

5468--B

2015-2016 Regular Sessions

I N A S S E M B L Y

February 24, 2015

Introduced by M. of A. WEPRIN, QUART, MILLER, SKOUFIS, SIMANOWITZ, GOLD-FEDER, PICHARDO, SCHIMEL, TITUS, COLTON, RODRIGUEZ, MOSLEY, DenDEKKER, BLAKE, HYNDMAN, LUPINACCI, RAIA, BRABENEC, MONTESANO, McDONOUGH, GOTTFRIED, CROUCH, GRAF, WOERNER, JEAN-PIERRE, SALADINO, GIGLIO, PALUMBO, ZEBROWSKI, ORTIZ, KIM, DAVILA, OTIS, LAVINE, ROBINSON -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, COOK, CRESPO, CYMBROWITZ, HAWLEY, HEVESI, HIKIND, HOOPER, MARKEY, ROZIC, SIMON -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to on duty auxiliary police officers

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

1 Section 1. Section 10.00 of the penal law is amended by adding a new
2 subdivision 22 to read as follows:
3 22. "ON-DUTY AUXILIARY POLICE OFFICER" MEANS A MEMBER OF AN AUXILIARY
4 POLICE PROGRAM THAT IS ORGANIZED AND MAINTAINED BY A STATE OR LOCAL
5 POLICE DEPARTMENT WHO IS ACTING AS AN AUXILIARY POLICE OFFICER AT THE
6 TIME OF THE ACT OR OMISSION.
7 S 2. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the
8 penal law, paragraph (b) as amended by chapter 1 of the laws of 2013 and
9 paragraph (c) as amended by chapter 368 of the laws of 2015, are amended
10 to read as follows:
11 (b) Class C violent felony offenses: an attempt to commit any of the
12 class B felonies set forth in paragraph (a) of this subdivision; aggra-
13 vated criminally negligent homicide as defined in section 125.11, aggra-
14 vated manslaughter in the second degree as defined in section 125.21,
15 aggravated sexual abuse in the second degree as defined in section

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

LBD08755-07-6

1 130.67, assault on a peace officer, police officer, fireman or emergency
2 medical services professional as defined in section 120.08, ASSAULT ON
3 AN ON-DUTY AUXILIARY POLICE OFFICER AS DEFINED IN SECTION 120.08-A,
4 assault on a judge as defined in section 120.09, gang assault in the
5 second degree as defined in section 120.06, strangulation in the first
6 degree as defined in section 121.13, burglary in the second degree as
7 defined in section 140.25, robbery in the second degree as defined in
8 section 160.10, criminal possession of a weapon in the second degree as
9 defined in section 265.03, criminal use of a firearm in the second
10 degree as defined in section 265.08, criminal sale of a firearm in the
11 second degree as defined in section 265.12, criminal sale of a firearm
12 with the aid of a minor as defined in section 265.14, aggravated crimi-
13 nal possession of a weapon as defined in section 265.19, soliciting or
14 providing support for an act of terrorism in the first degree as defined
15 in section 490.15, hindering prosecution of terrorism in the second
16 degree as defined in section 490.30, and criminal possession of a chemi-
17 cal weapon or biological weapon in the third degree as defined in
18 section 490.37.

19 (c) Class D violent felony offenses: an attempt to commit any of the
20 class C felonies set forth in paragraph (b); reckless assault of a child
21 as defined in section 120.02, assault in the second degree as defined in
22 section 120.05, menacing a police officer or peace officer as defined in
23 section 120.18, MENACING AN ON-DUTY AUXILIARY POLICE OFFICER AS DEFINED
24 IN SECTION 120.19, stalking in the first degree, as defined in subdivi-
25 sion one of section 120.60, strangulation in the second degree as
26 defined in section 121.12, rape in the second degree as defined in
27 section 130.30, criminal sexual act in the second degree as defined in
28 section 130.45, sexual abuse in the first degree as defined in section
29 130.65, course of sexual conduct against a child in the second degree as
30 defined in section 130.80, aggravated sexual abuse in the third degree
31 as defined in section 130.66, facilitating a sex offense with a
32 controlled substance as defined in section 130.90, labor trafficking as
33 defined in paragraphs (a) and (b) of subdivision three of section
34 135.35, criminal possession of a weapon in the third degree as defined
35 in subdivision five, six, seven, eight, nine or ten of section 265.02,
36 criminal sale of a firearm in the third degree as defined in section
37 265.11, intimidating a victim or witness in the second degree as defined
38 in section 215.16, soliciting or providing support for an act of terror-
39 ism in the second degree as defined in section 490.10, and making a
40 terroristic threat as defined in section 490.20, falsely reporting an
41 incident in the first degree as defined in section 240.60, placing a
42 false bomb or hazardous substance in the first degree as defined in
43 section 240.62, placing a false bomb or hazardous substance in a sports
44 stadium or arena, mass transportation facility or enclosed shopping mall
45 as defined in section 240.63, and aggravated unpermitted use of indoor
46 pyrotechnics in the first degree as defined in section 405.18.

47 S 3. Section 120.05 of the penal law is amended by adding a new subdivi-
48 sion 10-a to read as follows:

49 10-A. WITH THE INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER
50 FROM PERFORMING A LAWFUL DUTY, BY MEANS INCLUDING RELEASING OR FAILING
51 TO CONTROL AN ANIMAL UNDER CIRCUMSTANCES EVINCING THE ACTOR'S INTENT
52 THAT THE ANIMAL OBSTRUCT THE LAWFUL ACTIVITY OF SUCH ON-DUTY AUXILIARY
53 POLICE OFFICER, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH ON-DUTY AUXIL-
54 IARY POLICE OFFICER.

55 S 4. The penal law is amended by adding a new section 120.08-a to read
56 as follows:

1 S 120.08-A ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER.

2 A PERSON IS GUILTY OF ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER
3 WHEN, WITH INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER FROM
4 PERFORMING A LAWFUL DUTY, HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO
5 SUCH AN ON-DUTY AUXILIARY POLICE OFFICER.

6 ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER IS A CLASS C FELONY.

7 S 5. Section 120.13 of the penal law, as amended by chapter 765 of the
8 laws of 2005, is amended to read as follows:

9 S 120.13 Menacing in the first degree.

10 A person is guilty of menacing in the first degree when he or she
11 commits the crime of menacing in the second degree and has been previ-
12 ously convicted of the crime of menacing in the second degree or the
13 crime of menacing a police officer or peace officer, OR THE CRIME OF
14 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER within the preceding ten
15 years.

16 Menacing in the first degree is a class E felony.

17 S 6. The penal law is amended by adding a new section 120.19 to read
18 as follows:

19 S 120.19 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER.

20 A PERSON IS GUILTY OF MENACING AN ON-DUTY AUXILIARY POLICE OFFICER
21 WHEN HE OR SHE INTENTIONALLY PLACES OR ATTEMPTS TO PLACE AN ON-DUTY
22 AUXILIARY POLICE OFFICER IN REASONABLE FEAR OF PHYSICAL INJURY, SERIOUS
23 PHYSICAL INJURY OR DEATH BY DISPLAYING A DEADLY WEAPON, KNIFE, PISTOL,
24 REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM, WHETHER OPERABLE
25 OR NOT, WHERE SUCH OFFICER WAS IN THE COURSE OF PERFORMING HIS OR HER
26 OFFICIAL DUTIES AND THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN
27 THAT SUCH VICTIM WAS AN ON-DUTY AUXILIARY POLICE OFFICER.

28 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER IS A CLASS D FELONY.

29 S 7. The penal law is amended by adding a new section 195.09 to read
30 as follows:

31 S 195.09 OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY POLICE OFFICER
32 BY MEANS OF A SELF-DEFENSE SPRAY DEVICE.

33 A PERSON IS GUILTY OF OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY
34 POLICE OFFICER BY MEANS OF A SELF-DEFENSE SPRAY DEVICE WHEN, WITH THE
35 INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER FROM PERFORMING A
36 LAWFUL DUTY, HE OR SHE CAUSES TEMPORARY PHYSICAL IMPAIRMENT TO AN
37 ON-DUTY AUXILIARY POLICE OFFICER BY INTENTIONALLY DISCHARGING A SELF-DE-
38 FENSE SPRAY DEVICE, AS DEFINED IN PARAGRAPH FOURTEEN OF SUBDIVISION A OF
39 SECTION 265.20 OF THIS CHAPTER, THEREBY CAUSING SUCH TEMPORARY PHYSICAL
40 IMPAIRMENT.

41 OBSTRUCTING THE DUTIES OF AN ON-DUTY AUXILIARY POLICE OFFICER BY MEANS
42 OF A SELF-DEFENSE SPRAY DEVICE IS A CLASS D FELONY.

43 S 8. This act shall take effect on the first of November next succeed-
44 ing the date on which it shall have become a law.