

# STATE OF NEW YORK

6578

2021-2022 Regular Sessions

## IN ASSEMBLY

March 19, 2021

Introduced by M. of A. MONTESANO -- read once and referred to the  
Committee on Codes

AN ACT to amend the penal law, in relation to establishing the offenses of menacing a police officer or peace officer in the first degree and menacing a police officer or peace officer in the second degree; to amend the criminal procedure law, in relation to circumstances under which an officer is not required to issue an appearance ticket; and to amend the penal law, the criminal procedure law and the administrative code of the city of New York, in relation to making conforming changes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 120.18 of the penal law, as added by chapter 765 of  
2 the laws of 2005, is amended to read as follows:

3 § [~~120.18~~] 120.19 Menacing a police officer or peace officer in the  
4 first degree.

5 A person is guilty of menacing a police officer or peace officer in  
6 the first degree when he or she intentionally places or attempts to  
7 place a police officer or peace officer in reasonable fear of physical  
8 injury, serious physical injury or death by displaying a deadly weapon,  
9 knife, pistol, revolver, rifle, shotgun, machine gun or other firearm,  
10 whether operable or not, where such officer was in the course of  
11 performing his or her official duties and the defendant knew or reason-  
12 ably should have known that such victim was a police officer or peace  
13 officer.

14 Menacing a police officer or peace officer in the first degree is a  
15 class [~~D~~] C felony.

16 § 2. The penal law is amended by adding a new section 120.18 to read  
17 as follows:

18 § 120.18 Menacing a police officer or peace officer in the second  
19 degree.

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

LBD00862-01-1

A person is guilty of menacing a police officer or peace officer in the second degree when he or she intentionally assaults a police officer or peace officer by throwing or spraying water, urine, or any other substance where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was a police officer or peace officer.

Menacing a police officer or peace officer in the second degree is a class D felony.

§ 3. Subparagraph (viii) of paragraph (b) of subdivision 1 of section 150.20 of the criminal procedure law, as added by section 1-a of part JJJ of chapter 59 of the laws of 2019, is amended and a new subparagraph (ix) is added to read as follows:

(viii) it reasonably appears to the officer, based on the observed behavior of the individual in the present contact with the officer and facts regarding the person's condition that indicates a sign of distress to such a degree that the person would face harm without immediate medical or mental health care, that bringing the person before the court would be in such person's interest in addressing that need; provided, however, that before making the arrest, the officer shall make all reasonable efforts to assist the person in securing appropriate services[~~+~~]; or

(ix) the person is charged with menacing a police officer or peace officer in the second degree as defined in section 120.18 of the penal law.

§ 4. Subdivision 20 of section 10.00 of the penal law, as added by chapter 765 of the laws of 2005, is amended to read as follows:

20. For purposes of sections 120.13, 120.18, 120.19, 125.11, 125.21 and 125.22 of this chapter, the term "peace officer" means a peace officer as defined in subdivision one, two, three, four, six, twelve, thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-three, twenty-three-a, twenty-four, twenty-five, twenty-six, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six, forty-three, forty-five, forty-seven, forty-eight, forty-nine, fifty-one, fifty-two, fifty-eight, sixty-one, as added by chapter two hundred fifty-seven of the laws of nineteen hundred ninety-two, [~~sixty-one, as added by chapter three hundred twenty-one of the laws of nineteen hundred ninety-two,~~] sixty-two, as added by chapter two hundred four of the laws of nineteen hundred ninety-three, sixty-two, as added by chapter six hundred eighty-seven of the laws of nineteen hundred ninety-three, sixty-three, as amended by chapter six hundred thirty-eight of the laws of two thousand three, sixty-four, sixty-five, sixty-eight, as added by chapter one hundred sixty-eight of the laws of two thousand, sixty-eight, as added by chapter three hundred eighty-one of the laws of two thousand, seventy, seventy-one, seventy-four, as added by chapter five hundred forty-eight of the laws of two thousand one, seventy-five, as added by chapter three hundred twenty-one of the laws of two thousand two, seventy-five, as added by chapter six hundred twenty-three of the laws of two thousand two, seventy-seven, as added by chapter three hundred sixty-seven of the laws of two thousand four, seventy-eight or seventy-nine, as added by chapter two hundred forty-one of the laws of two thousand four, of section 2.10 of the criminal procedure law, as well as any federal law enforcement officer defined in section 2.15 of the criminal procedure law.

§ 5. Paragraphs (b) and (c) of subdivision 1, paragraph (b-1) of subdivision 2 and paragraph (c) of subdivision 3 of section 70.02 of the penal law, paragraph (b) of subdivision 1 as amended by chapter 94 of

1 the laws of 2020, paragraph (c) of subdivision 1 as amended by chapter  
2 134 of the laws of 2019, paragraph (b-1) of subdivision 2 as added by  
3 chapter 765 of the laws of 2005, and paragraph (c) of subdivision 3 as  
4 amended by chapter 1 of the laws of 2013, are amended to read as  
5 follows:

6 (b) Class C violent felony offenses: an attempt to commit any of the  
7 class B felonies set forth in paragraph (a) of this subdivision; menac-  
8 ing a police officer or peace officer in the first degree as defined in  
9 section 120.19, aggravated criminally negligent homicide as defined in  
10 section 125.11, aggravated manslaughter in the second degree as defined  
11 in section 125.21, aggravated sexual abuse in the second degree as  
12 defined in section 130.67, assault on a peace officer, police officer,  
13 firefighter or emergency medical services professional as defined in  
14 section 120.08, assault on a judge as defined in section 120.09, gang  
15 assault in the second degree as defined in section 120.06, strangulation  
16 in the first degree as defined in section 121.13, aggravated strangula-  
17 tion as defined in section 121.13-a, burglary in the second degree as  
18 defined in section 140.25, robbery in the second degree as defined in  
19 section 160.10, criminal possession of a weapon in the second degree as  
20 defined in section 265.03, criminal use of a firearm in the second  
21 degree as defined in section 265.08, criminal sale of a firearm in the  
22 second degree as defined in section 265.12, criminal sale of a firearm  
23 with the aid of a minor as defined in section 265.14, aggravated crimi-  
24 nal possession of a weapon as defined in section 265.19, soliciting or  
25 providing support for an act of terrorism in the first degree as defined  
26 in section 490.15, hindering prosecution of terrorism in the second  
27 degree as defined in section 490.30, and criminal possession of a chemi-  
28 cal weapon or biological weapon in the third degree as defined in  
29 section 490.37.

30 (c) Class D violent felony offenses: an attempt to commit any of the  
31 class C felonies set forth in paragraph (b); reckless assault of a child  
32 as defined in section 120.02, assault in the second degree as defined in  
33 section 120.05, menacing a police officer or peace officer in the second  
34 degree as defined in section 120.18, stalking in the first degree, as  
35 defined in subdivision one of section 120.60, strangulation in the  
36 second degree as defined in section 121.12, rape in the second degree as  
37 defined in section 130.30, criminal sexual act in the second degree as  
38 defined in section 130.45, sexual abuse in the first degree as defined  
39 in section 130.65, course of sexual conduct against a child in the  
40 second degree as defined in section 130.80, aggravated sexual abuse in  
41 the third degree as defined in section 130.66, facilitating a sex  
42 offense with a controlled substance as defined in section 130.90, labor  
43 trafficking as defined in paragraphs (a) and (b) of subdivision three of  
44 section 135.35, criminal possession of a weapon in the third degree as  
45 defined in subdivision five, six, seven, eight, nine or ten of section  
46 265.02, criminal sale of a firearm in the third degree as defined in  
47 section 265.11, intimidating a victim or witness in the second degree as  
48 defined in section 215.16, soliciting or providing support for an act of  
49 terrorism in the second degree as defined in section 490.10, and making  
50 a terroristic threat as defined in section 490.20, falsely reporting an  
51 incident in the first degree as defined in section 240.60, placing a  
52 false bomb or hazardous substance in the first degree as defined in  
53 section 240.62, placing a false bomb or hazardous substance in a sports  
54 stadium or arena, mass transportation facility or enclosed shopping mall  
55 as defined in section 240.63, aggravated unpermitted use of indoor pyro-  
56 technics in the first degree as defined in section 405.18, and criminal

1 manufacture, sale, or transport of an undetectable firearm, rifle or  
2 shotgun as defined in section 265.50.

3 (b-1) Except as provided in subdivision six of section 60.05, the  
4 sentence imposed upon a person who stands convicted of the class D  
5 violent felony offense of menacing a police officer or peace officer in  
6 the second degree as defined in section 120.18 of this chapter must be a  
7 determinate sentence of imprisonment.

8 (c) For a class D felony, the term must be at least two years and must  
9 not exceed seven years, provided, however, that the term must be: (i) at  
10 least two years and must not exceed eight years where the sentence is  
11 for the crime of menacing a police officer or peace officer in the  
12 second degree as defined in section 120.18 of this chapter; and (ii) at  
13 least three and one-half years and must not exceed seven years where the  
14 sentence is imposed for the crime of criminal possession of a weapon in  
15 the third degree as defined in subdivision ten of section 265.02 of this  
16 chapter;

17 § 6. Paragraph (t) of subdivision 8 of section 700.05 of the criminal  
18 procedure law, as added by chapter 765 of the laws of 2005, is amended  
19 to read as follows:

20 (t) Menacing a police officer or peace officer in the second degree as  
21 defined in section 120.18 of the penal law; menacing a police officer or  
22 peace officer in the first degree as defined in section 120.19 of the  
23 penal law; aggravated criminally negligent homicide as defined in  
24 section 125.11 of the penal law; aggravated manslaughter in the second  
25 degree as defined in section 125.21 of the penal law; aggravated  
26 manslaughter in the first degree as defined in section 125.22 of the  
27 penal law; aggravated murder as defined in section 125.26 of the penal  
28 law.

29 § 7. Subparagraph i of paragraph 7 of subdivision a of section 9-131  
30 of the administrative code of the city of New York, as amended by chap-  
31 ter 189 of the laws of 2018, is amended to read as follows:

32 i. a felony defined in any of the following sections of the penal law:  
33 120.01, 120.02, 120.03, 120.04, 120.04-a(4), 120.05, 120.06, 120.07,  
34 120.08, 120.09, 120.10, 120.11, 120.12, 120.13, 120.18, 120.19, 120.25,  
35 120.55, 120.60, 120.70, 121.12, 121.13, 125.10, 125.11, 125.12, 125.13,  
36 125.14, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, [~~125.40,~~  
37 ~~125.45,~~] 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65,  
38 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.85, 130.90,  
39 130.95, 130.96, 135.10, 135.20, 135.25, 135.35, 135.50, 135.65(2)(b),  
40 140.17, 140.25, 140.30, 145.12, 150.05, 150.10, 150.15, 150.20, 160.05,  
41 160.10, 160.15, 195.07, 195.08, 195.17, 215.11, 215.12, 215.13, 215.15,  
42 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.28, 220.41, 220.43,  
43 220.44, 220.48, 220.77, 230.05, 230.06, 230.19, 230.25(2), 230.30,  
44 230.32, 230.33, 230.34, 230.34-a, 235.22, 240.06, 240.55, 240.60,  
45 240.61, 240.62, 240.63, 240.75, 241.05, 255.26, 255.27, 260.25, 260.32,  
46 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 263.30, 265.01-a,  
47 265.01-b, 265.02(2) through (8), 265.03, 265.04, 265.08, 265.09, 265.10,  
48 265.11, 265.12, 265.13, 265.14, 265.16, 265.17, 265.19, 265.35(2),  
49 270.30, 270.35, 405.16(1), 405.18, 460.22, 470.21, 470.22, 470.23,  
50 470.24, 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, 490.37, 490.40,  
51 490.45, 490.47, 490.50, or 490.55;

52 § 8. Subparagraph i of paragraph 6 of subdivision a of section 14-154  
53 of the administrative code of the city of New York, as amended by chap-  
54 ter 189 of the laws of 2018, is amended to read as follows:

55 i. a felony defined in any of the following sections of the penal law:  
56 120.01, 120.02, 120.03, 120.04, 120.04-a(4), 120.05, 120.06, 120.07,

1 120.08, 120.09, 120.10, 120.11, 120.12, 120.13, 120.18, 120.19, 120.25,  
2 120.55, 120.60, 120.70, 121.12, 121.13, 125.10, 125.11, 125.12, 125.13,  
3 125.14, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, [~~125.40,~~  
4 ~~125.45,~~] 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65,  
5 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.85, 130.90,  
6 130.95, 130.96, 135.10, 135.20, 135.25, 135.35, 135.50, 135.65(2)(b),  
7 140.17, 140.25, 140.30, 145.12, 150.05, 150.10, 150.15, 150.20, 160.05,  
8 160.10, 160.15, 195.07, 195.08, 195.17, 215.11, 215.12, 215.13, 215.15,  
9 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.28, 220.41, 220.43,  
10 220.44, 220.48, 220.77, 230.05, 230.06, 230.19, 230.25(2), 230.30,  
11 230.32, 230.33, 230.34, 230.34-a, 235.22, 240.06, 240.55, 240.60,  
12 240.61, 240.62, 240.63, 240.75, 241.05, 255.26, 255.27, 260.25, 260.32,  
13 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 263.30, 265.01-a,  
14 265.01-b, 265.02 (2) through (8), 265.03, 265.04, 265.08, 265.09,  
15 265.10, 265.11, 265.12, 265.13, 265.14, 265.16, 265.17, 265.19,  
16 265.35(2), 270.30, 270.35, 405.16(1), 405.18, 460.22, 470.21, 470.22,  
17 470.23, 470.24, 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, 490.37,  
18 490.40, 490.45, 490.47, 490.50, or 490.55;  
19 § 9. This act shall take effect on the first of January next succeed-  
20 ing the date upon which it shall become a law.