTION 490.37 (CRIMINAL  
48 POSSESSION OF A CHEMICAL WEAPON OR BIOLOGICAL WEAPON IN THE THIRD  
49 DEGREE); SECTION 490.40 (CRIMINAL POSSESSION OF A CHEMICAL WEAPON OR  
50 BIOLOGICAL WEAPON IN THE SECOND DEGREE); SECTION 490.45 (CHEMICAL  
51 POSSESSION OF A CHEMICAL WEAPON OR BIOLOGICAL WEAPON IN THE FIRST  
52 DEGREE); SECTION 490.47 (CRIMINAL USE OF A CHEMICAL WEAPON OR BIOLOGICAL  
53 WEAPON IN THE THIRD DEGREE); SECTION 490.50 (CRIMINAL USE OF A CHEMICAL  
54 WEAPON OR BIOLOGICAL WEAPON IN THE SECOND DEGREE); OR ANY ATTEMPT OR  
55 CONSPIRACY TO COMMIT ANY OF THE FOREGOING OFFENSES.

1 3. (A) WHEN A PERSON IS CONVICTED OF COMMITTING AN OFFENSE WHILE  
2 IMPERSONATING A POLICE OFFICER OR PEACE OFFICER PURSUANT TO THIS  
3 SECTION, AND THE SPECIFIED OFFENSE IS A VIOLENT FELONY OFFENSE, AS  
4 DEFINED IN SECTION 70.02 OF THIS CHAPTER, THE OFFENSE OF COMMITTING AN  
5 OFFENSE WHILE IMPERSONATING A POLICE OFFICER OR PEACE OFFICER SHALL BE  
6 DEEMED A VIOLENT FELONY OFFENSE.

7 (B) WHEN A PERSON IS CONVICTED OF COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER OR PEACE OFFICER PURSUANT TO THIS SECTION AND  
8 THE SPECIFIED OFFENSE IS A MISDEMEANOR OR A CLASS C, D OR E FELONY, THE  
9 OFFENSE OF COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER OR  
10 PEACE OFFICER SHALL BE DEEMED TO BE ONE CATEGORY HIGHER THAN THE SPECIFIED OFFENSE THE DEFENDANT COMMITTED, OR ONE CATEGORY HIGHER THAN THE  
11 OFFENSE LEVEL APPLICABLE TO THE DEFENDANT'S CONVICTION FOR AN ATTEMPT OR  
12 CONSPIRACY TO COMMIT A SPECIFIED OFFENSE, WHICHEVER IS APPLICABLE.

13 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
14 CONVICTED OF COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER  
15 OR PEACE OFFICER PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS A  
16 CLASS B FELONY:

17 (I) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST  
18 SIX YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.00 OF  
19 THIS CHAPTER;

20 (II) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST EIGHT YEARS  
21 IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.02 OF THIS CHAPTER;

22 (III) THE TERM OF THE DETERMINATE SENTENCE MUST BE AT LEAST TWELVE  
23 YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.04 OF THIS  
24 CHAPTER;

25 (IV) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE MUST BE AT LEAST  
26 FOUR YEARS IF THE DEFENDANT IS SENTENCED PURSUANT TO SECTION 70.05 OF  
27 THIS CHAPTER; AND

28 (V) THE MAXIMUM TERM OF THE INDETERMINATE SENTENCE OR THE TERM OF THE  
29 DETERMINATE SENTENCE MUST BE AT LEAST TEN YEARS IF THE DEFENDANT IS  
30 SENTENCED PURSUANT TO SECTION 70.06 OF THIS CHAPTER.

31 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
32 CONVICTED OF COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER  
33 OR PEACE OFFICER PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS A  
34 CLASS A-I FELONY, THE MINIMUM PERIOD OF THE INDETERMINATE SENTENCE SHALL  
35 BE NOT LESS THAN TWENTY YEARS.

36 (E) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN A PERSON IS  
37 CONVICTED OF COMMITTING AN OFFENSE WHILE IMPERSONATING A POLICE OFFICER  
38 OR PEACE OFFICER PURSUANT TO THIS SECTION AND THE SPECIFIED OFFENSE IS  
39 THE VIOLATION OF HARASSMENT IN THE SECOND DEGREE AS DEFINED IN SECTION  
40 240.26 OF THIS PART, THE COMMITTING OF AN OFFENSE WHILE IMPERSONATING A  
41 POLICE OFFICER OR PEACE OFFICER SHALL BE DEEMED TO BE A CLASS A MISDEMEANOR.

42 S 2. Subdivision 2 of section 70.25 of the penal law, as amended by  
43 chapter 56 of the laws of 1984, is amended to read as follows:

44 2. When more than one sentence of imprisonment is imposed on a person  
45 for two or more offenses committed through a single act or omission, or  
46 through an act or omission which in itself constituted one of the  
47 offenses and also was a material element of the other OR A VIOLATION OF  
48 SECTION 190.28 OF THIS CHAPTER AND A VIOLATION OF SECTION 190.25 OR  
49 190.26 OF THIS CHAPTER COMMITTED THROUGH A SINGLE ACT OR CRIMINAL TRANS-  
50 ACTION, the sentences, except if one or more of such sentences is for a  
51 violation of section 270.20 of this chapter, must run concurrently.

52 S 3. This act shall take effect on the first of November next succeeding  
53 the date on which it shall have become a law.