STATE OF NEW YORK

30

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed 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:

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

§ 205.30 Resisting arrest **in the second degree**.

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

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

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

§ 205.35 Resisting arrest in the first degree.

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

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

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

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

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

LBD04212-01-7

(b) Suspended sentence, suspended execution of sentence, sentence of probation, sentence of parole supervision, and sentence of conditional discharge or of unconditional discharge shall be deemed to be a sentence;

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

(d) In calculating the ten year period under paragraph (c) of this subdivision, any period of time during which the defendant was incarcerated for any reason between the time of commission of the previous offense of resisting arrest in the second degree for which the defendant was convicted and the time of commission of the present offense shall be excluded and such ten year period shall be extended by a period or periods equal to the time served; and

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

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

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

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