

STATE OF NEW YORK

7078

2023-2024 Regular Sessions

IN ASSEMBLY

May 10, 2023

Introduced by M. of A. ZEBROWSKI, WOERNER, FAHY, WALLACE -- read once
and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to including certain offenses involving situations where a person physically harms another or engages in conduct that results in an unacceptable level of danger as qualifying offenses for the purpose of allowing a principal to be eligible to be held on bail; and to require the Office of Court Administration to establish an electronic tracking system maintaining a record of all bail decisions and to deliver a report to the legislature

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

Section 1. Paragraphs (a), (m), (t) and (u) of subdivision 4 of section 510.10 of the criminal procedure law, paragraph (a) as amended and paragraph (m) as added by section 2 of part UU of chapter 56 of the laws of 2020, and 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 seven new paragraphs (v), (w), (x), (y), (z), (aa) and (bb) are added to read as follows:

(a) a felony enumerated in section 70.02 of the penal law~~[, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling]~~;

(m) assault in the third degree as defined in section 120.00 of the penal law ~~[or arson in the third degree as defined in section 150.10 of the penal law]~~, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(t) any felony or class A misdemeanor involving harm to an identifiable person or property, or any charge of criminal possession of a

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

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

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

22 (v) assault in the third degree as defined in section 120.00 of the
23 penal law; reckless assault of a child by a child day care provider as
24 defined in section 120.01 of the penal law; vehicular assault in the
25 second degree as defined in section 120.03 of the penal law; menacing in
26 the first degree as defined in section 120.13 of the penal law; menacing
27 in the second degree as defined in section 120.14 of the penal law;
28 menacing in the third degree as defined in section 120.15 of the penal
29 law; reckless endangerment in the second degree as defined in section
30 120.20 of the penal law; reckless endangerment in the first degree as
31 defined in section 120.25 of the penal law; stalking in the third degree
32 as defined in section 120.50 of the penal law; or stalking in the second
33 degree as defined in section 120.55 of the penal law;

34 (w) unlawful imprisonment in the second degree as defined in section
35 135.05 of the penal law;

36 (x) burglary in the third degree as defined in section 140.20 of the
37 penal law;

38 (y) arson in the fifth degree as defined in section 150.01; arson in
39 the fourth degree as defined in section 150.05 of the penal law; or
40 arson in the third degree as defined in section 150.10 of the penal
41 law;

42 (z) public lewdness in the first degree as defined in section 245.03
43 of the penal law;

44 (aa) criminal possession of a rapid-fire modification device as
45 defined in section 265.01-c of the penal law; criminal possession of a
46 weapon in a restricted location as defined in section 265.01-d of the
47 penal law; criminal possession of a firearm, rifle or shotgun in a
48 sensitive location as defined in section 265.01-e of the penal law; a
49 violation of manufacture, transport, disposition and defacement of weap-
50 ons and dangerous instruments and appliances as defined in subdivision
51 five of section 265.10 of the penal law; prohibited use of weapons as
52 defined in subdivision three of section 265.35 of the penal law; or
53 unlawful possession of certain ammunition feeding devices as defined in
54 section 265.37 of the penal law; or

55 (bb) unlawful fleeing a police officer in a motor vehicle in the third
56 degree as defined in section 270.25 of the penal law.

§ 2. Subparagraphs (i), (xiii), (xx) and (xxi) of paragraph (b) of subdivision 1 of section 530.20 of the criminal procedure law, subparagraphs (i) and (xiii) as amended by section 3 of part UU of chapter 56 of the laws of 2020, and subparagraph (xx) as amended and subparagraph (xxi) as added by section 4 of subpart C of part UU of chapter 56 of the laws of 2022, are amended and seven new subparagraphs (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii) and (xxviii) are added to read as follows:

(i) a felony enumerated in section 70.02 of the penal law~~[, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling]~~;

(xiii) assault in the third degree as defined in section 120.00 of the penal law ~~[or arson in the third degree as defined in section 150.10 of the penal law]~~, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(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~~[-]~~;

(xxii) assault in the third degree as defined in section 120.00 of the penal law; reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law; vehicular assault in the second degree as defined in section 120.03 of the penal law; menacing in the first degree as defined in section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; reckless endangerment in the first degree as defined in section 120.25 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; or stalking in the second degree as defined in section 120.55 of the penal law;

(xxiii) unlawful imprisonment in the second degree as defined in section 135.05 of the penal law;

(xxiv) burglary in the third degree as defined in section 140.20 of the penal law;

(xxv) arson in the fifth degree as defined in section 150.01; arson in the fourth degree as defined in section 150.05 of the penal law; or arson in the third degree as defined in section 150.10 of the penal law;

(xxvi) public lewdness in the first degree as defined in section 245.03 of the penal law;

(xxvii) criminal possession of a rapid-fire modification device as defined in section 265.01-c of the penal law; criminal possession of a weapon in a restricted location as defined in section 265.01-d of the penal law; criminal possession of a firearm, rifle or shotgun in a sensitive location as defined in section 265.01-e of the penal law; a violation of manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances as defined in subdivision five of section 265.10 of the penal law; prohibited use of weapons as defined in subdivision three of section 265.35 of the penal law; or unlawful possession of certain ammunition feeding devices as defined in section 265.37 of the penal law; or

(xxviii) unlawful fleeing a police officer in a motor vehicle in the third degree as defined in section 270.25 of the penal law.

§ 3. Paragraphs (a), (m), (t) and (u) of subdivision 4 of section 530.40 of the criminal procedure law, paragraph (a) as amended and paragraph (m) as added by section 4 of part UU of chapter 56 of the laws of 2020, and 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 seven new paragraphs (v), (w), (x), (y), (z), (aa) and (bb) are added to read as follows:

(a) a felony enumerated in section 70.02 of the penal law~~[, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, provided, however, that burglary in the second degree as defined in subdivision two of section 140.25 of the penal law shall be a qualifying offense only where the defendant is charged with entering the living area of the dwelling]~~;

(m) assault in the third degree as defined in section 120.00 of the penal law ~~[or arson in the third degree as defined in section 150.10 of the penal law]~~, when such crime is charged as a hate crime as defined in section 485.05 of the penal law;

(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[+];

(v) assault in the third degree as defined in section 120.00 of the penal law; reckless assault of a child by a child day care provider as defined in section 120.01 of the penal law; vehicular assault in the second degree as defined in section 120.03 of the penal law; menacing in the first degree as defined in section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; reckless endangerment in the first degree as defined in section 120.25 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; or stalking in the second degree as defined in section 120.55 of the penal law;

(w) unlawful imprisonment in the second degree as defined in section 135.05 of the penal law;

(x) burglary in the third degree as defined in section 140.20 of the penal law;

(y) arson in the fifth degree as defined in section 150.01; arson in the fourth degree as defined in section 150.05 of the penal law; or arson in the third degree as defined in section 150.10 of the penal law;

(z) public lewdness in the first degree as defined in section 245.03 of the penal law;

(aa) criminal possession of a rapid-fire modification device as defined in section 265.01-c of the penal law; criminal possession of a weapon in a restricted location as defined in section 265.01-d of the penal law; criminal possession of a firearm, rifle or shotgun in a sensitive location as defined in section 265.01-e of the penal law; a violation of manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances as defined in subdivision five of section 265.10 of the penal law; prohibited use of weapons as defined in subdivision three of section 265.35 of the penal law; or unlawful possession of certain ammunition feeding devices as defined in section 265.37 of the penal law; or

(bb) unlawful fleeing a police officer in a motor vehicle in the third degree as defined in section 270.25 of the penal law.

§ 4. The Office of Court Administration, in conjunction with the New York State Division of Criminal Justice Services, shall manage an electronic tracking system maintaining a record of all bail decisions of judges in this state, specifying by court, the number of cases in which bail was granted, in which bail was denied and in which no bail was required. If bail was granted, the average amount of bail required shall be specified. On or before July 31st of each year, the Office of Court Administration shall prepare a report detailing the record of cases and deliver such report to the Speaker of the Assembly and the Temporary President of the Senate.

§ 5. This act shall take effect on the sixtieth day after it shall have become a law; provided that section four of this act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.