

# 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; ~~[ex]~~

24 (t) any felony or class A misdemeanor involving harm to an identi-  
25 fable 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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released under conditions for a separate felony or class A misdemeanor involving harm to an identifiable person or property, provided, however, that the prosecutor must show reasonable cause to believe that the defendant committed the instant crime and any underlying crime. For the purposes of this subparagraph, any of the underlying crimes need not be a qualifying offense as defined in this subdivision~~[+]~~; or

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

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

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

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

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

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

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

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

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

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