S T A T E O F N E W Y O R K

2180

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

Section 1. The penal law is amended by adding a new section 265.18 to read as follows:

S 265.18 ADDITIONAL SENTENCE WHEN CRIMINAL POSSESSION OF A WEAPON OR CRIMINAL SALE OF A FIREARM IS COMMITTED AT THE HOME OF A CHILD.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, WHEN A PERSON IS CONVICTED OF CRIMINAL POSSESSION OF A WEAPON AS DEFINED IN SECTIONS 265.04, 265.03 OR 265.02, OR CRIMINAL SALE OF A FIREARM AS DEFINED IN SECTIONS 265.16, 265.14, 265.13, 265.12, OR 265.11 OF THIS ARTICLE AND THE TRIER OF FACT DETERMINES BEYOND A REASONABLE DOUBT THAT THE CRIME WAS COMMITTED AT ANY DWELLING, MULTIPLE DWELLING OR RESIDENCE WHERE A CHILD UNDER THE AGE OF FOURTEEN YEARS OLD IS DOMICILED, THE COURT SHALL IMPOSE AN ADDITIONAL CONSECUTIVE SENTENCE OF TWO AND ONE-HALF YEARS TO THE MINIMUM TERM OF A SENTENCE IMPOSED ON THE UNDERLYING FELONY OFFENSE. IF THE TRIER OF FACT ALSO DETERMINES BEYOND A REASONABLE DOUBT THAT THE CRIME WAS COMMITTED AT SUCH RESIDENCE AND SUCH CHILD OR ANOTHER CHILD UNDER THE AGE OF FOURTEEN YEARS OLD WAS PRESENT AT THE DWELLING, MULTIPLE DWELLING OR RESIDENCE, OR WITHIN THE CURTILAGE OF SUCH, AT THE TIME OF THE COMMISSION OF THE CRIME, THE ADDITIONAL CONSECUTIVE SENTENCE SHALL BE NO LESS THAN FIVE YEARS. HOWEVER, SUCH ADDITIONAL SENTENCE SHALL NOT BE IMPOSED IF THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, FINDS ON THE RECORD THAT SUCH ADDITIONAL CONSECUTIVE SENTENCE WOULD BE UNDULY HARSH AND THAT NOT IMPOSING SUCH SENTENCE

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

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WOULD BE CONSISTENT WITH THE PUBLIC SAFETY AND WOULD NOT DEPRECATE THE SERIOUSNESS OF THE CRIME. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AGGREGATE OF THE CONSECUTIVE TERM IMPOSED PURSUANT TO THIS SECTION AND THE MINIMUM TERM OF THE SENTENCE IMPOSED ON THE UNDERLYING FELONY SHALL CONSTITUTE THE NEW AGGREGATE MINIMUM TERM OF IMPRISONMENT, AND A PERSON SUBJECT TO SUCH TERM SHALL BE REQUIRED TO SERVE THE ENTIRE AGGREGATE MINIMUM TERM AND SHALL NOT BE ELIGIBLE FOR RELEASE ON PAROLE OR CONDITIONAL RELEASE DURING SUCH TERM.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.