

STUDY OF PROPOSED PENAL LAW
ARTICLE 125: ASSAULT AND
RELATED OFFENSES.

There are major changes in the law of
"Assault" under the proposed Penal Law.

Actual physical injury must be sustained
by the victim to constitute the crime of
Assault in any degree. The degree of Assault
is directly related to the extent of such
physical injury. Third Degree Assault merely
requires physical injury. Second and First
Degree Assault require "serious" physical
injury, with the added requirement of intent
to kill in Assault First Degree.

"Assault" includes physical injury caused
by recklessness. Under present law, recklessness
as a basis for an Assault is found only in
Assault Third Degree, in the culpably negligent
operation of a motor vehicle where physical
injury results.

Under the new law, where the reckless conduct
does not result in physical injury, but places

a person in danger of serious physical injury, such conduct constitutes an element in the new crime of "reckless endangerment." There are two degrees of reckless endangerment. Second degree requires exposure to the danger of serious physical injury. First degree requires exposure to danger of death, plus conduct evincing a "depraved indifference to human life."

The "heat of passion" principle presently applied in mitigation of homicides will be extended to the crime of Assault. The phrase "extreme emotional disturbance" is used in place of the phrase "heat of passion."

What would constitute Assault in the First Degree, becomes Assault in the Second Degree, if the act is committed under "extreme emotional disturbance, etc."

Under present law, a "battery" is not required to support certain types of assault as with a weapon or other dangerous instrument likely to produce grievous bodily injury.

Under the new law, an Assault without a battery is included in the crime of "menacing." Only a fear of "imminent serious physical injury" by a victim, is required to support this crime.

The writer questions the adequacy of the maximum penalty of three months upon conviction of this crime, particularly in view of the fact that under existing law, the maximum sentence for conviction would be five years.

"Maiming" is eliminated as a separate crime under the new law. It will be generally included under the crime of Assault First Degree. The new law requires a specific intent to maim, whereas the present law requires only an intent to injure or to commit a felony.

Several omissions under the proposed law should be noted and considered. The new law omits any provisions for assaults on reporters and photographers and their apparatus in public places, etc., now included under Assault Third Degree. Furthermore, the new law omits any special provision for assaults on Police Officers, etc., while in the performance of their legal duties.

4.

Some comparison of the following sentencing provisions is in order:

<u>CRIME</u>	<u>EXISTING MAXIMUM</u>	<u>PROPOSED MAXIMUM</u>
Assault 3rd Degree	1 year - \$500.00 or both.	Class A - Mis. 1 year
Assault 2nd Degree	5 years and/or \$1000.00	Class D -Felony 7 years
Assault 1st Degree	10 years	Class B -Felony 25 years
Menacing	-	Class B-Mis. 3 months
Reckless Endangerment 2nd	-	Class A-Mis. 1 year
Reckless Endangerment 1st	-	Class D-Felony 7 years

It is the opinion of the writer that the proposed changes in the law of Assault are desirable. Among other things, the proposed changes supply a consistency in the Assault area not found in the existing law.

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