

# STATE OF NEW YORK

9924

## IN ASSEMBLY

April 19, 2022

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

AN ACT to amend the penal law and the criminal procedure law, in  
relation to establishing the crime of failure to retreat

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

1 Section 1. The penal law is amended by adding a new section 205.40 to  
2 read as follows:

3 § 205.40 Failure to retreat.

4 A person is guilty of failure to retreat when he or she is within  
5 twenty-five feet of a police officer or peace officer engaged in the  
6 performance of his or her duties and the police officer or peace officer  
7 orders such person to halt or retreat and the person fails to do so  
8 immediately.

9 An individual shall not be guilty of this offense if such individual  
10 (a) suffers from a physical disability or physical injury and halting or  
11 retreating would exacerbate such disability or injury, or (b) a physical  
12 barrier makes it physically impossible for the individual to halt or  
13 retreat.

14 Under this section, police officer and peace officer are as defined  
15 under section 1.20 of the criminal procedure law.

16 Failure to retreat is a class D felony.

17 § 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the  
18 criminal procedure law, as added by section 2 of part UU of chapter 56  
19 of the laws of 2020, are amended and a new paragraph (u) is added to  
20 read as follows:

21 (s) a felony, where the defendant qualifies for sentencing on such  
22 charge as a persistent felony offender pursuant to section 70.10 of the  
23 penal law; [~~ex~~]

24 (t) any felony or class A misdemeanor involving harm to an identifi-  
25 able person or property, where such charge arose from conduct occurring  
26 while the defendant was released on his or her own recognizance or  
27 released under conditions for a separate felony or class A misdemeanor  
28 involving harm to an identifiable person or property, provided, however,

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

LBD04230-01-1

1 that the prosecutor must show reasonable cause to believe that the  
2 defendant committed the instant crime and any underlying crime. For the  
3 purposes of this subparagraph, any of the underlying crimes need not be  
4 a qualifying offense as defined in this subdivision[~~✓~~]; or

5 (u) failure to retreat as defined in section 205.40 of the penal law.

6 § 3. Subparagraphs (xix) and (xx) of paragraph (b) of subdivision 1 of  
7 section 530.20 of the criminal procedure law, as amended by section 3 of  
8 part UU of chapter 56 of the laws of 2020, are amended and a new subpar-  
9 agraph (xxi) is added to read as follows:

10 (xix) a felony, where the defendant qualifies for sentencing on such  
11 charge as a persistent felony offender pursuant to section 70.10 of the  
12 penal law; [~~ex~~]

13 (xx) any felony or class A misdemeanor involving harm to an identifi-  
14 able person or property, where such charge arose from conduct occurring  
15 while the defendant was released on his or her own recognizance or  
16 released under conditions for a separate felony or class A misdemeanor  
17 involving harm to an identifiable person or property, provided, however,  
18 that the prosecutor must show reasonable cause to believe that the  
19 defendant committed the instant crime and any underlying crime. For the  
20 purposes of this subparagraph, any of the underlying crimes need not be  
21 a qualifying offense as defined in this subdivision[~~✓~~]; or

22 (xxi) failure to retreat as defined in section 205.40 of the penal  
23 law.

24 § 4. Paragraphs (s) and (t) of subdivision 4 of section 530.40 of the  
25 criminal procedure law, as added by section 4 of part UU of chapter 56  
26 of the laws of 2020, are amended and a new paragraph (u) is added to  
27 read as follows:

28 (s) a felony, where the defendant qualifies for sentencing on such  
29 charge as a persistent felony offender pursuant to section 70.10 of the  
30 penal law; [~~ex~~]

31 (t) any felony or class A misdemeanor involving harm to an identifi-  
32 able person or property, where such charge arose from conduct occurring  
33 while the defendant was released on his or her own recognizance or  
34 released under conditions for a separate felony or class A misdemeanor  
35 involving harm to an identifiable person or property, provided, however,  
36 that the prosecutor must show reasonable cause to believe that the  
37 defendant committed the instant crime and any underlying crime. For the  
38 purposes of this subparagraph, any of the underlying crimes need not be  
39 a qualifying offense as defined in this subdivision[~~✓~~]; or

40 (u) failure to retreat as defined in section 205.40 of the penal law.

41 § 5. This act shall take effect on the thirtieth day after it shall  
42 have become a law.