

# STATE OF NEW YORK

6338

2023-2024 Regular Sessions

## IN ASSEMBLY

April 5, 2023

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

AN ACT to amend the penal law, in relation to establishing the offenses of menacing a police officer or peace officer in the first degree and menacing a police officer or peace officer in the second degree; to amend the criminal procedure law, in relation to circumstances under which an officer is not required to issue an appearance ticket; and to amend the penal law, the criminal procedure law and the administrative code of the city of New York, in relation to making conforming changes

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

1 Section 1. Section 120.18 of the penal law, as added by chapter 765 of  
2 the laws of 2005, is amended to read as follows:

3 § [~~120.18~~] 120.19 Menacing a police officer or peace officer in the  
4 first degree.

5 A person is guilty of menacing a police officer or peace officer in  
6 the first degree when he or she intentionally places or attempts to  
7 place a police officer or peace officer in reasonable fear of physical  
8 injury, serious physical injury or death by displaying a deadly weapon,  
9 knife, pistol, revolver, rifle, shotgun, machine gun or other firearm,  
10 whether operable or not, where such officer was in the course of  
11 performing his or her official duties and the defendant knew or reason-  
12 ably should have known that such victim was a police officer or peace  
13 officer.

14 Menacing a police officer or peace officer in the first degree is a  
15 class [~~D~~] C felony.

16 § 2. The penal law is amended by adding a new section 120.18 to read  
17 as follows:

18 § 120.18 Menacing a police officer or peace officer in the second  
19 degree.

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

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1 A person is guilty of menacing a police officer or peace officer in  
2 the second degree when he or she intentionally assaults a police officer  
3 or peace officer by throwing or spraying water, urine, or any other  
4 substance where such officer was in the course of performing his or her  
5 official duties and the defendant knew or reasonably should have known  
6 that such victim was a police officer or peace officer.

7 Menacing a police officer or peace officer in the second degree is a  
8 class D felony.

9 § 3. Subparagraphs (x) and (xi) of paragraph (b) of subdivision 1 of  
10 section 150.20 of the criminal procedure law, as added by section 1 of  
11 subpart B of part UU of chapter 56 of the laws of 2022, are amended and  
12 a new subparagraph (xii) is added to read as follows:

13 (x) the person is eighteen years of age or older and charged with a  
14 hate crime as defined in section 485.05 of the penal law; ~~[ex]~~

15 (xi) the offense is a qualifying offense pursuant to paragraph (t) of  
16 subdivision four of section 510.10 of this chapter, or pursuant to para-  
17 graph (t) of subdivision four of section 530.40 of this chapter~~[-]~~; or

18 (xii) the person is charged with menacing a police officer or peace  
19 officer in the second degree as defined in section 120.18 of the penal  
20 law.

21 § 4. Subdivision 20 of section 10.00 of the penal law, as added by  
22 chapter 765 of the laws of 2005, is amended to read as follows:

23 20. For purposes of sections 120.13, 120.18, 120.19, 125.11, 125.21  
24 and 125.22 of this chapter, the term "peace officer" means a peace offi-  
25 cer as defined in subdivision one, two, three, four, six, twelve, thir-  
26 teen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-  
27 one, twenty-three, twenty-three-a, twenty-four, twenty-five, twenty-six,  
28 twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-four,  
29 thirty-five, thirty-six, forty-three, forty-five, forty-seven, forty-  
30 eight, forty-nine, fifty-one, fifty-two, fifty-eight, sixty-one, as  
31 added by chapter two hundred fifty-seven of the laws of nineteen hundred  
32 ninety-two, ~~[sixty-one, as added by chapter three hundred twenty-one of~~  
33 ~~the laws of nineteen hundred ninety-two,~~] sixty-two, as added by chapter  
34 two hundred four of the laws of nineteen hundred ninety-three, sixty-  
35 two, as added by chapter six hundred eighty-seven of the laws of nine-  
36 teen hundred ninety-three, sixty-three, as amended by chapter six  
37 hundred thirty-eight of the laws of two thousand three, sixty-four,  
38 sixty-five, sixty-eight, as added by chapter one hundred sixty-eight of  
39 the laws of two thousand, sixty-eight, as added by chapter three hundred  
40 eighty-one of the laws of two thousand, seventy, seventy-one, seventy-  
41 four, as added by chapter five hundred forty-eight of the laws of two  
42 thousand one, seventy-five, as added by chapter three hundred twenty-one  
43 of the laws of two thousand two, seventy-five, as added by chapter six  
44 hundred twenty-three of the laws of two thousand two, seventy-seven, as  
45 added by chapter three hundred sixty-seven of the laws of two thousand  
46 four, seventy-eight or seventy-nine, as added by chapter two hundred  
47 forty-one of the laws of two thousand four, of section 2.10 of the crim-  
48 inal procedure law, as well as any federal law enforcement officer  
49 defined in section 2.15 of the criminal procedure law.

50 § 5. Paragraphs (b) and (c) of subdivision 1, paragraph (b-1) of  
51 subdivision 2 and paragraph (c) of subdivision 3 of section 70.02 of the  
52 penal law, paragraph (b) of subdivision 1 as amended by chapter 94 of  
53 the laws of 2020, paragraph (c) of subdivision 1 as amended by chapter  
54 134 of the laws of 2019, paragraph (b-1) of subdivision 2 as added by  
55 chapter 765 of the laws of 2005, and paragraph (c) of subdivision 3 as

1 amended by chapter 1 of the laws of 2013, are amended to read as  
2 follows:

3 (b) Class C violent felony offenses: an attempt to commit any of the  
4 class B felonies set forth in paragraph (a) of this subdivision; menac-  
5 ing a police officer or peace officer in the first degree as defined in  
6 section 120.19, aggravated criminally negligent homicide as defined in  
7 section 125.11, aggravated manslaughter in the second degree as defined  
8 in section 125.21, aggravated sexual abuse in the second degree as  
9 defined in section 130.67, assault on a peace officer, police officer,  
10 firefighter or emergency medical services professional as defined in  
11 section 120.08, assault on a judge as defined in section 120.09, gang  
12 assault in the second degree as defined in section 120.06, strangulation  
13 in the first degree as defined in section 121.13, aggravated strangula-  
14 tion as defined in section 121.13-a, burglary in the second degree as  
15 defined in section 140.25, robbery in the second degree as defined in  
16 section 160.10, criminal possession of a weapon in the second degree as  
17 defined in section 265.03, criminal use of a firearm in the second  
18 degree as defined in section 265.08, criminal sale of a firearm in the  
19 second degree as defined in section 265.12, criminal sale of a firearm  
20 with the aid of a minor as defined in section 265.14, aggravated crimi-  
21 nal possession of a weapon as defined in section 265.19, soliciting or  
22 providing support for an act of terrorism in the first degree as defined  
23 in section 490.15, hindering prosecution of terrorism in the second  
24 degree as defined in section 490.30, and criminal possession of a chemi-  
25 cal weapon or biological weapon in the third degree as defined in  
26 section 490.37.

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

1 (b-1) Except as provided in subdivision six of section 60.05, the  
2 sentence imposed upon a person who stands convicted of the class D  
3 violent felony offense of menacing a police officer or peace officer in  
4 the second degree as defined in section 120.18 of this chapter must be a  
5 determinate sentence of imprisonment.

6 (c) For a class D felony, the term must be at least two years and must  
7 not exceed seven years, provided, however, that the term must be: (i) at  
8 least two years and must not exceed eight years where the sentence is  
9 for the crime of menacing a police officer or peace officer in the  
10 second degree as defined in section 120.18 of this chapter; and (ii) at  
11 least three and one-half years and must not exceed seven years where the  
12 sentence is imposed for the crime of criminal possession of a weapon in  
13 the third degree as defined in subdivision ten of section 265.02 of this  
14 chapter;

15 § 6. Paragraph (t) of subdivision 8 of section 700.05 of the criminal  
16 procedure law, as added by chapter 765 of the laws of 2005, is amended  
17 to read as follows:

18 (t) Menacing a police officer or peace officer in the second degree as  
19 defined in section 120.18 of the penal law; menacing a police officer or  
20 peace officer in the first degree as defined in section 120.19 of the  
21 penal law; aggravated criminally negligent homicide as defined in  
22 section 125.11 of the penal law; aggravated manslaughter in the second  
23 degree as defined in section 125.21 of the penal law; aggravated  
24 manslaughter in the first degree as defined in section 125.22 of the  
25 penal law; aggravated murder as defined in section 125.26 of the penal  
26 law.

27 § 7. Subparagraph i of paragraph 7 of subdivision a of section 9-131  
28 of the administrative code of the city of New York, as amended by chap-  
29 ter 189 of the laws of 2018, is amended to read as follows:

30 i. a felony defined in any of the following sections of the penal law:  
31 120.01, 120.02, 120.03, 120.04, 120.04-a(4), 120.05, 120.06, 120.07,  
32 120.08, 120.09, 120.10, 120.11, 120.12, 120.13, 120.18, 120.19, 120.25,  
33 120.55, 120.60, 120.70, 121.12, 121.13, 125.10, 125.11, 125.12, 125.13,  
34 125.14, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, [~~125.40,~~  
35 ~~125.45,~~] 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65,  
36 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.85, 130.90,  
37 130.95, 130.96, 135.10, 135.20, 135.25, 135.35, 135.50, 135.65(2)(b),  
38 140.17, 140.25, 140.30, 145.12, 150.05, 150.10, 150.15, 150.20, 160.05,  
39 160.10, 160.15, 195.07, 195.08, 195.17, 215.11, 215.12, 215.13, 215.15,  
40 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.28, 220.41, 220.43,  
41 220.44, 220.48, 220.77, 230.05, 230.06, 230.19, 230.25(2), 230.30,  
42 230.32, 230.33, 230.34, 230.34-a, 235.22, 240.06, 240.55, 240.60,  
43 240.61, 240.62, 240.63, 240.75, 241.05, 255.26, 255.27, 260.25, 260.32,  
44 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 263.30, 265.01-a,  
45 265.01-b, 265.02(2) through (8), 265.03, 265.04, 265.08, 265.09, 265.10,  
46 265.11, 265.12, 265.13, 265.14, 265.16, 265.17, 265.19, 265.35(2),  
47 270.30, 270.35, 405.16(1), 405.18, 460.22, 470.21, 470.22, 470.23,  
48 470.24, 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, 490.37, 490.40,  
49 490.45, 490.47, 490.50, or 490.55;

50 § 8. Subparagraph i of paragraph 6 of subdivision a of section 14-154  
51 of the administrative code of the city of New York, as amended by chap-  
52 ter 189 of the laws of 2018, is amended to read as follows:

53 i. a felony defined in any of the following sections of the penal law:  
54 120.01, 120.02, 120.03, 120.04, 120.04-a(4), 120.05, 120.06, 120.07,  
55 120.08, 120.09, 120.10, 120.11, 120.12, 120.13, 120.18, 120.19, 120.25,  
56 120.55, 120.60, 120.70, 121.12, 121.13, 125.10, 125.11, 125.12, 125.13,

1 125.14, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, [~~125.40,~~  
2 ~~125.45,~~] 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65,  
3 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.85, 130.90,  
4 130.95, 130.96, 135.10, 135.20, 135.25, 135.35, 135.50, 135.65(2)(b),  
5 140.17, 140.25, 140.30, 145.12, 150.05, 150.10, 150.15, 150.20, 160.05,  
6 160.10, 160.15, 195.07, 195.08, 195.17, 215.11, 215.12, 215.13, 215.15,  
7 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.28, 220.41, 220.43,  
8 220.44, 220.48, 220.77, 230.05, 230.06, 230.19, 230.25(2), 230.30,  
9 230.32, 230.33, 230.34, 230.34-a, 235.22, 240.06, 240.55, 240.60,  
10 240.61, 240.62, 240.63, 240.75, 241.05, 255.26, 255.27, 260.25, 260.32,  
11 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 263.30, 265.01-a,  
12 265.01-b, 265.02 (2) through (8), 265.03, 265.04, 265.08, 265.09,  
13 265.10, 265.11, 265.12, 265.13, 265.14, 265.16, 265.17, 265.19,  
14 265.35(2), 270.30, 270.35, 405.16(1), 405.18, 460.22, 470.21, 470.22,  
15 470.23, 470.24, 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, 490.37,  
16 490.40, 490.45, 490.47, 490.50, or 490.55;  
17 § 9. This act shall take effect on the first of January next succeed-  
18 ing the date upon which it shall have become a law.