S T A T E O F N E W Y O R K

900

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the penal law, in relation to menacing committed with a deadly weapon, dangerous instrument or firearm

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

Section 1. Section 120.13 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

S 120.13 Menacing in the first degree.

1. A person is guilty of menacing in the first degree when [he or she] SUCH PERSON:

(A) commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer within the preceding ten years[.]; OR

(B) INTENTIONALLY PLACES OR ATTEMPTS TO PLACE ANOTHER PERSON IN REASONABLE FEAR OF PHYSICAL INJURY, SERIOUS PHYSICAL INJURY OR DEATH BY DISPLAYING A DEADLY WEAPON, DANGEROUS INSTRUMENT OR WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM.

2. A PERSON IS NOT GUILTY OF MENACING IN THE FIRST DEGREE IF HE OR SHE VIOLATES SUBDIVISION ONE OF THIS SECTION UNDER CIRCUMSTANCES WHERE SUCH PERSON BELIEVES THAT SUCH ACTION IS NECESSARY TO PROTECT A PERSON OR PROPERTY FROM HARM.

Menacing in the first degree is a class E felony.

S 2. Section 120.14 of the penal law, as amended by chapter 222 of the laws of 1994, subdivision 3 as amended by chapter 597 of the laws of 1998, is amended to read as follows:

S 120.14 Menacing in the second degree.

1. A person is guilty of menacing in the second degree when SUCH PERSON:

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

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[1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. He or she] (A) repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or

[3. He or she] (B) commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

2. A PERSON IS NOT GUILTY OF MENACING IN THE SECOND DEGREE IF HE OR SHE VIOLATES SUBDIVISION ONE OF THIS SECTION UNDER CIRCUMSTANCES WHERE SUCH PERSON BELIEVES THAT SUCH ACTION IS NECESSARY TO PROTECT A PERSON OR PROPERTY FROM HARM.

Menacing in the second degree is a class A misdemeanor.

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