

5602

2013-2014 Regular Sessions

I N   S E N A T E

May 24, 2013

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Introduced by Sen. ROBACH -- 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 community guns and the criminal sale of a firearm in the first and third degrees

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

1     Section 1. Section 115.00 of the penal law, as amended by chapter 422  
2     of the laws of 1978, is amended to read as follows:  
3     S 115.00 Criminal facilitation in the fourth degree.  
4     A person is guilty of criminal facilitation in the fourth degree  
5     when[, ]:  
6     1. believing it probable that he OR SHE is rendering aid:  
7     [1.] A. to a person who intends to commit a crime, he OR SHE engages  
8     in conduct which provides such person with means or opportunity for the  
9     commission thereof and which in fact aids such person to commit a felo-  
10    ny; or  
11    [2.] B. to a person under sixteen years of age who intends to engage  
12    in conduct which would constitute a crime, he OR SHE, being over eigh-  
13    teen years of age, engages in conduct which provides such person with  
14    means or opportunity for the commission thereof and which in fact aids  
15    such person to commit a crime; OR  
16    2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO  
17    POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR  
18    DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,  
19    AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A FELONY, INCLUD-  
20    ING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED  
21    SIXTY-FIVE OF THIS PART; OR  
22    3. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED  
23    PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES  
24    AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR  
25    ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT

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

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1 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING,  
2 BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE  
3 OF THIS PART.

4 Criminal facilitation in the fourth degree is a class A misdemeanor.

5 S 2. Section 115.01 of the penal law, as added by chapter 422 of the  
6 laws of 1978, is amended to read as follows:

7 S 115.01 Criminal facilitation in the third degree.

8 A person IS guilty of criminal facilitation in the third degree, when:

9 1. believing it probable that he OR SHE is rendering aid to a person  
10 under sixteen years of age who intends to engage in conduct that would  
11 constitute a felony, he OR SHE, being over eighteen years of age,  
12 engages in conduct which provides such person with means or opportunity  
13 for the commission thereof and which in fact aids such person to commit  
14 a felony; OR

15 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED  
16 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES  
17 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR  
18 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT  
19 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A FELONY, INCLUDING,  
20 BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE  
21 OF THIS PART.

22 Criminal facilitation in the third degree is a class E felony.

23 S 3. Section 115.05 of the penal law, as amended by chapter 422 of the  
24 laws of 1978, is amended to read as follows:

25 S 115.05 Criminal facilitation in the second degree.

26 A person is guilty of criminal facilitation in the second degree  
27 when[, ]:

28 1. believing it probable that he OR SHE is rendering aid to a person  
29 who intends to commit a class A felony, he OR SHE engages in conduct  
30 which provides such person with means or opportunity for the commission  
31 thereof and which in fact aids such person to commit such class A  
32 felony; OR

33 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO  
34 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR  
35 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,  
36 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A CLASS A FELONY.

37 Criminal facilitation in the second degree is a class C felony.

38 S 4. Section 115.08 of the penal law, as added by chapter 422 of the  
39 laws of 1978, is amended to read as follows:

40 S 115.08 Criminal facilitation in the first degree.

41 A person is guilty of criminal facilitation in the first degree  
42 when[, ]:

43 1. believing it probable that he OR SHE is rendering aid to a person  
44 under sixteen years of age who intends to engage in conduct that would  
45 constitute a class A felony, he OR SHE, being over eighteen years of  
46 age, engages in conduct which provides such person with means or oppor-  
47 tunity for the commission thereof and which in fact aids such person to  
48 commit such a class A felony; OR

49 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED  
50 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES  
51 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR  
52 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT  
53 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CLASS A FELONY.

54 Criminal facilitation in the first degree is a class B felony.

55 S 5. Section 115.15 of the penal law is amended to read as follows:

56 S 115.15 Criminal facilitation; corroboration.

1 A person shall not be convicted of criminal facilitation upon the  
2 testimony of a person who has committed the felony charged to have been  
3 facilitated unless such testimony be corroborated by such other evidence  
4 as tends to connect the defendant with such facilitation; PROVIDED THAT  
5 THIS SECTION SHALL NOT APPLY TO A CONVICTION OF CRIMINAL FACILITATION  
6 FOR SHARING, MAKING AVAILABLE, SELLING, EXCHANGING, GIVING OR DISPOSING  
7 OF A COMMUNITY GUN, OR ASSISTING ANY PERSON IN SUCH ACTIVITY.

8 S 6. The penal law is amended by adding a new section 115.20 to read  
9 as follows:

10 S 115.20 CRIMINAL FACILITATION; DEFINITIONS AND CONSTRUCTION.

11 AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING  
12 MEANINGS:

13 1. "COMMUNITY GUN" SHALL MEAN A FIREARM THAT IS SHARED, MADE AVAIL-  
14 ABLE, SOLD, EXCHANGED, GIVEN OR DISPOSED OF AMONG OR BETWEEN TWO OR MORE  
15 PERSONS, AT LEAST ONE OF WHOM IS NOT AUTHORIZED PURSUANT TO LAW TO  
16 POSSESS A FIREARM.

17 2. "DISPOSE OF" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION  
18 265.00 OF THIS PART.

19 3. "SHARE" AND "MAKE AVAILABLE" SHALL, IN THE CASE OF A FIREARM, BE  
20 CONSTRUED TO INCLUDE, BUT SHALL NOT BE LIMITED TO, PLACING SUCH FIREARM  
21 AT A LOCATION ACCESSIBLE AND KNOWN TO ONE OR MORE OTHER PERSONS.

22 S 7. Section 265.00 of the penal law is amended by adding a new subdi-  
23 vision 25 to read as follows:

24 25. "COMMUNITY GUN" SHALL HAVE THE DEFINITION SET FORTH IN SECTION  
25 115.20 OF THIS PART, AND THE TERMS "SHARE" AND "MAKE AVAILABLE" SHALL BE  
26 CONSTRUED AS SET FORTH IN SUCH SECTION.

27 S 8. Section 265.11 of the penal law, as amended by chapter 764 of the  
28 laws of 2005, is amended to read as follows:

29 S 265.11 Criminal sale of a firearm in the third degree.

30 A person is guilty of criminal sale of a firearm in the third degree  
31 when such person is not authorized pursuant to law to possess a firearm  
32 and such person unlawfully either:

33 (1) sells, exchanges, gives or disposes of a firearm or large capacity  
34 ammunition feeding device to another person; [or]

35 (2) possesses a firearm with the intent to sell it; OR

36 (3) SHARE OR MAKES AVAILABLE A COMMUNITY GUN.

37 Criminal sale of a firearm in the third degree is a class D felony.

38 S 9. Section 265.13 of the penal law, as amended by chapter 764 of the  
39 laws of 2005, is amended to read as follows:

40 S 265.13 Criminal sale of a firearm in the first degree.

41 A person is guilty of criminal sale of a firearm in the first degree  
42 when such person:

43 (1) unlawfully sells, exchanges, gives or disposes of to another ten  
44 or more firearms; [or]

45 (2) unlawfully sells, exchanges, gives or disposes of to another  
46 person or persons a total of ten or more firearms in a period of not  
47 more than one year; OR

48 (3) BEING NOT AUTHORIZED BY NEW YORK STATE LAW TO POSSESS A FIREARM  
49 UNLAWFULLY SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES, OR DISPOSES  
50 OF A FIREARM TO ANOTHER PERSON, AND, WITHIN THREE YEARS THEREAFTER, THE  
51 FIREARM IS DISCHARGED AND CAUSES THE DEATH OF ANOTHER PERSON. THE  
52 PROVISIONS OF THIS SUBDIVISION SHALL ONLY APPLY WHEN SUCH FIREARM WAS  
53 DISCHARGED INTENTIONALLY, RECKLESSLY OR WITH CRIMINAL NEGLIGENCE,  
54 PROVIDED THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHEN  
55 SUCH FIREARM WAS DISCHARGED INTENTIONALLY FOR PURPOSES OF COMMITTING

1 SUICIDE. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "FIREARM" SHALL  
2 INCLUDE BUT NOT BE LIMITED TO A COMMUNITY GUN.  
3 Criminal sale of a firearm in the first degree is a class B felony.  
4 S 10. This act shall take effect on the one hundred eightieth day  
5 after it shall have become a law.