STATE OF NEW YORK

1562

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. BUTTENSCHON, NORRIS -- read once and referred 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:

Section 1. Section 120.40 of the penal law, as added by chapter 635 of the laws of 1999, paragraph b of subdivision 5 as amended by chapter 320 of the laws of 2006 and paragraph c of subdivision 5 as amended by section 7 of part NN of chapter 55 of the laws of 2018, is amended to read as follows:

§ 120.40 Definitions.

For purposes of sections 120.45, 120.50, 120.55 [~~and~~], 120.60 **and 120.80** of this article:

1. "Kidnapping" shall mean a kidnapping crime defined in article one hundred thirty-five of this chapter.

2. "Unlawful imprisonment" shall mean an unlawful imprisonment felony crime defined in article one hundred thirty-five of this chapter.

3. "Sex offense" shall mean a felony defined in article one hundred thirty of this chapter, sexual misconduct, as defined in section 130.20 of this chapter, sexual abuse in the third degree as defined in section 130.55 of this chapter or sexual abuse in the second degree as defined in section 130.60 of this chapter.

4. "Immediate family" means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.

5. "Specified predicate crime" means:

a. a violent felony offense;

b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45, 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

c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.61; coercion in the third degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section 145.10[~~,~~]; criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; endangering the welfare of a child, as defined in section 260.10; or

d. stalking in the fourth degree, as defined in section 120.45; stalking in the third degree, as defined in section 120.50; stalking in the second degree, as defined in section 120.55; **stalking a police officer or peace officer as defined in section 120.80;** or

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

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

§ 120.80 Stalking a police officer or peace officer.

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

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

2. He or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific police officer, peace officer or a person who he or she knows or reasonably should know is a member of such officer's immediate family, and knows or reasonably should know that such conduct causes material harm to the mental or emotional health of such officer or member of such officer's immediate family, where such conduct consists of the following, telephoning or initiating communication or contact with such officer or a member of such officer's immediate family, and the actor was previously clearly informed to cease that conduct; or

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

For purposes of subdivision two of this section, "following" shall include the unauthorized tracking of a police officer, peace officer, or such officer's immediate family member movements or location through the 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

of a firearm to a minor as defined in section 265.16 of the penal law[~~.~~]**; or**

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

§ 5. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the criminal procedure law, paragraph (t) as amended and paragraph (u) as added by section 4 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.

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