

# STATE OF NEW YORK

2226

2021-2022 Regular Sessions

## IN SENATE

January 20, 2021

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to creating the crime 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:

1 Section 1. Section 120.40 of the penal law, as added by chapter 635 of  
2 the laws of 1999, paragraph b of subdivision 5 as amended by chapter 320  
3 of the laws of 2006 and paragraph c of subdivision 5 as amended by  
4 section 7 of part NN of chapter 55 of the laws of 2018, is amended to  
5 read as follows:  
6 § 120.40 Definitions.  
7 For purposes of sections 120.45, 120.50, 120.55 [~~and~~], 120.60 and  
8 120.80 of this article:  
9 1. "Kidnapping" shall mean a kidnapping crime defined in article one  
10 hundred thirty-five of this chapter.  
11 2. "Unlawful imprisonment" shall mean an unlawful imprisonment felony  
12 crime defined in article one hundred thirty-five of this chapter.  
13 3. "Sex offense" shall mean a felony defined in article one hundred  
14 thirty of this chapter, sexual misconduct, as defined in section 130.20  
15 of this chapter, sexual abuse in the third degree as defined in section  
16 130.55 of this chapter or sexual abuse in the second degree as defined  
17 in section 130.60 of this chapter.  
18 4. "Immediate family" means the spouse, former spouse, parent, child,  
19 sibling, or any other person who regularly resides or has regularly  
20 resided in the household of a person.  
21 5. "Specified predicate crime" means:  
22 a. a violent felony offense;  
23 b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45,  
24 130.55, 130.60, 130.70, 255.25, 255.26 or 255.27;  
25 c. assault in the third degree, as defined in section 120.00; menacing  
26 in the first degree, as defined in section 120.13; menacing in the  
27 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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1 degree, as defined in section 135.65; coercion in the second degree, as  
2 defined in section 135.61; coercion in the third degree, as defined in  
3 section 135.60; aggravated harassment in the second degree, as defined  
4 in section 240.30; harassment in the first degree, as defined in section  
5 240.25; menacing in the third degree, as defined in section 120.15;  
6 criminal mischief in the third degree, as defined in section 145.05;  
7 criminal mischief in the second degree, as defined in section 145.10[7];  
8 criminal mischief in the first degree, as defined in section 145.12;  
9 criminal tampering in the first degree, as defined in section 145.20;  
10 arson in the fourth degree, as defined in section 150.05; arson in the  
11 third degree, as defined in section 150.10; criminal contempt in the  
12 first degree, as defined in section 215.51; endangering the welfare of a  
13 child, as defined in section 260.10; or

14 d. stalking in the fourth degree, as defined in section 120.45; stalk-  
15 ing in the third degree, as defined in section 120.50; stalking in the  
16 second degree, as defined in section 120.55; stalking a police officer  
17 or peace officer as defined in section 120.80; or

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

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

25 § 120.80 Stalking a police officer or peace officer.

26 A person is guilty of stalking a police officer or peace officer when:

27 1. He or she intentionally, and for no legitimate purpose, engages in  
28 a course of conduct directed at a specific police officer, peace officer  
29 or a person who he or she knows or reasonably should know is a member of  
30 such officer's immediate family, and knows or reasonably should know  
31 that such conduct is likely to cause reasonable fear of material harm to  
32 the physical health, safety or property of such officer or member of  
33 such officer's immediate family;

34 2. He or she intentionally, and for no legitimate purpose, engages in  
35 a course of conduct directed at a specific police officer, peace officer  
36 or a person who he or she knows or reasonably should know is a member of  
37 such officer's immediate family, and knows or reasonably should know  
38 that such conduct causes material harm to the mental or emotional health  
39 of such officer or member of such officer's immediate family, where such  
40 conduct consists of the following, telephoning or initiating communi-  
41 cation or contact with such officer or a member of such officer's imme-  
42 diated family, and the actor was previously clearly informed to cease  
43 that conduct; or

44 3. He or she intentionally, and for no legitimate purpose, approaches,  
45 within one hundred yards, the private residence or place of lodging of a  
46 police officer or peace officer, without the consent of such officer,  
47 for reasons related to the officer's status or service as a police offi-  
48 cer or peace officer and such purposes are for the purpose of harming or  
49 intimidating the officer or the officer's immediate family.

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

54 Stalking a police officer or peace officer is a class E felony.

55 § 3. Paragraph (s) and (t) of subdivision 4 of section 510.10 of the  
56 criminal procedure law, as added by section 2 of part UU of chapter 56

1 of the laws of 2020, are amended and a new paragraph (u) is added to  
2 read as follows:

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

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

15 (u) stalking a police officer or peace officer as defined under  
16 section 120.80 of the penal law.

17 § 4. Paragraphs (xix) and (xx) of paragraph (b) of subdivision 1 of  
18 section 530.20 of the criminal procedure law, as amended by section 3 of  
19 part UU of chapter 56 of the laws of 2020, are amended and a new para-  
20 graph (xxi) is added to read as follows:

21 (xix) 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 (xx) 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  
27 released under conditions for a separate felony or class A misdemeanor  
28 involving harm to an identifiable person or property, provided, however,  
29 that the prosecutor must show reasonable cause to believe that the  
30 defendant committed the instant crime and any underlying crime. For the  
31 purposes of this subparagraph, any of the underlying crimes need not be  
32 a qualifying offense as defined in this subdivision[~~+~~]; or

33 (xxi) stalking a police officer or peace officer as defined under  
34 section 120.80 of the penal law.

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

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

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

51 (u) stalking a police officer or peace officer as defined under  
52 section 120.80 of the penal law.

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