

2919

2013-2014 Regular Sessions

I N S E N A T E

January 25, 2013

Introduced by Sen. BRESLIN -- 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 criminal possession of a weapon

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

1 Section 1. Section 265.01 of the penal law, as amended by chapter 1 of
2 the laws of 2013, is amended to read as follows:
3 S 265.01 Criminal possession of a weapon in the fourth degree.
4 A person is guilty of criminal possession of a weapon in the fourth
5 degree when:
6 (1) He or she possesses any firearm, electronic dart gun, electronic
7 stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal
8 knuckle knife, cane sword, billy, blackjack, bludgeon, plastic knuckles,
9 metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type sling-
10 shot or slungshot, shirken or "Kung Fu star"; or
11 (2) He possesses any dagger, dangerous knife, dirk, razor, stiletto,
12 imitation pistol, or any other dangerous or deadly instrument or weapon
13 with intent to use the same unlawfully against another; or
14 (3)[; or
15 (4) He possesses a rifle, shotgun, antique firearm, black powder
16 rifle, black powder shotgun, or any muzzle-loading firearm, and has been
17 convicted of a felony or serious offense; or
18 (5)] He possesses any dangerous or deadly weapon and is not a citizen
19 of the United States[; or
20 (6) He is a person who has been certified not suitable to possess a
21 rifle or shotgun, as defined in subdivision sixteen of section 265.00,
22 and refuses to yield possession of such rifle or shotgun upon the demand
23 of a police officer. Whenever a person is certified not suitable to
24 possess a rifle or shotgun, a member of the police department to which
25 such certification is made, or of the state police, shall forthwith

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

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1 seize any rifle or shotgun possessed by such person. A rifle or shotgun
2 seized as herein provided shall not be destroyed, but shall be delivered
3 to the headquarters of such police department, or state police, and
4 there retained until the aforesaid certificate has been rescinded by the
5 director or physician in charge, or other disposition of such rifle or
6 shotgun has been ordered or authorized by a court of competent jurisdic-
7 tion.

8 (7) He knowingly possesses a bullet containing an explosive substance
9 designed to detonate upon impact.

10 (8) He possesses any armor piercing ammunition with intent to use the
11 same unlawfully against another].

12 Criminal possession of a weapon in the fourth degree is a class A
13 misdemeanor.

14 S 2. Section 265.02 of the penal law, as amended by chapter 764 of the
15 laws of 2005, subdivision 8 as amended and subdivisions 9 and 10 as
16 added by chapter 1 of the laws of 2013, is amended to read as follows:

17 S 265.02 Criminal possession of a weapon in the third degree.

18 A person is guilty of criminal possession of a weapon in the third
19 degree when:

20 (1) Such person commits the crime of criminal possession of a weapon
21 in the fourth degree as defined in subdivision one, two, three or [five]
22 FOUR of section 265.01, and has been previously convicted of any crime;
23 or

24 (2) Such person possesses any explosive or incendiary bomb, bombshell,
25 firearm silencer, machine-gun or any other firearm or weapon simulating
26 a machine-gun and which is adaptable for such use; or

27 (3) Such person knowingly possesses a machine-gun, firearm, rifle or
28 shotgun which has been defaced for the purpose of concealment or
29 prevention of the detection of a crime or misrepresenting the identity
30 of such machine-gun, firearm, rifle or shotgun; or

31 (5) (i) Such person possesses three or more firearms; or (ii) such
32 person possesses a firearm and has been previously convicted of a felony
33 or a class A misdemeanor defined in this chapter [within the five years
34 immediately preceding the commission of the offense] and such possession
35 did not take place in the person's home or place of business; or

36 (6) Such person knowingly possesses any disguised gun; or

37 (7) Such person possesses an assault weapon; or

38 (8) Such person possesses a large capacity ammunition feeding device.
39 For purposes of this subdivision, a large capacity ammunition feeding
40 device shall not include an ammunition feeding device lawfully possessed
41 by such person before the effective date of the chapter of the laws of
42 two thousand thirteen which amended this subdivision, that has a capaci-
43 ty of, or that can be readily restored or converted to accept more than
44 seven but less than eleven rounds of ammunition, or that was manufac-
45 tured before September thirteenth, nineteen hundred ninety-four, that
46 has a capacity of, or that can be readily restored or converted to
47 accept, more than ten rounds of ammunition; or

48 (9) Such person possesses an unloaded firearm and also commits a drug
49 trafficking felony as defined in subdivision twenty-one of section 10.00
50 of this chapter as part of the same criminal transaction; or

51 (10) Such person possesses an unloaded firearm and also commits any
52 violent felony offense as defined in subdivision one of section 70.02 of
53 this chapter as part of the same criminal transaction[.]; OR

54 (11) SUCH PERSON POSSESSES A RIFLE, SHOTGUN, ANTIQUE FIREARM, BLACK
55 POWDER RIFLE, BLACK POWDER SHOTGUN, OR ANY MUZZLE-LOADING FIREARM, AND
56 HAS BEEN CONVICTED OF A FELONY OR SERIOUS OFFENSE; OR

1 (12) SUCH PERSON IS A PERSON WHO HAS BEEN CERTIFIED NOT SUITABLE TO
2 POSSESS A RIFLE OR SHOTGUN, AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION
3 265.00, AND REFUSES TO YIELD POSSESSION OF SUCH RIFLE OR SHOTGUN UPON
4 THE DEMAND OF A POLICE OFFICER. WHENEVER A PERSON IS CERTIFIED NOT SUIT-
5 ABLE TO POSSESS A RIFLE OR SHOTGUN, A MEMBER OF THE POLICE DEPARTMENT TO
6 WHICH SUCH CERTIFICATION IS MADE, OR OF THE STATE POLICE, SHALL FORTH-
7 WITH SEIZE ANY RIFLE OR SHOTGUN POSSESSED BY SUCH PERSON. A RIFLE OR
8 SHOTGUN SEIZED AS HEREIN PROVIDED SHALL NOT BE DESTROYED, BUT SHALL BE
9 DELIVERED TO THE HEADQUARTERS OF SUCH POLICE DEPARTMENT, OR STATE
10 POLICE, AND THERE RETAINED UNTIL THE AFORESAID CERTIFICATE HAS BEEN
11 RESCINDED BY THE DIRECTOR OR PHYSICIAN IN CHARGE, OR OTHER DISPOSITION
12 OF SUCH RIFLE OR SHOTGUN HAS BEEN ORDERED OR AUTHORIZED BY A COURT OF
13 COMPETENT JURISDICTION; OR

14 (13) SUCH PERSON KNOWINGLY POSSESSES A BULLET CONTAINING AN EXPLOSIVE
15 SUBSTANCE DESIGNED TO DETONATE UPON IMPACT; OR

16 (14) SUCH PERSON POSSESSES ANY ARMOR PIERCING AMMUNITION WITH INTENT
17 TO USE THE SAME UNLAWFULLY AGAINST ANOTHER.

18 Criminal possession of a weapon in the third degree is a class D felo-
19 ny.

20 S 3. Paragraph 5 of subdivision a of section 265.20 of the penal law,
21 as amended by chapter 235 of the laws of 2007, is amended to read as
22 follows:

23 5. Possession of a rifle or shotgun by a person other than a person
24 who has been convicted of a class A-I felony or a violent felony
25 offense, as defined in subdivision one of section 70.02 of this chapter,
26 who has been convicted as specified in subdivision [four] NINE of
27 section [265.01] 265.02 to whom a certificate of good conduct has been
28 issued pursuant to section seven hundred three-b of the correction law.

29 S 4. This act shall take effect on the ninetieth day after it shall
30 have become a law; provided, however, that if the amendments to section
31 265.01 of the penal law made by section 40 of chapter 1 of the laws of
32 2013 have not yet taken effect on such ninetieth day, then the amend-
33 ments to section 265.01 of the penal law made by section one of this act
34 shall take effect on the same date as section 40 of chapter 1 of the
35 laws of 2013, takes effect; and provided, further, that if the amend-
36 ments to section 265.02 of the penal law made by section 41-b of chapter
37 1 of the laws of 2013 have not yet taken effect on such ninetieth day
38 then the amendments to section 265.02 of the penal law made by section
39 two of this act shall take effect on the same date as section 41-b of
40 chapter 1 of the laws of 2013, takes effect.