

# STATE OF NEW YORK

7591

2017-2018 Regular Sessions

## IN ASSEMBLY

May 3, 2017

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

AN ACT to amend the penal law, in relation to resisting arrest of a police officer or peace officer

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

1 Section 1. Section 205.30 of the penal law, as amended by chapter 843  
2 of the laws of 1980, is amended to read as follows:

3 § 205.30 Resisting arrest in the second degree.

4 A person is guilty of resisting arrest in the second degree when he or  
5 she intentionally prevents or attempts to prevent a police officer or  
6 peace officer from effecting an authorized arrest of himself, or herself  
7 or another person.

8 Resisting arrest in the second degree is a class A misdemeanor.

9 § 2. The penal law is amended by adding a new section 205.35 to read  
10 as follows:

11 § 205.35 Resisting arrest in the first degree.

12 1. A person is guilty of resisting arrest in the first degree when  
13 such person commits the offense of resisting arrest in the second degree  
14 after having been previously subjected to one or more convictions for  
15 such offense within the preceding ten years.

16 2. The provisions of section 200.60 of the criminal procedure law  
17 shall apply to any prosecution under this section.

18 3. For the purposes of this section, in determining whether a person  
19 has been previously subjected to one or more convictions for the offense  
20 of resisting arrest in the second degree within the preceding ten years,  
21 the following criteria shall apply:

22 (a) Sentence upon each such prior conviction must have been imposed  
23 before commission of the present offense;

24 (b) Suspended sentence, suspended execution of sentence, sentence of  
25 probation, sentence of parole supervision, and sentence of conditional

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

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1 discharge or of unconditional discharge shall be deemed to be a  
2 sentence;

3 (c) Except as provided in paragraph (d) of this subdivision, each  
4 sentence must have been imposed not more than ten years before the  
5 commission of the present offense;

6 (d) In calculating the ten year period under paragraph (c) of this  
7 subdivision, any period of time during which the defendant was incarcer-  
8 ated for any reason between the time of commission of the previous  
9 offense of resisting arrest in the second degree for which the defendant  
10 was convicted and the time of commission of the present offense shall be  
11 excluded and such ten year period shall be extended by a period or peri-  
12 ods equal to the time served; and

13 (e) An offense for which the defendant has been pardoned on the ground  
14 of innocence shall not be deemed a previous conviction.

15 4. Nothing contained in this section shall be construed to preclude a  
16 prosecution or conviction for any other offense, a necessary element of  
17 which is a previous conviction for an offense.

18 Resisting arrest in the first degree is a class E felony.

19 § 3. This act shall take effect on the first of November next succeed-  
20 ing the date on which it shall have become a law.