

1407--B

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. GOLDEN, AVELLA, BONACIC, DeFRANCISCO, GRIFFO, JOHNSON, LANZA, LARKIN, LAVALLE, MAZIARZ, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the vehicle and traffic law and the general business law, in relation to criminal use of a firearm in the first degree and to repeal certain provisions of the penal law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 265.09 of the penal law, as amended by chapter 650
2 of the laws of 1996, is amended to read as follows:
3 S 265.09 Criminal use of a firearm in the first degree.
4 (1) A person is guilty of criminal use of a firearm in the first
5 degree when he OR SHE commits any [class B violent] felony offense [as
6 defined in paragraph (a) of subdivision one of section 70.02] and he
7 [either:
8 (a) possesses a deadly weapon, if the weapon is a loaded weapon from
9 which a shot, readily capable of producing death or other serious injury
10 may be discharged; or
11 (b)] OR SHE displays what appears to be a pistol, revolver, rifle,
12 shotgun, machine gun or other firearm.
13 Criminal use of a firearm in the first degree is a class B felony.
14 (2) Sentencing. Notwithstanding any other provision of law to the
15 contrary, when a person is convicted of criminal use of a firearm in the
16 first degree as defined in subdivision one of this section, the court

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

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1 shall impose [an additional] A consecutive sentence of five years to the
2 minimum term of [an indeterminate] THE sentence imposed on the underly-
3 ing [class B violent] felony offense where the person convicted of such
4 crime displays [a loaded weapon from which a shot, readily capable of
5 producing death or other serious injury may be discharged,] WHAT APPEARS
6 TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM
7 in furtherance of the commission of such crime, provided, however, that
8 such additional sentence shall not be imposed if the court, having
9 regard to the nature and circumstances of the crime and to the history
10 and character of the defendant, finds on the record that such additional
11 consecutive sentence would be unduly harsh and that not imposing such
12 sentence would be consistent with the public safety and would not depre-
13 cate the seriousness of the crime. Notwithstanding any other provision
14 of law to the contrary, the aggregate of the five year consecutive term
15 imposed pursuant to this subdivision and the minimum term of the [inde-
16 terminate] sentence imposed on the underlying [class B violent] felony
17 shall constitute the new aggregate minimum term of imprisonment, and a
18 person subject to such term shall be required to serve the entire aggre-
19 gate minimum term and shall not be eligible for release on parole or
20 conditional release during such term. This subdivision shall not apply
21 where the defendant's criminal liability for displaying [a loaded weapon
22 from which a shot, readily capable of producing death or other serious
23 injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE,
24 SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission
25 of crime is based on the conduct of another pursuant to section 20.00 of
26 [the penal law] THIS CHAPTER.

27 S 2. Section 265.08 of the penal law is REPEALED.

28 S 3. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,
29 as amended by chapter 148 of the laws of 2011, is amended to read as
30 follows:

31 (b) Class C violent felony offenses: an attempt to commit any of the
32 class B felonies set forth in paragraph (a) of this subdivision; aggra-
33 vated criminally negligent homicide as defined in section 125.11, aggra-
34 vated manslaughter in the second degree as defined in section 125.21,
35 aggravated sexual abuse in the second degree as defined in section
36 130.67, assault on a peace officer, police officer, fireman or emergency
37 medical services professional as defined in section 120.08, assault on a
38 judge as defined in section 120.09, gang assault in the second degree as
39 defined in section 120.06, strangulation in the first degree as defined
40 in section 121.13, burglary in the second degree as defined in section
41 140.25, robbery in the second degree as defined in section 160.10, crim-
42 inal possession of a weapon in the second degree as defined in section
43 265.03, [criminal use of a firearm in the second degree as defined in
44 section 265.08,] criminal sale of a firearm in the second degree as
45 defined in section 265.12, criminal sale of a firearm with the aid of a
46 minor as defined in section 265.14, soliciting or providing support for
47 an act of terrorism in the first degree as defined in section 490.15,
48 hindering prosecution of terrorism in the second degree as defined in
49 section 490.30, and criminal possession of a chemical weapon or biolog-
50 ical weapon in the third degree as defined in section 490.37.

51 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
52 and traffic law, as amended by chapter 400 of the laws of 2011, is
53 amended to read as follows:

54 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
55 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
56 of this section that result in disqualification for a period of five

1 years shall include a conviction under sections 100.10, 105.13, 115.05,
2 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
3 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,
4 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,
5 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,
6 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00,
7 260.10, subdivision two of section 260.20 and sections 260.25, 265.02,
8 265.03, [265.08,] 265.09, 265.10, 265.12, 265.35 of the penal law or an
9 attempt to commit any of the aforesaid offenses under section 110.00 of
10 the penal law, or any similar offenses committed under a former section
11 of the penal law, or any offenses committed under a former section of
12 the penal law which would constitute violations of the aforesaid
13 sections of the penal law, or any offenses committed outside this state
14 which would constitute violations of the aforesaid sections of the penal
15 law.

16 S 5. The opening paragraph of paragraph (f) of subdivision 1 of
17 section 410 of the general business law, as added by chapter 509 of the
18 laws of 1992, is amended to read as follows:

19 Conviction of any of the following crimes subsequent to the issuance
20 of a license pursuant to this article: fraud pursuant to sections
21 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
22 business records pursuant to section 175.10; grand larceny pursuant to
23 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
24 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
25 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
26 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
27 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
28 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
29 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
30 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
31 of a weapon pursuant to [sections 265.08 and] SECTION 265.09; criminal
32 sale of a weapon pursuant to sections 265.11 and 265.12; and sex
33 offenses pursuant to article 130 of the penal law. Provided, however,
34 that for the purposes of this article, none of the following shall be
35 considered criminal convictions or reported as such: (i) a conviction
36 for which an executive pardon has been issued pursuant to the executive
37 law; (ii) a conviction which has been vacated and replaced by a youthful
38 offender finding pursuant to article seven hundred twenty of the crimi-
39 nal procedure law, or the applicable provisions of law of any other
40 jurisdiction; or (iii) a conviction the records of which have been
41 expunged or sealed pursuant to the applicable provisions of the laws of
42 this state or of any other jurisdiction; and (iv) a conviction for which
43 other evidence of successful rehabilitation to remove the disability has
44 been issued.

45 S 6. This act shall take effect on the first of November next succeed-
46 ing the date on which it shall have become a law.