

5468--A

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 -- Multi-Sponsored by -- M. of A. CYMBROWITZ, HEVESI, MONTESANO -- 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

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  
16 130.67, assault on a peace officer, police officer, fireman or emergency  
17 medical services professional as defined in section 120.08, ASSAULT ON  
18 AN ON-DUTY AUXILIARY POLICE OFFICER AS DEFINED IN SECTION 120.08-A,  
19 assault on a judge as defined in section 120.09, gang assault in the  
20 second degree as defined in section 120.06, strangulation in the first  
21 degree as defined in section 121.13, burglary in the second degree as

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

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1 defined in section 140.25, robbery in the second degree as defined in  
2 section 160.10, criminal possession of a weapon in the second degree as  
3 defined in section 265.03, criminal use of a firearm in the second  
4 degree as defined in section 265.08, criminal sale of a firearm in the  
5 second degree as defined in section 265.12, criminal sale of a firearm  
6 with the aid of a minor as defined in section 265.14, aggravated crimi-  
7 nal possession of a weapon as defined in section 265.19, soliciting or  
8 providing support for an act of terrorism in the first degree as defined  
9 in section 490.15, hindering prosecution of terrorism in the second  
10 degree as defined in section 490.30, and criminal possession of a chemi-  
11 cal weapon or biological weapon in the third degree as defined in  
12 section 490.37.

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

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

43 10-A. WITH THE INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER  
44 FROM PERFORMING A LAWFUL DUTY, BY MEANS INCLUDING RELEASING OR FAILING  
45 TO CONTROL AN ANIMAL UNDER CIRCUMSTANCES EVINCING THE ACTOR'S INTENT  
46 THAT THE ANIMAL OBSTRUCT THE LAWFUL ACTIVITY OF SUCH ON-DUTY AUXILIARY  
47 POLICE OFFICER, HE OR SHE CAUSES PHYSICAL INJURY TO SUCH ON-DUTY AUXIL-  
48 IARY POLICE OFFICER.

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

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

52 A PERSON IS GUILTY OF ASSAULT ON AN ON-DUTY AUXILIARY POLICE OFFICER  
53 WHEN, WITH INTENT TO PREVENT AN ON-DUTY AUXILIARY POLICE OFFICER FROM  
54 PERFORMING A LAWFUL DUTY, HE OR SHE CAUSES SERIOUS PHYSICAL INJURY TO  
55 SUCH AN ON-DUTY AUXILIARY POLICE OFFICER.

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

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

3 S 120.13 Menacing in the first degree.

4 A person is guilty of menacing in the first degree when he or she  
5 commits the crime of menacing in the second degree and has been previ-  
6 ously convicted of the crime of menacing in the second degree or the  
7 crime of menacing a police officer or peace officer, OR THE CRIME OF  
8 MENACING AN ON-DUTY AUXILIARY POLICE OFFICER within the preceding ten  
9 years.

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

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

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

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

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

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

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

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

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

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