

1407--A

Cal. No. 265

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. GOLDEN, 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

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
17 shall impose [an additional] A consecutive sentence of five years to the
18 minimum term of [an indeterminate] THE sentence imposed on the underly-
19 ing [class B violent] felony offense where the person convicted of such

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

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1 crime displays a loaded weapon from which a shot, readily capable of
2 producing death or other serious injury may be discharged, in further-
3 ance of the commission of such crime, provided, however, that such addi-
4 tional sentence shall not be imposed if the court, having regard to the
5 nature and circumstances of the crime and to the history and character
6 of the defendant, finds on the record that such additional consecutive
7 sentence would be unduly harsh and that not imposing such sentence would
8 be consistent with the public safety and would not deprecate the seri-
9 ousness of the crime. Notwithstanding any other provision of law to the
10 contrary, the aggregate of the five year consecutive term imposed pursu-
11 ant to this subdivision and the minimum term of the [indeterminate]
12 sentence imposed on the underlying [class B violent] felony shall
13 constitute the new aggregate minimum term of imprisonment, and a person
14 subject to such term shall be required to serve the entire aggregate
15 minimum term and shall not be eligible for release on parole or condi-
16 tional release during such term. This subdivision shall not apply where
17 the defendant's criminal liability for displaying a loaded weapon from
18 which a shot, readily capable of producing death or other serious injury
19 may be discharged, in furtherance of the commission of crime is based on
20 the conduct of another pursuant to section 20.00 of [the penal law] THIS
21 CHAPTER.

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 Section 265.08 of the penal law is REPEALED.

23 S 3. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,
24 as amended by chapter 405 of the laws of 2010, is amended to read as
25 follows:

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

46 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
47 and traffic law, as amended by chapter 405 of the laws of 2010, is
48 amended to read as follows:

49 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
50 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
51 of this section that result in disqualification for a period of five
52 years shall include a conviction under sections 100.10, 105.13, 115.05,
53 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
54 125.13, 125.14, 125.40, 125.45, 130.20, 130.25, 130.55, 135.10, 135.55,
55 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06,
56 220.09, 220.16, 220.31, 220.34, 220.60, 221.30, 221.50, 221.55, 230.00,

1 230.05, 230.06, 230.20, 230.25, 230.30, 230.32, 235.05, 235.06, 235.07,
2 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and
3 sections 260.25, 265.02, 265.03, [265.08,] 265.09, 265.10, 265.12,
4 265.35 of the penal law or an attempt to commit any of the aforesaid
5 offenses under section 110.00 of the penal law, or any similar offenses
6 committed under a former section of the penal law, or any offenses
7 committed under a former section of the penal law which would constitute
8 violations of the aforesaid sections of the penal law, or any offenses
9 committed outside this state which would constitute violations of the
10 aforesaid sections of the penal law.

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

14 Conviction of any of the following crimes subsequent to the issuance
15 of a license pursuant to this article: fraud pursuant to sections
16 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
17 business records pursuant to section 175.10; grand larceny pursuant to
18 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
19 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
20 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
21 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
22 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
23 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
24 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
25 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
26 of a weapon pursuant to [sections 265.08 and] SECTION 265.09; criminal
27 sale of a weapon pursuant to sections 265.11 and 265.12; and sex
28 offenses pursuant to article 130 of the penal law. Provided, however,
29 that for the purposes of this article, none of the following shall be
30 considered criminal convictions or reported as such: (i) a conviction
31 for which an executive pardon has been issued pursuant to the executive
32 law; (ii) a conviction which has been vacated and replaced by a youthful
33 offender finding pursuant to article seven hundred twenty of the crimi-
34 nal procedure law, or the applicable provisions of law of any other
35 jurisdiction; or (iii) a conviction the records of which have been
36 expunged or sealed pursuant to the applicable provisions of the laws of
37 this state or of any other jurisdiction; and (iv) a conviction for which
38 other evidence of successful rehabilitation to remove the disability has
39 been issued.

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