STATE OF NEW YORK

4304

2019-2020 Regular Sessions

IN ASSEMBLY

February 4, 2019

Introduced by M. of A. WEPRIN, QUART, M. G. MILLER, PICHARDO, TITUS, COLTON, RODRIGUEZ, MOSLEY, DenDEKKER, BLAKE, HYNDMAN, RAIA, BRABENEC, MONTESANO, McDONOUGH, GOTTFRIED, CROUCH, WOERNER, JEAN-PIERRE, GIGLIO, PALUMBO, ZEBROWSKI, ORTIZ, KIM, DAVILA, OTIS, LAVINE, PALMESANO, NIOU, SIMOTAS, PHEFFER AMATO, RA, GUNTHER, D. ROSENTHAL, SEAWRIGHT, BENEDETTO, ARROYO, ABBATE, VANEL, DICKENS, RIVERA, FERNANDEZ, STERN -- Multi-Sponsored by -- M. of A. BARNWELL, BRAUNSTEIN, COOK, CRESPO, CYMBROWITZ, DINOWITZ, GALEF, HAWLEY, HEVESI, NOLAN, ROZIC, SIMON, THIELE, WRIGHT -- read once and referred to the Committee on Codes

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:

Section 1. Section 10.00 of the penal law is amended by adding a new subdivision 22 to read as follows:

22. "On-duty auxiliary police officer" means a member of an auxiliary police program that is organized and maintained by a state or local police department who is acting as an auxiliary police officer at the time of the act or omission.

§ 2. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as amended by chapter 476 of the laws of 2018 and paragraph (c) as amended by chapter 368 of the laws of 2015, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, firefighter or emergency medical services professional as defined in section 120.08, **assault on an on-duty auxiliary police officer as defined in section**

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

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120.08-a, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, menacing an on-duty auxiliary police officer as defined in section 120.19, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, labor trafficking as defined in paragraphs (a) and (b) of subdivision three of section 135.35, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

§ 3. Section 120.05 of the penal law is amended by adding a new subdivision 10-a to read as follows:

10-a. With the intent to prevent an on-duty auxiliary police officer from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such on-duty auxiliary police officer, he or she causes physical injury to such on-duty auxiliary police officer.

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

§ 120.08-a Assault on an on-duty auxiliary police officer.

A person is guilty of assault on an on-duty auxiliary police officer when, with intent to prevent an on-duty auxiliary police officer from

performing a lawful duty, he or she causes serious physical injury to such an on-duty auxiliary police officer.

Assault on an on-duty auxiliary police officer is a class C felony.

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

§ 120.13 Menacing in the first degree.

A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer**, or the crime of menacing an on-duty auxiliary police officer** within the preceding ten years.

Menacing in the first degree is a class E felony.

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

§ 120.19 Menacing an on-duty auxiliary police officer.

A person is guilty of menacing an on-duty auxiliary police officer when he or she intentionally places or attempts to place an on-duty auxiliary police officer in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not, where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was an on-duty auxiliary police officer.

Menacing an on-duty auxiliary police officer is a class D felony.

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

§ 195.09 Obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device.

A person is guilty of obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device when, with the intent to prevent an on-duty auxiliary police officer from performing a lawful duty, he or she causes temporary physical impairment to an on-duty auxiliary police officer by intentionally discharging a self-defense spray device, as defined in paragraph fourteen of subdivision a of section 265.20 of this chapter, thereby causing such temporary physical impairment.

Obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device is a class D felony.

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