STATE OF NEW YORK

2529

2017-2018 Regular Sessions

IN SENATE

January 13, 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 criminalizing the act of stalking 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 120.40 of the penal law, as added by chapter 635 of the laws of 1999 and paragraph b of subdivision 5 as amended by chapter 320 of the laws of 2006, is amended to read as follows:

§ 120.40 Definitions.

For purposes of sections 120.45, 120.50, 120.55 [~~and~~], 120.60**, 120.80, 120.85, and 120.90** of this article:

1. "Kidnapping" shall mean a kidnapping crime defined in article one hundred thirty-five of this chapter.

2. "Unlawful imprisonment" shall mean an unlawful imprisonment felony crime defined in article one hundred thirty-five of this chapter.

3. "Sex offense" shall mean a felony defined in article one hundred thirty of this chapter, sexual misconduct, as defined in section 130.20 of this chapter, sexual abuse in the third degree as defined in section 130.55 of this chapter or sexual abuse in the second degree as defined in section 130.60 of this chapter.

4. "Immediate family" means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.

5. "Specified predicate crime" means:

a. a violent felony offense;

b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45, 130.55, 130.60, 130.70, 255.25, 255.26 or 255.27;

c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first

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

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degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section 145.10[~~.~~]; criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; endangering the welfare of a child, as defined in section 260.10; or

d. stalking in the fourth degree, as defined in section 120.45; stalking in the third degree, as defined in section 120.50; stalking in the second degree, as defined in section 120.55; **stalking a police officer or peace officer in the third degree, as defined in section 120.80; stalking a police officer or peace officer in the second degree, as defined in section 120.85;** or

e. an offense in any other jurisdiction which includes all of the essential elements of any such crime for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed.

§ 2. The penal law is amended by adding a new section 120.80 to read as follows:

§ 120.80 Stalking a police officer or peace officer in the third degree.

A person is guilty of stalking a police officer or peace officer in the third degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific police officer, peace officer or a person who he or she knows or reasonably should know is a member of such officer's immediate family, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such officer or member of such officer's immediate family; or

2. causes material harm to the mental or emotional health of such officer or member of such officer's immediate family, where such conduct consists of the following, telephoning or initiating communication or contact with such officer or a member of such officer's immediate family, and the actor was previously clearly informed to cease that conduct.

For purposes of subdivision two of this section, "following" shall include the unauthorized tracking of a police officer, peace officer, or immediate family member of such officer's movements or location through the use of a global positioning system or other device.

Stalking a police officer or peace officer in the third degree is a class E felony.

§ 3. The penal law is amended by adding a new section 120.85 to read as follows:

§ 120.85 Stalking a police officer or peace officer in the second degree.

A person is guilty of stalking a police officer or peace officer in the second degree when he or she:

1. Commits the crime of stalking a police officer or peace officer in the third degree in violation of section 120.80 of this article against two or more police officers, peace officers, or a person who he or she knows or reasonably should know is a member of any such officer's imme-

diate family, in two or more separate transactions, for which the actor has not been previously convicted; or

2. Commits the crime of stalking a police officer or peace officer in the third degree in violation of section 120.80 of this article against any police officer or peace officer, or a person who he or she knows or reasonably should know is a member of such officer's immediate family, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such predicate crime is the victim police officer, peace officer, or a person who he or she knows or reasonably should know is a member of such officer's immediate family; or

3. With intent to harass, annoy or alarm a specific police officer, peace officer, or a person who he or she knows or reasonably should know is a member of such officer's immediate family, intentionally engages in a course of conduct directed at such police officer, peace officer or a person who he or she knows or reasonably should know is a member of such officer's immediate family, which is likely to cause a specific police officer, peace officer or a person who he or she knows or reasonably should know is a member of such officer's immediate family to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of a specific police officer, peace officer or person he or she knows or reasonably should know is a member of such officer's immediate family; or

4. Commits the crime of stalking a police officer or peace officer in the third degree in violation of section 120.85 of this article and has previously been convicted within the preceding ten years of stalking a police officer or peace officer in the third degree.

Stalking a police officer or peace officer in the second degree is a class D felony.

§ 4. The penal law is amended by adding a new section 120.90 to read as follows:

§ 120.90 Stalking a police officer or peace officer in the first degree.

A person is guilty of stalking a police officer or peace officer in the first degree when he or she commits the crime of stalking a police officer or peace officer in the third degree as defined in section 120.80 of this article or stalking a police officer or peace officer in the second degree as defined in section 120.85 of this article and, in the course and furtherance thereof, he or she:

1. Intentionally or recklessly causes physical injury to the victim of such crime; or

2. Commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking a police officer or peace officer in the first degree is a class C felony.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law.