

2169--A

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sens. GOLDEN, DeFRANCISCO, FUSCHILLO, GRIFFO, HANNON, JOHNSON, LARKIN, LAVALLE, LITTLE, MAZIARZ, O'MARA, RANZENHOFER, SALAND, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- 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, in relation to enhanced sentencing for criminal possession of a weapon or criminal sale of a firearm, when the crime is committed at the home of a child

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

1 Section 1. The penal law is amended by adding a new section 265.18 to
2 read as follows:
3 S 265.18 ADDITIONAL SENTENCE WHEN CRIMINAL POSSESSION OF A WEAPON OR
4 CRIMINAL SALE OF A FIREARM IS COMMITTED AT THE HOME OF A
5 CHILD.
6 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A
7 PERSON IS CONVICTED OF CRIMINAL POSSESSION OF A WEAPON AS DEFINED IN
8 SECTIONS 265.04, 265.03 OR 265.02, OR CRIMINAL SALE OF A FIREARM AS
9 DEFINED IN SECTIONS 265.16, 265.14, 265.13, 265.12, OR 265.11 OF THIS
10 ARTICLE AND THE TRIER OF FACT DETERMINES BEYOND A REASONABLE DOUBT THAT
11 THE CRIME WAS COMMITTED AT ANY DWELLING, MULTIPLE DWELLING OR RESIDENCE
12 WHERE A CHILD UNDER THE AGE OF FOURTEEN YEARS OLD IS DOMICILED, THE
13 COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE SENTENCE OF TWO AND
14 ONE-HALF YEARS TO THE MINIMUM TERM OF A SENTENCE IMPOSED ON THE UNDERLY-
15 ING FELONY OFFENSE. IF THE TRIER OF FACT ALSO DETERMINES BEYOND A
16 REASONABLE DOUBT THAT THE CRIME WAS COMMITTED AT SUCH RESIDENCE AND SUCH
17 CHILD OR ANOTHER CHILD UNDER THE AGE OF FOURTEEN YEARS OLD WAS PRESENT
18 AT THE DWELLING, MULTIPLE DWELLING OR RESIDENCE, OR WITHIN THE CURTILAGE
19 OF SUCH, AT THE TIME OF THE COMMISSION OF THE CRIME, THE ADDITIONAL

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

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1 CONSECUTIVE SENTENCE SHALL BE NO LESS THAN FIVE YEARS. HOWEVER, SUCH
2 ADDITIONAL SENTENCE SHALL NOT BE IMPOSED IF THE COURT, HAVING REGARD TO
3 THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARAC-
4 TER OF THE DEFENDANT, FINDS ON THE RECORD THAT SUCH ADDITIONAL CONSEC-
5 UTIVE SENTENCE WOULD BE UNDULY HARSH AND THAT NOT IMPOSING SUCH SENTENCE
6 WOULD BE CONSISTENT WITH THE PUBLIC SAFETY AND WOULD NOT DEPRECATE THE
7 SERIOUSNESS OF THE CRIME. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
8 THE CONTRARY, THE AGGREGATE OF THE CONSECUTIVE TERM IMPOSED PURSUANT TO
9 THIS SECTION AND THE MINIMUM TERM OF THE SENTENCE IMPOSED ON THE UNDER-
10 LYING FELONY SHALL CONSTITUTE THE NEW AGGREGATE MINIMUM TERM OF IMPRI-
11 SONMENT, AND A PERSON SUBJECT TO SUCH TERM SHALL BE REQUIRED TO SERVE
12 THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE
13 ON PAROLE OR CONDITIONAL RELEASE DURING SUCH TERM.

14 S 2. This act shall take effect on the first of November next succeed-
15 ing the date on which it shall have become a law.