

STATE OF NEW YORK

108

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. GALLIVAN, BORRELLO, GRIFFO, HELMING, LANZA, MATTERA, OBERACKER, O'MARA, ORTT, PALUMBO, RHOADS, STEC, TEDISCO, WEIK -- read twice and ordered printed, and when printed to be committed 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 Assembly, do enact as follows:

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

§ 205.40 Failure to retreat.

A person is guilty of failure to retreat when such person is within twenty-five feet of a police officer or peace officer engaged in the performance of their duties and such police officer or peace officer orders such person to halt or retreat and the person fails to do so immediately.

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

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

Failure to retreat is a class D felony.

§ 2. Paragraphs (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (t) as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a

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

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1 firearm as defined in section 265.01-b of the penal law, where such
2 charge arose from conduct occurring while the defendant was released on
3 ~~[his or her]~~ their own recognizance, released under conditions, or had
4 yet to be arraigned after the issuance of a desk appearance ticket for a
5 separate felony or class A misdemeanor involving harm to an identifiable
6 person or property, or any charge of criminal possession of a firearm as
7 defined in section 265.01-b of the penal law, provided, however, that
8 the prosecutor must show reasonable cause to believe that the defendant
9 committed the instant crime and any underlying crime. For the purposes
10 of this subparagraph, any of the underlying crimes need not be a quali-
11 fying offense as defined in this subdivision. For the purposes of this
12 paragraph, "harm to an identifiable person or property" shall include
13 but not be limited to theft of or damage to property. However, based
14 upon a review of the facts alleged in the accusatory instrument, if the
15 court determines that such theft is negligible and does not appear to be
16 in furtherance of other criminal activity, the principal shall be
17 released on ~~[his or her]~~ their own recognizance or under appropriate
18 non-monetary conditions; ~~[or]~~

19 (u) criminal possession of a weapon in the third degree as defined in
20 subdivision three of section 265.02 of the penal law or criminal sale of
21 a firearm to a minor as defined in section 265.16 of the penal law~~[-];~~
22 or

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

24 § 3. Subparagraphs (xx) and (xxi) of paragraph (b) of subdivision 1 of
25 section 530.20 of the criminal procedure law, subparagraph (xx) as
26 amended and subparagraph (xxi) as added by section 4 of subpart C of
27 part UU of chapter 56 of the laws of 2022, are amended and a new subpar-
28 agraph (xxii) is added to read as follows:

29 (xx) any felony or class A misdemeanor involving harm to an identifi-
30 able person or property, or any charge of criminal possession of a
31 firearm as defined in section 265.01-b of the penal law where such
32 charge arose from conduct occurring while the defendant was released on
33 ~~[his or her]~~ their own recognizance, released under conditions, or had
34 yet to be arraigned after the issuance of a desk appearance ticket for a
35 separate felony or class A misdemeanor involving harm to an identifiable
36 person or property, provided, however, that the prosecutor must show
37 reasonable cause to believe that the defendant committed the instant
38 crime and any underlying crime. For the purposes of this subparagraph,
39 any of the underlying crimes need not be a qualifying offense as defined
40 in this subdivision. For the purposes of this paragraph, "harm to an
41 identifiable person or property" shall include but not be limited to
42 theft of or damage to property. However, based upon a review of the
43 facts alleged in the accusatory instrument, if the court determines that
44 such theft is negligible and does not appear to be in furtherance of
45 other criminal activity, the principal shall be released on ~~[his or her]~~
46 their own recognizance or under appropriate non-monetary conditions;
47 ~~[or]~~

48 (xxi) criminal possession of a weapon in the third degree as defined
49 in subdivision three of section 265.02 of the penal law or criminal sale
50 of a firearm to a minor as defined in section 265.16 of the penal
51 law~~[-];~~ or

52 (xxii) failure to retreat as defined in section 205.40 of the penal
53 law.

54 § 4. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the
55 criminal procedure law, paragraph (t) as amended and paragraph (u) as

added by section 4 of subpart B of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on ~~his or her~~ their own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on ~~his or her~~ their own recognizance or under appropriate non-monetary conditions; ~~or~~

(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~[-]~~;
or

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

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