

STATE OF NEW YORK

2522

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

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;

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

LBD04842-02-3

1 c. assault in the third degree, as defined in section 120.00; menacing
2 in the first degree, as defined in section 120.13; menacing in the
3 second degree, as defined in section 120.14; coercion in the first
4 degree, as defined in section 135.65; coercion in the second degree, as
5 defined in section 135.61; coercion in the third degree, as defined in
6 section 135.60; aggravated harassment in the second degree, as defined
7 in section 240.30; harassment in the first degree, as defined in section
8 240.25; menacing in the third degree, as defined in section 120.15;
9 criminal mischief in the third degree, as defined in section 145.05;
10 criminal mischief in the second degree, as defined in section 145.10[~~r~~];
11 criminal mischief in the first degree, as defined in section 145.12;
12 criminal tampering in the first degree, as defined in section 145.20;
13 arson in the fourth degree, as defined in section 150.05; arson in the
14 third degree, as defined in section 150.10; criminal contempt in the
15 first degree, as defined in section 215.51; endangering the welfare of a
16 child, as defined in section 260.10; or

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

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

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

28 § 120.80 Stalking a police officer or peace officer.

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

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

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

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

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

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

§ 3. Paragraph (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (t) as amended and paragraph (u) as added by section 2 of subpart B of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (v) is added to read as follows:

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket for a separate felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law, 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. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; ~~[or]~~

(u) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale of a firearm to a minor as defined in section 265.16 of the penal law~~[-];~~
or

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

§ 4. Paragraphs (xx) and (xxi) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, paragraph (xx) as amended and paragraph (xxi) as added by section 4 of subpart C of part UU of chapter 56 of the laws of 2022, are amended and a new paragraph (xxii) is added to read as follows:

(xx) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a firearm as defined in section 265.01-b of the penal law where such charge arose from conduct occurring while the defendant was released on his or her own recognizance, released under conditions, or had yet to be arraigned after the issuance of a desk appearance ticket 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. For the purposes of this paragraph, "harm to an identifiable person or property" shall include but not be limited to theft of or damage to property. However, based upon a review of the facts alleged in the accusatory instrument, if the court determines that such theft is negligible and does not appear to be in furtherance of other criminal activity, the principal shall be released on his or her own recognizance or under appropriate non-monetary conditions; ~~[or]~~

(xxi) criminal possession of a weapon in the third degree as defined in subdivision three of section 265.02 of the penal law or criminal sale

1 of a firearm to a minor as defined in section 265.16 of the penal
2 law~~[-]~~; or

3 (xxii) stalking a police officer or peace officer as defined under
4 section 120.80 of the penal law.

5 § 5. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the
6 criminal procedure law, paragraph (t) as amended and paragraph (u) as
7 added by section 4 of subpart B of part UU of chapter 56 of the laws of
8 2022, are amended and a new paragraph (v) is added to read as follows:

9 (t) any felony or class A misdemeanor involving harm to an identifi-
10 able person or property, or any charge of criminal possession of a
11 firearm as defined in section 265.01-b of the penal law, where such
12 charge arose from conduct occurring while the defendant was released on
13 his or her own recognizance, released under conditions, or had yet to be
14 arraigned after the issuance of a desk appearance ticket for a separate
15 felony or class A misdemeanor involving harm to an identifiable person
16 or property, or any charge of criminal possession of a firearm as
17 defined in section 265.01-b of the penal law, provided, however, that
18 the prosecutor must show reasonable cause to believe that the defendant
19 committed the instant crime and any underlying crime. For the purposes
20 of this subparagraph, any of the underlying crimes need not be a quali-
21 fying offense as defined in this subdivision. For the purposes of this
22 paragraph, "harm to an identifiable person or property" shall include
23 but not be limited to theft of or damage to property. However, based
24 upon a review of the facts alleged in the accusatory instrument, if the
25 court determines that such theft is negligible and does not appear to be
26 in furtherance of other criminal activity, the principal shall be
27 released on his or her own recognizance or under appropriate non-mone-
28 tary conditions; ~~[or]~~

29 (u) criminal possession of a weapon in the third degree as defined in
30 subdivision three of section 265.02 of the penal law or criminal sale of
31 a firearm to a minor as defined in section 265.16 of the penal law~~[-]~~;
32 or

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

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