

# STATE OF NEW YORK

4211

2023-2024 Regular Sessions

## IN ASSEMBLY

February 13, 2023

Introduced by M. of A. MORINELLO -- read once and referred 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 Assem-  
bly, do enact as follows:

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

3 § 205.40 Failure to retreat.

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

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

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

16 Failure to retreat is a class D felony.

17 § 2. Paragraphs (t) and (u) of subdivision 4 of section 510.10 of the  
18 criminal procedure law, paragraph (t) as amended and paragraph (u) as  
19 added by section 2 of subpart B of part UU of chapter 56 of the laws of  
20 2022, are amended and a new paragraph (v) is added to read as follows:

21 (t) any felony or class A misdemeanor involving harm to an identifi-  
22 able person or property, or any charge of criminal possession of a  
23 firearm as defined in section 265.01-b of the penal law, where such  
24 charge arose from conduct occurring while the defendant was released on  
25 his or her own recognizance, released under conditions, or had yet to be

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

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1 arraigned after the issuance of a desk appearance ticket for a separate  
2 felony or class A misdemeanor involving harm to an identifiable person  
3 or property, or any charge of criminal possession of a firearm as  
4 defined in section 265.01-b of the penal law, provided, however, that  
5 the prosecutor must show reasonable cause to believe that the defendant  
6 committed the instant crime and any underlying crime. For the purposes  
7 of this subparagraph, any of the underlying crimes need not be a quali-  
8 fying offense as defined in this subdivision. For the purposes of this  
9 paragraph, "harm to an identifiable person or property" shall include  
10 but not be limited to theft of or damage to property. However, based  
11 upon a review of the facts alleged in the accusatory instrument, if the  
12 court determines that such theft is negligible and does not appear to be  
13 in furtherance of other criminal activity, the principal shall be  
14 released on his or her own recognizance or under appropriate non-mone-  
15 tary conditions; ~~[ex]~~

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

20 (v) failure to retreat as defined in section 205.40 of the penal law.

21 § 3. Subparagraphs (xx) and (xxi) of paragraph (b) of subdivision 1 of  
22 section 530.20 of the criminal procedure law, subparagraph (xx) as  
23 amended and subparagraph (xxi) as added by section 4 of subpart C of  
24 part UU of chapter 56 of the laws of 2022, are amended and a new subpar-  
25 agraph (xxii) is added to read as follows:

26 (xx) any felony or class A misdemeanor involving harm to an identifi-  
27 able person or property, or any charge of criminal possession of a  
28 firearm as defined in section 265.01-b of the penal law where such  
29 charge arose from conduct occurring while the defendant was released on  
30 his or her own recognizance, released under conditions, or had yet to be  
31 arraigned after the issuance of a desk appearance ticket for a separate  
32 felony or class A misdemeanor involving harm to an identifiable person  
33 or property, provided, however, that the prosecutor must show reasonable  
34 cause to believe that the defendant committed the instant crime and any  
35 underlying crime. For the purposes of this subparagraph, any of the  
36 underlying crimes need not be a qualifying offense as defined in this  
37 subdivision. For the purposes of this paragraph, "harm to an identifi-  
38 able person or property" shall include but not be limited to theft of or  
39 damage to property. However, based upon a review of the facts alleged in  
40 the accusatory instrument, if the court determines that such theft is  
41 negligible and does not appear to be in furtherance of other criminal  
42 activity, the principal shall be released on his or her own recognizance  
43 or under appropriate non-monetary conditions; ~~[ex]~~

44 (xxi) criminal possession of a weapon in the third degree as defined  
45 in subdivision three of section 265.02 of the penal law or criminal sale  
46 of a firearm to a minor as defined in section 265.16 of the penal  
47 law~~[+]~~; or

48 (xxii) failure to retreat as defined in section 205.40 of the penal  
49 law.

50 § 4. Paragraphs (t) and (u) of subdivision 4 of section 530.40 of the  
51 criminal procedure law, paragraph (t) as amended and paragraph (u) as  
52 added by section 4 of subpart B of part UU of chapter 56 of the laws of  
53 2022, are amended and a new paragraph (v) is added to read as follows:

54 (t) any felony or class A misdemeanor involving harm to an identifi-  
55 able person or property, or any charge of criminal possession of a  
56 firearm as defined in section 265.01-b of the penal law, where such

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

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

22 (v) failure to retreat as defined in section 205.40 of the penal law.

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