

# STATE OF NEW YORK

5610

2019-2020 Regular Sessions

## IN SENATE

May 8, 2019

Introduced by Sen. ADDABBO -- 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 on duty auxiliary police officers

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

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

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

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

11 (b) Class C violent felony offenses: an attempt to commit any of the  
12 class B felonies set forth in paragraph (a) of this subdivision; aggra-  
13 vated criminally negligent homicide as defined in section 125.11, aggra-  
14 vated manslaughter in the second degree as defined in section 125.21,  
15 aggravated sexual abuse in the second degree as defined in section  
16 130.67, assault on a peace officer, police officer, firefighter or emer-  
17 gency medical services professional as defined in section 120.08,  
18 assault on an on-duty auxiliary police officer as defined in section  
19 120.08-a, assault on a judge as defined in section 120.09, gang assault  
20 in the second degree as defined in section 120.06, strangulation in the  
21 first degree as defined in section 121.13, burglary in the second degree  
22 as defined in section 140.25, robbery in the second degree as defined in  
23 section 160.10, criminal possession of a weapon in the second degree as  
24 defined in section 265.03, criminal use of a firearm in the second  
25 degree as defined in section 265.08, criminal sale of a firearm in the

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

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1 second degree as defined in section 265.12, criminal sale of a firearm  
2 with the aid of a minor as defined in section 265.14, aggravated crimi-  
3 nal possession of a weapon as defined in section 265.19, soliciting or  
4 providing support for an act of terrorism in the first degree as defined  
5 in section 490.15, hindering prosecution of terrorism in the second  
6 degree as defined in section 490.30, and criminal possession of a chemi-  
7 cal weapon or biological weapon in the third degree as defined in  
8 section 490.37.

9 (c) Class D violent felony offenses: an attempt to commit any of the  
10 class C felonies set forth in paragraph (b); reckless assault of a child  
11 as defined in section 120.02, assault in the second degree as defined in  
12 section 120.05, menacing a police officer or peace officer as defined in  
13 section 120.18, menacing an on-duty auxiliary police officer as defined  
14 in section 120.19, stalking in the first degree, as defined in subdivi-  
15 sion one of section 120.60, strangulation in the second degree as  
16 defined in section 121.12, rape in the second degree as defined in  
17 section 130.30, criminal sexual act in the second degree as defined in  
18 section 130.45, sexual abuse in the first degree as defined in section  
19 130.65, course of sexual conduct against a child in the second degree as  
20 defined in section 130.80, aggravated sexual abuse in the third degree  
21 as defined in section 130.66, facilitating a sex offense with a  
22 controlled substance as defined in section 130.90, labor trafficking as  
23 defined in paragraphs (a) and (b) of subdivision three of section  
24 135.35, criminal possession of a weapon in the third degree as defined  
25 in subdivision five, six, seven, eight, nine or ten of section 265.02,  
26 criminal sale of a firearm in the third degree as defined in section  
27 265.11, intimidating a victim or witness in the second degree as defined  
28 in section 215.16, soliciting or providing support for an act of terror-  
29 ism in the second degree as defined in section 490.10, and making a  
30 terroristic threat as defined in section 490.20, falsely reporting an  
31 incident in the first degree as defined in section 240.60, placing a  
32 false bomb or hazardous substance in the first degree as defined in  
33 section 240.62, placing a false bomb or hazardous substance in a sports  
34 stadium or arena, mass transportation facility or enclosed shopping mall  
35 as defined in section 240.63, and aggravated unpermitted use of indoor  
36 pyrotechnics in the first degree as defined in section 405.18.

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

39 10-a. With the intent to prevent an on-duty auxiliary police officer  
40 from performing a lawful duty, by means including releasing or failing  
41 to control an animal under circumstances evincing the actor's intent  
42 that the animal obstruct the lawful activity of such on-duty auxiliary  
43 police officer, he or she causes physical injury to such on-duty auxil-  
44 iary police officer.

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

47 § 120.08-a Assault on an on-duty auxiliary police officer.

48 A person is guilty of assault on an on-duty auxiliary police officer  
49 when, with intent to prevent an on-duty auxiliary police officer from  
50 performing a lawful duty, he or she causes serious physical injury to  
51 such an on-duty auxiliary police officer.

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

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

55 § 120.13 Menacing in the first degree.

1 A person is guilty of menacing in the first degree when he or she  
2 commits the crime of menacing in the second degree and has been previ-  
3 ously convicted of the crime of menacing in the second degree or the  
4 crime of menacing a police officer or peace officer, or the crime of  
5 menacing an on-duty auxiliary police officer within the preceding ten  
6 years.

7 Menacing in the first degree is a class E felony.

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

10 § 120.19 Menacing an on-duty auxiliary police officer.

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

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

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

22 § 195.09 Obstructing the duties of an on-duty auxiliary police officer  
23 by means of a self-defense spray device.

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

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

34 § 8. This act shall take effect on the first of November next succeed-  
35 ing the date on which it shall have become a law.