

STATE OF NEW YORK

8821

IN SENATE

July 20, 2020

Introduced by Sens. GALLIVAN, AKSHAR, AMEDORE, BORRELLO, BOYLE, FUNKE, HELMING, JORDAN, LANZA, LAVALLE, LITTLE, O'MARA, ORTT, RANZENHOFER, RITCHIE, ROBACH, SERINO, SEWARD, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing the crime of failure to retreat

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

1 Section 1. The penal law is amended by adding a new section 205.40 to
2 read as follows:

3 § 205.40 Failure to retreat.

4 A person is guilty of failure to retreat when he or she is within
5 twenty-five feet of a police officer or peace officer engaged in the
6 performance of his or her duties and the police officer or peace officer
7 orders such person to halt or retreat and the person fails to do so
8 immediately.

9 An individual shall not be guilty of this offense if such individual
10 (a) suffers from a physical disability or physical injury and halting or
11 retreating would exacerbate such disability or injury, or (b) a physical
12 barrier makes it physically impossible for the individual to halt or
13 retreat.

14 Under this section, police officer and peace officer are as defined
15 under section 1.20 of the criminal procedure law.

16 Failure to retreat is a class D felony.

17 § 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the
18 criminal procedure law, as added by section 2 of part UU of chapter 56
19 of the laws of 2020, are amended and a new paragraph (u) is added to
20 read as follows:

21 (s) a felony, where the defendant qualifies for sentencing on such
22 charge as a persistent felony offender pursuant to section 70.10 of the
23 penal law; [~~or~~]

24 (t) any felony or class A misdemeanor involving harm to an identifi-
25 able person or property, where such charge arose from conduct occurring
26 while the defendant was released on his or her own recognizance or

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

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1 released under conditions for a separate felony or class A misdemeanor
2 involving harm to an identifiable person or property, provided, however,
3 that the prosecutor must show reasonable cause to believe that the
4 defendant committed the instant crime and any underlying crime. For the
5 purposes of this subparagraph, any of the underlying crimes need not be
6 a qualifying offense as defined in this subdivision[+]; or

7 (u) failure to retreat as defined in section 205.40 of the penal law.

8 § 3. Subparagraphs (xix) and (xx) of paragraph (b) of subdivision 1 of
9 section 530.20 of the criminal procedure law, as amended by section 3 of
10 part UU of chapter 56 of the laws of 2020, are amended and a new subpar-
11 agraph (xxi) is added to read as follows:

12 (xix) a felony, where the defendant qualifies for sentencing on such
13 charge as a persistent felony offender pursuant to section 70.10 of the
14 penal law; [~~or~~]

15 (xx) any felony or class A misdemeanor involving harm to an identifi-
16 able person or property, where such charge arose from conduct occurring
17 while the defendant was released on his or her own recognizance or
18 released under conditions for a separate felony or class A misdemeanor
19 involving harm to an identifiable person or property, provided, however,
20 that the prosecutor must show reasonable cause to believe that the
21 defendant committed the instant crime and any underlying crime. For the
22 purposes of this subparagraph, any of the underlying crimes need not be
23 a qualifying offense as defined in this subdivision[+]; or

24 (xxi) failure to retreat as defined in section 205.40 of the penal
25 law.

26 § 4. Paragraphs (s) and (t) of subdivision 4 of section 530.40 of the
27 criminal procedure law, as added by section 4 of part UU of chapter 56
28 of the laws of 2020, are amended and a new paragraph (u) is added to
29 read as follows:

30 (s) a felony, where the defendant qualifies for sentencing on such
31 charge as a persistent felony offender pursuant to section 70.10 of the
32 penal law; [~~or~~]

33 (t) any felony or class A misdemeanor involving harm to an identifi-
34 able person or property, where such charge arose from conduct occurring
35 while the defendant was released on his or her own recognizance or
36 released under conditions for a separate felony or class A misdemeanor
37 involving harm to an identifiable person or property, provided, however,
38 that the prosecutor must show reasonable cause to believe that the
39 defendant committed the instant crime and any underlying crime. For the
40 purposes of this subparagraph, any of the underlying crimes need not be
41 a qualifying offense as defined in this subdivision[+]; or

42 (u) failure to retreat as defined in section 205.40 of the penal law.

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