STATE OF NEW YORK

3464

2021-2022 Regular Sessions

IN SENATE

January 29, 2021

Introduced by Sens. GALLIVAN, AKSHAR, BORRELLO, BOYLE, GRIFFO, HELMING, JORDAN, LANZA, MARTUCCI, MATTERA, OBERACKER, O'MARA, ORTT, PALUMBO, RATH, RITCHIE, SERINO, STEC, TEDISCO, WEIK -- 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 establishing the crime of failure to retreat

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

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

§ 205.40 Failure to retreat.

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

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

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

Failure to retreat is a class D felony.

§ 2. Paragraphs (s) and (t) of subdivision 4 of section 510.10 of the criminal procedure law, as added by section 2 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; [~~or~~]

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

LBD04230-01-1

(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.

§ 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; [~~**or**~~]

(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; [~~**or**~~]

(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.