

3767--A

2013-2014 Regular Sessions

I N S E N A T E

February 14, 2013

Introduced by Sen. KLEIN -- 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 aggravated enterprise corruption, gang assault, coercion, tampering with a witness, intimidating a victim or witness, obstructing governmental administration, criminal use of a firearm, sexually motivated felonies and hate crimes; to amend the criminal procedure law, in relation to compulsion of evidence by offer of immunity, prior contradictory statements, warrants for eavesdropping and video surveillance and motions to suppress evidence; and to repeal section 265.08 of the penal law relating to criminal use of a firearm in the second degree

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

1 Section 1. Short title. This shall be known and may be cited as the
2 "victim protection and gang violence reduction act of 2014".
3 S 2. The penal law is amended by adding a new section 460.23 to read
4 as follows:
5 S 460.23 AGGRAVATED ENTERPRISE CORRUPTION.
6 A PERSON IS GUILTY OF AGGRAVATED ENTERPRISE CORRUPTION WHEN HE OR SHE
7 COMMITTS THE CRIME OF ENTERPRISE CORRUPTION, AS DEFINED IN SECTION 460.20
8 OF THIS ARTICLE, AND TWO OR MORE OF THE ACTS THAT CONSTITUTE HIS OR HER
9 PATTERN OF CRIMINAL ACTIVITY ARE EITHER A CLASS A OR CLASS B FELONY, AND
10 AT LEAST ONE SUCH ACT IS A VIOLENT FELONY OFFENSE, AS DEFINED IN SUBDI-
11 VISION ONE OF SECTION 70.02 OF THIS CHAPTER OR A CLASS A-I FELONY.
12 AGGRAVATED ENTERPRISE CORRUPTION IS A CLASS A-I FELONY.
13 S 3. The penal law is amended by adding a new section 120.05-a to read
14 as follows:
15 S 120.05-A GANG ASSAULT IN THE THIRD DEGREE.

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

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1 A PERSON IS GUILTY OF GANG ASSAULT IN THE THIRD DEGREE WHEN, WITH THE
2 INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON AND WHEN AIDED BY TWO
3 OR MORE PERSONS ACTUALLY PRESENT, HE OR SHE CAUSES PHYSICAL INJURY TO
4 SUCH PERSON OR TO A THIRD PERSON.

5 GANG ASSAULT IN THE THIRD DEGREE IS A CLASS D FELONY.

6 S 4. The section heading, opening paragraph and closing paragraph of
7 section 135.60 of the penal law, as amended by chapter 426 of the laws
8 of 2008, are amended to read as follows:

9 Coercion in the [second] THIRD degree.

10 A person is guilty of coercion in the [second] THIRD degree when he or
11 she compels or induces a person to engage in conduct which the latter
12 has a legal right to abstain from engaging in, or to abstain from engag-
13 ing in conduct in which he or she has a legal right to engage, or
14 compels or induces a person to join a group, organization or criminal
15 enterprise which such latter person has a right to abstain from joining,
16 by means of instilling in him or her a fear that, if the demand is not
17 complied with, the actor or another will:

18 Coercion in the [second] THIRD degree is a class A misdemeanor.

19 S 5. The section heading, opening paragraph and closing paragraph of
20 section 135.65 of the penal law, as amended by chapter 426 of the laws
21 of 2008, are amended to read as follows:

22 Coercion in the [first] SECOND degree.

23 A person is guilty of coercion in the [first] SECOND degree when he or
24 she commits the crime of coercion in the [second] THIRD degree, and
25 when:

26 Coercion in the [first] SECOND degree is a class D felony.

27 S 6. The penal law is amended by adding a new section 135.67 to read
28 as follows:

29 S 135.67 COERCION IN THE FIRST DEGREE.

30 A PERSON IS GUILTY OF COERCION IN THE FIRST DEGREE WHEN HE OR SHE,
31 BEING EIGHTEEN YEARS OLD OR OLDER, COMMITS THE CRIME OF COERCION IN THE
32 SECOND DEGREE, AS DEFINED IN SECTION 135.65 OF THIS ARTICLE, AND:

33 1. THE VICTIM OF SUCH CRIME IS LESS THAN SIXTEEN YEARS OLD; OR

34 2. THE CRIME IS COMMITTED IN OR UPON A BUILDING OR GROUNDS USED FOR
35 EDUCATIONAL PURPOSES, OR ANY SCHOOL, COLLEGE OR UNIVERSITY OR UPON A
36 SCHOOL BUS, AS DEFINED IN SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE
37 AND TRAFFIC LAW, OR ON ANY PUBLIC SIDEWALK, STREET, PARKING LOT, PARK,
38 PLAYGROUND OR PRIVATE LAND LOCATED IMMEDIATELY ADJACENT TO THE BOUNDARY
39 LINE OF SUCH SCHOOL OR SCHOOL BUS.

40 COERCION IN THE FIRST DEGREE IS A CLASS C FELONY.

41 S 7. The penal law is amended by adding a new section 215.09 to read
42 as follows:

43 S 215.09 TAMPERING WITH A WITNESS IN THE FIFTH DEGREE.

44 A PERSON IS GUILTY OF TAMPERING WITH A WITNESS IN THE FIFTH DEGREE
45 WHEN, KNOWING OR BELIEVING THAT ANOTHER PERSON POSSESSES INFORMATION
46 RELATING TO A CRIMINAL TRANSACTION AND OTHER THAN IN THE COURSE OF THAT
47 CRIMINAL TRANSACTION OR IMMEDIATE FLIGHT THEREFROM, HE OR SHE:

48 1. WRONGFULLY INDUCES OR ATTEMPTS TO INDUCE SUCH OTHER PERSON TO
49 REFRAIN FROM COMMUNICATING SUCH INFORMATION TO ANY COURT, GRAND JURY,
50 PROSECUTOR, POLICE OFFICER OR PEACE OFFICER; OR

51 2. KNOWINGLY MAKES ANY FALSE STATEMENT OR PRACTICES ANY FRAUD WITH
52 INTENT TO HINDER, DELAY OR PREVENT COMMUNICATION OF INFORMATION RELATED
53 TO A CRIMINAL TRANSACTION TO ANY COURT, GRAND JURY, PROSECUTOR, POLICE
54 OFFICER OR PEACE OFFICER FROM SUCH PERSON.

55 TAMPERING WITH A WITNESS IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

1 S 8. Section 215.10 of the penal law, the section heading and closing
2 paragraph as amended by chapter 664 of the laws of 1982, is amended to
3 read as follows:

4 S 215.10 Tampering with a witness in the fourth degree.

5 A person is guilty of tampering with a witness IN THE FOURTH DEGREE
6 when, knowing that a person is or is about to be called as a witness in
7 an action or proceeding, [(a)] he OR SHE:

8 1. wrongfully induces or attempts to induce such person to absent
9 himself OR HERSELF from, or otherwise to avoid or seek to avoid appear-
10 ing or testifying at, such action or proceeding[,]; or

11 [(b) he] 2. knowingly makes any false statement or practices any fraud
12 or deceit with intent to affect the testimony of such person.

13 Tampering with a witness in the fourth degree is a class [A misdemea-
14 nor] E FELONY.

15 S 9. The closing paragraph of section 215.11 of the penal law, as
16 added by chapter 664 of the laws of 1982, is amended to read as follows:

17 Tampering with a witness in the third degree is a class [E] D felony.

18 S 10. The closing paragraph of section 215.12 of the penal law, as
19 added by chapter 664 of the laws of 1982, is amended to read as follows:

20 Tampering with a witness in the second degree is a class [D] C felony.

21 S 11. The closing paragraph of section 215.15 of the penal law, as
22 added by chapter 667 of the laws of 1985, is amended to read as follows:

23 Intimidating a victim or witness in the third degree is a class [E] D
24 felony.

25 S 12. The closing paragraph of section 215.16 of the penal law, as
26 added by chapter 667 of the laws of 1985, is amended to read as follows:

27 Intimidating a victim or witness in the second degree is a class [D] C
28 felony.

29 S 13. The penal law is amended by adding a new section 195.03 to read
30 as follows:

31 S 195.03 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE.

32 A PERSON IS GUILTY OF OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE
33 THIRD DEGREE WHEN HE OR SHE INTENTIONALLY OBSTRUCTS, IMPAIRS OR PERVERTS
34 THE ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION, OR PREVENTS OR
35 ATTEMPTS TO PREVENT A PUBLIC SERVANT FROM PERFORMING AN OFFICIAL FUNC-
36 TION.

37 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE IS A CLASS
38 A MISDEMEANOR.

39 S 14. Section 195.05 of the penal law, as amended by chapter 269 of
40 the laws of 1998, is amended to read as follows:

41 S 195.05 Obstructing governmental administration in the second degree.

42 A person is guilty of obstructing governmental administration IN THE
43 SECOND DEGREE when he OR SHE intentionally obstructs, impairs or
44 perverts the administration of law or other governmental function or
45 prevents or attempts to prevent a public servant from performing an
46 official function, by means of intimidation, physical force or interfer-
47 ence, or by means of any independently unlawful act, or by means of
48 interfering, whether or not physical force is involved, with radio,
49 telephone, television or other telecommunications systems owned or oper-
50 ated by the state, or a county, city, town, village, fire district or
51 emergency medical service or by means of releasing a dangerous animal
52 under circumstances evincing the actor's intent that the animal obstruct
53 governmental administration.

54 Obstructing governmental administration IN THE SECOND DEGREE is a
55 class [A misdemeanor] E FELONY.

1 S 15. Section 195.07 of the penal law, as added by chapter 956 of the
2 laws of 1984, is amended to read as follows:

3 S 195.07 Obstructing governmental administration in the first degree.

4 A person is guilty of obstructing governmental administration in the
5 first degree when he OR SHE commits the crime of obstructing govern-
6 mental administration in the second degree [by means of interfering with
7 a telecommunications system], AS DEFINED IN SECTION 195.05 OF THIS ARTI-
8 CLE, thereby causing serious physical injury to another person.

9 Obstructing governmental administration in the first degree is a class
10 [E] D felony.

11 S 16. Subdivision 1 of section 50.10 of the criminal procedure law is
12 amended to read as follows:

13 1. ["Immunity." A person who has been a witness in a legal proceed-
14 ing, and who cannot, except as otherwise provided in this subdivision,
15 be convicted of any offense or subjected to any penalty or forfeiture
16 for or on account of any transaction, matter or thing concerning which
17 he gave evidence therein, possesses "immunity" from any such
18 conviction,] "IMMUNITY", WHEN CONFERRED ON A WITNESS IN A LEGAL PROCEED-
19 ING, MEANS THAT NEITHER THE EVIDENCE GIVEN BY THAT WITNESS NOR ANY
20 EVIDENCE DERIVED DIRECTLY OR INDIRECTLY FROM IT MAY BE USED AGAINST HIM
21 OR HER IN THE SAME OR ANY OTHER CRIMINAL PROCEEDING OR IN THE IMPOSITION
22 OF ANY penalty or forfeiture. A person who possesses such immunity may
23 nevertheless be convicted of perjury as a result of having given false
24 testimony in such legal proceeding, and may be convicted of or adjudged
25 in contempt as a result of having contumaciously refused to give
26 evidence therein.

27 S 17. Section 190.40 of the criminal procedure law is amended by
28 adding a new subdivision 3 to read as follows:

29 3. A WITNESS WHO GIVES EVIDENCE IN A GRAND JURY PROCEEDING, AND WHO
30 THEREBY RECEIVES IMMUNITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION,
31 SHALL NOT THEREAFTER BE INDICTED BY THAT SAME GRAND JURY FOR ANY
32 OFFENSE, EXCEPT (A) WHERE SUCH OFFENSE IS PERJURY OR CONTEMPT, AS TO
33 WHICH PROSECUTION IS AUTHORIZED BY SECTION 50.10 OF THIS CHAPTER; OR (B)
34 WHERE THE EVIDENCE GIVEN BY THE WITNESS CONSISTS ONLY OF BOOKS, PAPERS,
35 RECORDS OR OTHER PHYSICAL EVIDENCE OF AN ENTERPRISE, AS DEFINED IN
36 SUBDIVISION ONE OF SECTION 175.00 OF THE PENAL LAW, AND ANY IMMUNITY THE
37 WITNESS RECEIVES RESULTS SOLELY FROM HIS OR HER POSSESSION OF A PRIVI-
38 LEGE AGAINST SELF-INCRIMINATION WITH RESPECT TO THE ACT OF PRODUCING
39 SUCH EVIDENCE. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE ANOTHER GRAND
40 JURY IN THE SAME OR ANY OTHER COUNTY FROM CHARGING THE WITNESS WITH ANY
41 OFFENSE BASED UPON OTHER EVIDENCE WHOSE USE AGAINST THE WITNESS IS NOT
42 BARRED BY THE IMMUNITY HE OR SHE HAS RECEIVED BY GIVING EVIDENCE BEFORE
43 THE FIRST GRAND JURY.

44 S 18. Section 265.08 of the penal law is REPEALED.

45 S 19. Section 265.09 of the penal law, as amended by chapter 650 of
46 the laws of 1996, subdivision 2 as amended by chapter 1 of the laws of
47 2013, is amended to read as follows:

48 S 265.09 Criminal use of a firearm [in the first degree].

49 (1) A person is guilty of criminal use of a firearm [in the first
50 degree] when he OR SHE commits any [class B] violent felony offense, as
51 defined in [paragraph (a) of] subdivision one of section 70.02 OF THIS
52 CHAPTER, OR A DRUG TRAFFICKING FELONY OFFENSE and, WHILE IN THE COURSE
53 OF OR FURTHERANCE OF SUCH VIOLENT FELONY OFFENSE OR DRUG TRAFFICKING
54 FELONY OFFENSE, he OR SHE either:

1 (a) possesses a [deadly] LOADED weapon[, if the weapon is a loaded
2 weapon from which a shot, readily capable of producing death or other
3 serious injury may be discharged]; or

4 (b) displays what appears to be a pistol, revolver, rifle, shotgun,
5 machine gun or other firearm.

6 Criminal use of a firearm [in the first degree] is a class B felony.

7 (2) [Sentencing.] FOR THE PURPOSES OF THIS SECTION, "DRUG TRAFFICKING
8 FELONY OFFENSE" MEANS CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN
9 THE THIRD DEGREE AS DEFINED IN SUBDIVISION ONE, TWO, THREE, FOUR, FIVE,
10 SIX OR SEVEN OF SECTION 220.16, USE OF A CHILD TO COMMIT A CONTROLLED
11 SUBSTANCE OFFENSE AS DEFINED IN SECTION 220.28, CRIMINAL SALE OF A
12 CONTROLLED SUBSTANCE IN THE FIFTH DEGREE AS DEFINED IN SECTION 220.31,
13 CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE AS DEFINED
14 IN SECTION 220.34, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE THIRD
15 DEGREE AS DEFINED IN SECTION 220.39, CRIMINAL SALE OF A CONTROLLED
16 SUBSTANCE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.41, CRIMINAL
17 SALE OF A CONTROLLED SUBSTANCE IN THE FIRST DEGREE AS DEFINED IN SECTION
18 220.43, CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN OR NEAR SCHOOL
19 GROUNDS AS DEFINED IN SECTION 220.44, CRIMINAL SALE OF A CONTROLLED
20 SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48, UNLAWFUL MANUFACTURE
21 OF METHAMPHETAMINE IN THE SECOND DEGREE AS DEFINED IN SECTION 220.74,
22 UNLAWFUL MANUFACTURE OF METHAMPHETAMINE IN THE FIRST DEGREE AS DEFINED
23 IN SECTION 220.75, OR OPERATING AS A MAJOR TRAFFICKER AS DEFINED IN
24 SECTION 220.77 OF THIS CHAPTER.

25 (3) Notwithstanding any other provision of law to the contrary, when a
26 person is convicted of criminal use of a firearm [in the first degree]
27 as defined in subdivision one of this section, the court shall impose an
28 additional consecutive DETERMINATE sentence OF IMPRISONMENT of five
29 years to the sentence imposed on the underlying [class B violent] felony
30 offense [where the person convicted of such crime displays a loaded
31 weapon from which a shot, readily capable of producing death or other
32 serious injury may be discharged, in furtherance of the commission of
33 such crime], provided, however, that such additional sentence OF IMPRI-
34 SONMENT shall not be imposed if the court, having regard to the nature
35 and circumstances of the crime and to the history and character of the
36 defendant, finds on the record that such additional consecutive sentence
37 would be unduly harsh and that not imposing such sentence would be
38 consistent with the public safety and would not deprecate the serious-
39 ness of the crime. Notwithstanding any other provision of law to the
40 contrary, the aggregate of the five year consecutive term OF IMPRISON-
41 MENT imposed pursuant to this subdivision and [the] (A) ANY minimum term
42 of [the] AN indeterminate sentence, OR (B) THE TERM OF A DETERMINATE
43 SENTENCE, imposed on the underlying [class B violent] felony OFFENSE
44 shall constitute the new aggregate minimum term OR TERMS of imprison-
45 ment, and a person subject to such term shall be required to serve the
46 entire aggregate minimum term OR TERMS and shall not be eligible for
47 release on parole or conditional release during such term. This subdivi-
48 sion shall not apply where the defendant's [criminal liability for
49 displaying a loaded weapon from which a shot, readily capable of produc-
50 ing death or other serious injury may be discharged, in furtherance of
51 the commission of crime] COMMISSION OF THE OFFENSE DEFINED IN SUBDIVI-
52 SION ONE OF THIS SECTION is based on the conduct of another pursuant to
53 section 20.00 of this chapter.

54 S 20. Subdivision 2 of section 60.35 of the criminal procedure law is
55 amended to read as follows:

1 2. Evidence concerning a prior contradictory statement introduced
2 pursuant to subdivision one [may be received only for the purpose of
3 impeaching the credibility of the witness with respect to his testimony
4 upon the subject, and does not constitute evidence in chief. Upon
5 receiving such evidence at a jury trial, the court must so instruct the
6 jury] OF THIS SECTION CONSTITUTES EVIDENCE IN CHIEF.

7 S 21. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
8 procedure law, as amended by chapter 405 of the laws of 2010, is amended
9 to read as follows:

10 (b) Any of the following felonies: assault in the second degree as
11 defined in section 120.05 of the penal law, assault in the first degree
12 as defined in section 120.10 of the penal law, GANG ASSAULT IN THE THIRD
13 DEGREE AS DEFINED IN SECTION 120.05-A OF THE PENAL LAW, GANG ASSAULT IN
14 THE SECOND DEGREE AS DEFINED IN SECTION 120.06 OF THE PENAL LAW, GANG
15 ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.07 OF THE PENAL
16 LAW, reckless endangerment in the first degree as defined in section
17 120.25 of the penal law, promoting a suicide attempt as defined in
18 section 120.30 of the penal law, strangulation in the second degree as
19 defined in section 121.12 of the penal law, strangulation in the first
20 degree as defined in section 121.13 of the penal law, criminally negli-
21 gent homicide as defined in section 125.10 of the penal law, manslaught-
22 er in the second degree as defined in section 125.15 of the penal law,
23 manslaughter in the first degree as defined in section 125.20 of the
24 penal law, murder in the second degree as defined in section 125.25 of
25 the penal law, murder in the first degree as defined in section 125.27
26 of the penal law, abortion in the second degree as defined in section
27 125.40 of the penal law, abortion in the first degree as defined in
28 section 125.45 of the penal law, rape in the third degree as defined in
29 section 130.25 of the penal law, rape in the second degree as defined in
30 section 130.30 of the penal law, rape in the first degree as defined in
31 section 130.35 of the penal law, criminal sexual act in the third degree
32 as defined in section 130.40 of the penal law, criminal sexual act in
33 the second degree as defined in section 130.45 of the penal law, crimi-
34 nal sexual act in the first degree as defined in section 130.50 of the
35 penal law, sexual abuse in the first degree as defined in section 130.65
36 of the penal law, unlawful imprisonment in the first degree as defined
37 in section 135.10 of the penal law, kidnapping in the second degree as
38 defined in section 135.20 of the penal law, kidnapping in the first
39 degree as defined in section 135.25 of the penal law, labor trafficking
40 as defined in section 135.35 of the penal law, custodial interference in
41 the first degree as defined in section 135.50 of the penal law, coercion
42 in the [first] SECOND degree as defined in section 135.65 of the penal
43 law, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION 135.67 OF THE
44 PENAL LAW, criminal trespass in the first degree as defined in section
45 140.17 of the penal law, burglary in the third degree as defined in
46 section 140.20 of the penal law, burglary in the second degree as
47 defined in section 140.25 of the penal law, burglary in the first degree
48 as defined in section 140.30 of the penal law, criminal mischief in the
49 third degree as defined in section 145.05 of the penal law, criminal
50 mischief in the second degree as defined in section 145.10 of the penal
51 law, criminal mischief in the first degree as defined in section 145.12
52 of the penal law, criminal tampering in the first degree as defined in
53 section 145.20 of the penal law, arson in the fourth degree as defined
54 in section 150.05 of the penal law, arson in the third degree as defined
55 in section 150.10 of the penal law, arson in the second degree as
56 defined in section 150.15 of the penal law, arson in the first degree as

1 defined in section 150.20 of the penal law, grand larceny in the fourth
2 degree as defined in section 155.30 of the penal law, grand larceny in
3 the third degree as defined in section 155.35 of the penal law, grand
4 larceny in the second degree as defined in section 155.40 of the penal
5 law, grand larceny in the first degree as defined in section 155.42 of
6 the penal law, health care fraud in the fourth degree as defined in
7 section 177.10 of the penal law, health care fraud in the third degree
8 as defined in section 177.15 of the penal law, health care fraud in the
9 second degree as defined in section 177.20 of the penal law, health care
10 fraud in the first degree as defined in section 177.25 of the penal law,
11 robbery in the third degree as defined in section 160.05 of the penal
12 law, robbery in the second degree as defined in section 160.10 of the
13 penal law, robbery in the first degree as defined in section 160.15 of
14 the penal law, unlawful use of secret scientific material as defined in
15 section 165.07 of the penal law, criminal possession of stolen property
16 in the fourth degree as defined in section 165.45 of the penal law,
17 criminal possession of stolen property in the third degree as defined in
18 section 165.50 of the penal law, criminal possession of stolen property
19 in the second degree as defined by section 165.52 of the penal law,
20 criminal possession of stolen property in the first degree as defined by
21 section 165.54 of the penal law, trademark counterfeiting in the second
22 degree as defined in section 165.72 of the penal law, trademark counter-
23 feiting in the first degree as defined in section 165.73 of the penal
24 law, forgery in the second degree as defined in section 170.10 of the
25 penal law, forgery in the first degree as defined in section 170.15 of
26 the penal law, criminal possession of a forged instrument in the second
27 degree as defined in section 170.25 of the penal law, criminal
28 possession of a forged instrument in the first degree as defined in
29 section 170.30 of the penal law, criminal possession of forgery devices
30 as defined in section 170.40 of the penal law, falsifying business
31 records in the first degree as defined in section 175.10 of the penal
32 law, tampering with public records in the first degree as defined in
33 section 175.25 of the penal law, offering a false instrument for filing
34 in the first degree as defined in section 175.35 of the penal law, issu-
35 ing a false certificate as defined in section 175.40 of the penal law,
36 criminal diversion of prescription medications and prescriptions in the
37 second degree as defined in section 178.20 of the penal law, criminal
38 diversion of prescription medications and prescriptions in the first
39 degree as defined in section 178.25 of the penal law, residential mort-
40 gage fraud in the fourth degree as defined in section 187.10 of the
41 penal law, residential mortgage fraud in the third degree as defined in
42 section 187.15 of the penal law, residential mortgage fraud in the
43 second degree as defined in section 187.20 of the penal law, residential
44 mortgage fraud in the first degree as defined in section 187.25 of the
45 penal law, escape in the second degree as defined in section 205.10 of
46 the penal law, escape in the first degree as defined in section 205.15
47 of the penal law, absconding from temporary release in the first degree
48 as defined in section 205.17 of the penal law, promoting prison contra-
49 band in the first degree as defined in section 205.25 of the penal law,
50 hindering prosecution in the second degree as defined in section 205.60
51 of the penal law, hindering prosecution in the first degree as defined
52 in section 205.65 of the penal law, TAMPERING WITH A WITNESS IN THE
53 FOURTH DEGREE AS DEFINED IN SECTION 215.10 OF THE PENAL LAW, TAMPERING
54 WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11 OF THE
55 PENAL LAW, TAMPERING WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN
56 SECTION 215.12 OF THE PENAL LAW, TAMPERING WITH A WITNESS IN THE FIRST

1 DEGREE AS DEFINED IN SECTION 215.13 OF THE PENAL LAW, sex trafficking as
2 defined in section 230.34 of the penal law, criminal possession of a
3 weapon in the third degree as defined in subdivisions two, three and
4 five of section 265.02 of the penal law, criminal possession of a weapon
5 in the second degree as defined in section 265.03 of the penal law,
6 criminal possession of a weapon in the first degree as defined in
7 section 265.04 of the penal law, manufacture, transport, disposition and
8 defacement of weapons and dangerous instruments and appliances defined
9 as felonies in subdivisions one, two, and three of section 265.10 of the
10 penal law, sections 265.11, 265.12 and 265.13 of the penal law, or
11 prohibited use of weapons as defined in subdivision two of section
12 265.35 of the penal law, relating to firearms and other dangerous weap-
13 ons, or failure to disclose the origin of a recording in the first
14 degree as defined in section 275.40 of the penal law;

15 S 22. Subdivision 1 of section 70.02 of the penal law, as separately
16 amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as
17 amended by chapter 320 of the laws of 2006, paragraphs (b) and (c) as
18 amended by chapter 1 of the laws of 2013 and paragraph (d) as amended by
19 chapter 7 of the laws of 2007, is amended to read as follows:

20 1. Definition of a violent felony offense. A violent felony offense is
21 a class B violent felony offense, a class C violent felony offense, a
22 class D violent felony offense, or a class E violent felony offense,
23 defined as follows:

24 (a) Class B violent felony offenses: an attempt to commit the class
25 A-I [felonies] FELONY of murder in the second degree as defined in
26 section 125.25, kidnapping in the first degree as defined in section
27 135.25[, and] OR arson in the first degree as defined in section 150.20;
28 manslaughter in the first degree as defined in section 125.20, aggra-
29 vated manslaughter in the first degree as defined in section 125.22,
30 rape in the first degree as defined in section 130.35, criminal sexual
31 act in the first degree as defined in section 130.50, aggravated sexual
32 abuse in the first degree as defined in section 130.70, course of sexual
33 conduct against a child in the first degree as defined in section
34 130.75; assault in the first degree as defined in section 120.10,
35 kidnapping in the second degree as defined in section 135.20, burglary
36 in the first degree as defined in section 140.30, arson in the second
37 degree as defined in section 150.15, robbery in the first degree as
38 defined in section 160.15, incest in the first degree as defined in
39 section 255.27, criminal possession of a weapon in the first degree as
40 defined in section 265.04, criminal use of a firearm in the first degree
41 as defined in section 265.09, criminal sale of a firearm in the first
42 degree as defined in section 265.13, aggravated assault upon a police
43 officer or a peace officer as defined in section 120.11, gang assault in
44 the first degree as defined in section 120.07, TAMPERING WITH A WITNESS
45 IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13, intimidating a victim
46 or witness in the first degree as defined in section 215.17, hindering
47 prosecution of terrorism in the first degree as defined in section
48 490.35, criminal possession of a chemical weapon or biological weapon in
49 the second degree as defined in section 490.40, [and] OR criminal use of
50 a chemical weapon or biological weapon in the third degree as defined in
51 section 490.47; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS
52 PARAGRAPH.

53 (b) Class C violent felony offenses: an attempt to commit any of the
54 class B felonies set forth in paragraph (a) of this subdivision; aggra-
55 vated criminally negligent homicide as defined in section 125.11, aggra-
56 vated manslaughter in the second degree as defined in section 125.21,

1 aggravated sexual abuse in the second degree as defined in section
2 130.67, assault on a peace officer, police officer, fireman or emergency
3 medical services professional as defined in section 120.08, assault on a
4 judge as defined in section 120.09, gang assault in the second degree as
5 defined in section 120.06, strangulation in the first degree as defined
6 in section 121.13, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION
7 135.67, burglary in the second degree as defined in section 140.25,
8 robbery in the second degree as defined in section 160.10, TAMPERING
9 WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, INTIM-
10 IDATING A VICTIM OR WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION
11 215.16, criminal possession of a weapon in the second degree as defined
12 in section 265.03, [criminal use of a firearm in the second degree as
13 defined in section 265.08,] criminal sale of a firearm in the second
14 degree as defined in section 265.12, criminal sale of a firearm with the
15 aid of a minor as defined in section 265.14, aggravated criminal
16 possession of a weapon as defined in section 265.19, soliciting or
17 providing support for an act of terrorism in the first degree as defined
18 in section 490.15, hindering prosecution of terrorism in the second
19 degree as defined in section 490.30, [and] OR criminal possession of a
20 chemical weapon or biological weapon in the third degree as defined in
21 section 490.37; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS
22 PARAGRAPH.

23 (c) Class D violent felony offenses: an attempt to commit any of the
24 class C felonies set forth in paragraph (b) of this subdivision; reck-
25 less assault of a child as defined in section 120.02, assault in the
26 second degree as defined in section 120.05, GANG ASSAULT IN THE THIRD
27 DEGREE AS DEFINED IN SECTION 120.05-A, menacing a police officer or
28 peace officer as defined in section 120.18, stalking in the first
29 degree, as defined in subdivision one of section 120.60, strangulation
30 in the second degree as defined in section 121.12, rape in the second
31 degree as defined in section 130.30, criminal sexual act in the second
32 degree as defined in section 130.45, sexual abuse in the first degree as
33 defined in section 130.65, course of sexual conduct against a child in
34 the second degree as defined in section 130.80, aggravated sexual abuse
35 in the third degree as defined in section 130.66, facilitating a sex
36 offense with a controlled substance as defined in section 130.90, crimi-
37 nal possession of a weapon in the third degree as defined in subdivision
38 five, six, seven, eight, nine or ten of section 265.02, criminal sale of
39 a firearm in the third degree as defined in section 265.11, TAMPERING
40 WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11, intim-
41 idating a victim or witness in the [second] THIRD degree as defined in
42 section [215.16] 215.15, soliciting or providing support for an act of
43 terrorism in the second degree as defined in section 490.10, and making
44 a terroristic threat as defined in section 490.20, falsely reporting an
45 incident in the first degree as defined in section 240.60, placing a
46 false bomb or hazardous substance in the first degree as defined in
47 section 240.62, placing a false bomb or hazardous substance in a sports
48 stadium or arena, mass transportation facility or enclosed shopping mall
49 as defined in section 240.63, [and] OR aggravated unpermitted use of
50 indoor pyrotechnics in the first degree as defined in section 405.18; OR
51 A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

52 (d) Class E violent felony offenses: an attempt to commit any of the
53 felonies of criminal possession of a weapon in the third degree as
54 defined in subdivision five, six, seven or eight of section 265.02 as a
55 lesser included offense of that section as defined in section 220.20 of
56 the criminal procedure law[,]; persistent sexual abuse as defined in

1 section 130.53, aggravated sexual abuse in the fourth degree as defined
2 in section 130.65-a, falsely reporting an incident in the second degree
3 as defined in section 240.55 [and] OR placing a false bomb or hazardous
4 substance in the second degree as defined in section 240.61; OR A
5 CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

6 S 23. Subdivision 2 of section 130.91 of the penal law, as amended by
7 chapter 405 of the laws of 2010, is amended to read as follows:

8 2. A "specified offense" is a felony offense defined by any of the
9 following provisions of this chapter: assault in the second degree as
10 defined in section 120.05, assault in the first degree as defined in
11 section 120.10, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION
12 120.05-A, gang assault in the second degree as defined in section
13 120.06, gang assault in the first degree as defined in section 120.07,
14 stalking in the first degree as defined in section 120.60, strangulation
15 in the second degree as defined in section 121.12, strangulation in the
16 first degree as defined in section 121.13, manslaughter in the second
17 degree as defined in subdivision one of section 125.15, manslaughter in
18 the first degree as defined in section 125.20, murder in the second
19 degree as defined in section 125.25, aggravated murder as defined in
20 section 125.26, murder in the first degree as defined in section 125.27,
21 kidnapping in the second degree as defined in section 135.20, kidnapping
22 in the first degree as defined in section 135.25, burglary in the third
23 degree as defined in section 140.20, burglary in the second degree as
24 defined in section 140.25, burglary in the first degree as defined in
25 section 140.30, arson in the second degree as defined in section 150.15,
26 arson in the first degree as defined in section 150.20, robbery in the
27 third degree as defined in section 160.05, robbery in the second degree
28 as defined in section 160.10, robbery in the first degree as defined in
29 section 160.15, promoting prostitution in the second degree as defined
30 in section 230.30, promoting prostitution in the first degree as defined
31 in section 230.32, compelling prostitution as defined in section 230.33,
32 disseminating indecent material to minors in the first degree as defined
33 in section 235.22, use of a child in a sexual performance as defined in
34 section 263.05, promoting an obscene sexual performance by a child as
35 defined in section 263.10, promoting a sexual performance by a child as
36 defined in section 263.15, or any felony attempt or conspiracy to commit
37 any of the foregoing offenses.

38 S 24. Section 70.25 of the penal law is amended by adding two new
39 subdivisions 2-h and 2-i to read as follows:

40 2-H. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE
41 FOURTH DEGREE AS DEFINED IN SECTION 215.10, TAMPERING WITH A WITNESS IN
42 THE THIRD DEGREE AS DEFINED IN SECTION 215.11, TAMPERING WITH A WITNESS
43 IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, TAMPERING WITH A
44 WITNESS IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13 OF THIS CHAP-
45 TER, OR ANY ATTEMPT TO COMMIT ANY OF SUCH OFFENSE, RELATING TO A CRIMI-
46 NAL PROCEEDING, AND SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE CHARGED
47 IN SUCH CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

48 2-I. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE
49 FIFTH DEGREE AS DEFINED IN SECTION 215.09 OF THIS CHAPTER, OR ANY
50 ATTEMPT TO COMMIT SUCH OFFENSE RELATING TO A CRIMINAL PROCEEDING, AND
51 SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE THAT IS CHARGED IN SUCH
52 CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

53 S 25. The opening paragraph and subdivisions 6 and 7 of section 710.20
54 of the criminal procedure law, the opening paragraph and subdivision 6
55 as amended by chapter 8 of the laws of 1976, subdivision 6 as renumbered
56 by chapter 481 of the laws of 1983 and subdivision 7 as added by chapter

1 744 of the laws of 1988, are amended and a new subdivision 8 is added to
2 read as follows:

3 Upon motion of a defendant who (a) is aggrieved by unlawful or improp-
4 er acquisition of evidence and has reasonable cause to believe that such
5 may be offered against him in a criminal action, or (b) claims that
6 improper identification testimony may be offered against him in a crimi-
7 nal action, OR (C) CLAIMS THAT EVIDENCE AS TO THE USE OF WHICH HE OR SHE
8 POSSESSES IMMUNITY MAY BE OFFERED AGAINST HIM OR HER IN A CRIMINAL
9 PROCEEDING, a court may, under circumstances prescribed in this article,
10 order that such evidence be suppressed or excluded upon the ground that
11 it:

12 6. Consists of potential testimony regarding an observation of the
13 defendant either at the time or place of the commission of the offense
14 or upon some other occasion relevant to the case, which potential testi-
15 mony would not be admissible upon the prospective trial of such charge
16 owing to an improperly made previous identification of the defendant by
17 the prospective witness[.]; OR

18 7. Consists of information obtained by means of a pen register or trap
19 and trace device installed or used in violation of the provisions of
20 article seven hundred five of this [chapter.] TITLE; OR

21 8. CONSISTS OF POTENTIAL EVIDENCE AS TO THE USE OF WHICH THE DEFENDANT
22 POSSESSES IMMUNITY. WHERE THE DEFENDANT ESTABLISHES THAT IMMUNITY HAD
23 BEEN CONFERRED UPON HIM OR HER THE PEOPLE MUST THEN ESTABLISH, BEYOND A
24 REASONABLE DOUBT, THAT ANY EVIDENCE WHICH THEY PROPOSE TO USE IN THE
25 INSTANT ACTION DOES NOT CONSIST OF AND WAS NOT DERIVED, DIRECTLY OR
26 INDIRECTLY, FROM THE EVIDENCE AS TO WHICH SUCH IMMUNITY HAD BEEN
27 CONFERRED.

28 S 26. Subdivision 3 of section 485.05 of the penal law, as amended by
29 chapter 405 of the laws of 2010, is amended to read as follows:

30 3. A "specified offense" is an offense defined by any of the following
31 provisions of this chapter: section 120.00 (assault in the third
32 degree); section 120.05 (assault in the second degree); SECTION 120.05-A
33 (GANG ASSAULT IN THE THIRD DEGREE); SECTION 120.06 (GANG ASSAULT IN THE
34 SECOND DEGREE); SECTION 120.07 (GANG ASSAULT IN THE FIRST DEGREE);
35 section 120.10 (assault in the first degree); section 120.12 (aggravated
36 assault upon a person less than eleven years old); section 120.13
37 (menacing in the first degree); section 120.14 (menacing in the second
38 degree); section 120.15 (menacing in the third degree); section 120.20
39 (reckless endangerment in the second degree); section 120.25 (reckless
40 endangerment in the first degree); section 121.12 (strangulation in the
41 second degree); section 121.13 (strangulation in the first degree);
42 subdivision one of section 125.15 (manslaughter in the second degree);
43 subdivision one, two or four of section 125.20 (manslaughter in the
44 first degree); section 125.25 (murder in the second degree); section
45 120.45 (stalking in the fourth degree); section 120.50 (stalking in the
46 third degree); section 120.55 (stalking in the second degree); section
47 120.60 (stalking in the first degree); subdivision one of section 130.35
48 (rape in the first degree); subdivision one of section 130.50 (criminal
49 sexual act in the first degree); subdivision one of section 130.65
50 (sexual abuse in the first degree); paragraph (a) of subdivision one of
51 section 130.67 (aggravated sexual abuse in the second degree); paragraph
52 (a) of subdivision one of section 130.70 (aggravated sexual abuse in the
53 first degree); section 135.05 (unlawful imprisonment in the second
54 degree); section 135.10 (unlawful imprisonment in the first degree);
55 section 135.20 (kidnapping in the second degree); section 135.25
56 (kidnapping in the first degree); section 135.60 (coercion in the

1 [second] THIRD degree); section 135.65 (coercion in the [first] SECOND
2 degree); SECTION 135.67 (COERCION IN THE FIRST DEGREE); section 140.10
3 (criminal trespass in the third degree); section 140.15 (criminal tres-
4 pass in the second degree); section 140.17 (criminal trespass in the
5 first degree); section 140.20 (burglary in the third degree); section
6 140.25 (burglary in the second degree); section 140.30 (burglary in the
7 first degree); section 145.00 (criminal mischief in the fourth degree);
8 section 145.05 (criminal mischief in the third degree); section 145.10
9 (criminal mischief in the second degree); section 145.12 (criminal
10 mischief in the first degree); section 150.05 (arson in the fourth
11 degree); section 150.10 (arson in the third degree); section 150.15
12 (arson in the second degree); section 150.20 (arson in the first
13 degree); section 155.25 (petit larceny); section 155.30 (grand larceny
14 in the fourth degree); section 155.35 (grand larceny in the third
15 degree); section 155.40 (grand larceny in the second degree); section
16 155.42 (grand larceny in the first degree); section 160.05 (robbery in
17 the third degree); section 160.10 (robbery in the second degree);
18 section 160.15 (robbery in the first degree); section 240.25 (harassment
19 in the first degree); subdivision one, two or four of section 240.30
20 (aggravated harassment in the second degree); or any attempt or conspir-
21 acy to commit any of the foregoing offenses.

22 S 27. This act shall take effect on the first of November next
23 succeeding the date on which it shall have become a law.