

# STATE OF NEW YORK

497

2023-2024 Regular Sessions

## IN ASSEMBLY

January 9, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the use of pepper spray by police officers and peace officers

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

1 Section 1. Section 120.00 of the penal law is amended to read as  
2 follows:  
3 § 120.00 Assault in the third degree.  
4 A person is guilty of assault in the third degree when:  
5 1. With intent to cause physical injury to another person, he causes  
6 such injury to such person or to a third person; or  
7 2. He recklessly causes physical injury to another person; or  
8 3. With criminal negligence, he causes physical injury to another  
9 person by means of a deadly weapon or a dangerous instrument~~[-]~~; or  
10 4. A police officer, peace officer, or other public servant who is  
11 authorized to make an arrest for a criminal offense intentionally or  
12 recklessly uses pepper spray on an individual that is not being lawfully  
13 arrested or uses pepper spray other than pursuant to article thirty-five  
14 of this chapter. Any use of pepper spray as crowd control shall consti-  
15 tute a violation of this section, and each individual affected shall  
16 constitute a separate incidence of assault in the third degree.  
17 Assault in the third degree is a class A misdemeanor.  
18 § 2. This act shall take effect immediately.

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

LBD00154-01-3