

# STATE OF NEW YORK

2313

2023-2024 Regular Sessions

## IN ASSEMBLY

January 25, 2023

Introduced by M. of A. WEPRIN, BURGOS, BENEDETTO, BRABENEC, BRAUNSTEIN, AUBRY, COLTON, CRUZ, DARLING, DAVILA, DICKENS, DURSO, FALL, GUNTHER, HYNDMAN, JEAN-PIERRE, PALMESANO, PHEFFER AMATO, REYES, RIVERA, PAULIN, SAYEGH, SEAWRIGHT, STIRPE, VANEL, WILLIAMS, WALKER, WALLACE, STERN, EICHENSTEIN, D. ROSENTHAL, OTIS, KIM, LAVINE, ZEBROWSKI, WOERNER, RA, ZINERMAN, RAJKUMAR, SILLITTI, BURDICK, JACKSON -- Multi-Sponsored by -- M. of A. COOK, DINOWITZ, HAWLEY, HEVESI, ROZIC, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to on duty auxiliary police officers

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

Section 1. Section 10.00 of the penal law is amended by adding a new subdivision 22 to read as follows:

22. "On-duty auxiliary police officer" means a member of an auxiliary police program that is organized and maintained by a state or local police department who is acting as an auxiliary police officer at the time of the act or omission.

§ 2. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as amended by chapter 94 of the laws of 2020 and paragraph (c) as amended by chapter 134 of the laws of 2019, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, firefighter or emergency medical services professional as defined in section 120.08, assault on an on-duty auxiliary police officer as defined in section 120.08-a, assault on a judge as defined in section 120.09, gang assault

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

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1 in the second degree as defined in section 120.06, strangulation in the  
2 first degree as defined in section 121.13, aggravated strangulation as  
3 defined in section 121.13-a, burglary in the second degree as defined in  
4 section 140.25, robbery in the second degree as defined in section  
5 160.10, criminal possession of a weapon in the second degree as defined  
6 in section 265.03, criminal use of a firearm in the second degree as  
7 defined in section 265.08, criminal sale of a firearm in the second  
8 degree as defined in section 265.12, criminal sale of a firearm with the  
9 aid of a minor as defined in section 265.14, aggravated criminal  
10 possession of a weapon as defined in section 265.19, soliciting or  
11 providing support for an act of terrorism in the first degree as defined  
12 in section 490.15, hindering prosecution of terrorism in the second  
13 degree as defined in section 490.30, and criminal possession of a chemi-  
14 cal weapon or biological weapon in the third degree as defined in  
15 section 490.37.

16 (c) Class D violent felony offenses: an attempt to commit any of the  
17 class C felonies set forth in paragraph (b); reckless assault of a child  
18 as defined in section 120.02, assault in the second degree as defined in  
19 section 120.05, menacing a police officer or peace officer as defined in  
20 section 120.18, menacing an on-duty auxiliary police officer as defined  
21 in section 120.19, stalking in the first degree, as defined in subdivi-  
22 sion one of section 120.60, strangulation in the second degree as  
23 defined in section 121.12, rape in the second degree as defined in  
24 section 130.30, criminal sexual act in the second degree as defined in  
25 section 130.45, sexual abuse in the first degree as defined in section  
26 130.65, course of sexual conduct against a child in the second degree as  
27 defined in section 130.80, aggravated sexual abuse in the third degree  
28 as defined in section 130.66, facilitating a sex offense with a  
29 controlled substance as defined in section 130.90, labor trafficking as  
30 defined in paragraphs (a) and (b) of subdivision three of section  
31 135.35, criminal possession of a weapon in the third degree as defined  
32 in subdivision five, six, seven, eight, nine or ten of section 265.02,  
33 criminal sale of a firearm in the third degree as defined in section  
34 265.11, intimidating a victim or witness in the second degree as defined  
35 in section 215.16, soliciting or providing support for an act of terror-  
36 ism in the second degree as defined in section 490.10, and making a  
37 terroristic threat as defined in section 490.20, falsely reporting an  
38 incident in the first degree as defined in section 240.60, placing a  
39 false bomb or hazardous substance in the first degree as defined in  
40 section 240.62, placing a false bomb or hazardous substance in a sports  
41 stadium or arena, mass transportation facility or enclosed shopping mall  
42 as defined in section 240.63, aggravated unpermitted use of indoor pyro-  
43 technics in the first degree as defined in section 405.18, and criminal  
44 manufacture, sale, or transport of an undetectable firearm, rifle or  
45 shotgun as defined in section 265.50.

46 § 3. Section 120.05 of the penal law is amended by adding a new subdivi-  
47 sion 10-a to read as follows:

48 10-a. With the intent to prevent an on-duty auxiliary police officer  
49 from performing a lawful duty, by means including releasing or failing  
50 to control an animal under circumstances evincing the actor's intent  
51 that the animal obstruct the lawful activity of such on-duty auxiliary  
52 police officer, he or she causes physical injury to such on-duty auxil-  
53 iary police officer.

54 § 4. The penal law is amended by adding a new section 120.08-a to read  
55 as follows:

56 § 120.08-a Assault on an on-duty auxiliary police officer.

A person is guilty of assault on an on-duty auxiliary police officer when, with intent to prevent an on-duty auxiliary police officer from performing a lawful duty, he or she causes serious physical injury to such an on-duty auxiliary police officer.

Assault on an on-duty auxiliary police officer is a class C felony.

§ 5. Section 120.13 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

§ 120.13 Menacing in the first degree.

A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer, or the crime of menacing an on-duty auxiliary police officer within the preceding ten years.

Menacing in the first degree is a class E felony.

§ 6. The penal law is amended by adding a new section 120.19 to read as follows:

§ 120.19 Menacing an on-duty auxiliary police officer.

A person is guilty of menacing an on-duty auxiliary police officer when he or she intentionally places or attempts to place an on-duty auxiliary police officer in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, whether operable or not, where such officer was in the course of performing his or her official duties and the defendant knew or reasonably should have known that such victim was an on-duty auxiliary police officer.

Menacing an on-duty auxiliary police officer is a class D felony.

§ 7. The penal law is amended by adding a new section 195.09 to read as follows:

§ 195.09 Obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device.

A person is guilty of obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device when, with the intent to prevent an on-duty auxiliary police officer from performing a lawful duty, he or she causes temporary physical impairment to an on-duty auxiliary police officer by intentionally discharging a self-defense spray device, as defined in paragraph fourteen of subdivision a of section 265.20 of this part, thereby causing such temporary physical impairment.

Obstructing the duties of an on-duty auxiliary police officer by means of a self-defense spray device is a class D felony.

§ 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.