

3767

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

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 "witness protection and gang violence reduction act of 2013".
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 COMMITS 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.
16 A PERSON IS GUILTY OF GANG ASSAULT IN THE THIRD DEGREE WHEN, WITH THE
17 INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON AND WHEN AIDED BY TWO

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

LBD05859-03-3

1 OR MORE PERSONS ACTUALLY PRESENT, HE OR SHE CAUSES PHYSICAL INJURY TO
2 SUCH PERSON OR TO A THIRD PERSON.

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

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

7 Coercion in the [second] THIRD degree.

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

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

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

20 Coercion in the [first] SECOND degree.

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

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

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

27 S 135.67 COERCION IN THE FIRST DEGREE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 S 10. The closing paragraph of section 215.12 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 second degree is a class [D] C felony.

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

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

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

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

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

28 S 195.03 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE.

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

34 OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE THIRD DEGREE IS A CLASS
35 A MISDEMEANOR.

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

38 S 195.05 Obstructing governmental administration in the second degree.

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

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

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

55 S 195.07 Obstructing governmental administration in the first degree.

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

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

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

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

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

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

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

42 S 19. Section 265.09 of the penal law, as amended by chapter 650 of
43 the laws of 1996, subdivision 2 as amended by chapter 1 of the laws of
44 2013, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

4 (b) Any of the following felonies: assault in the second degree as
5 defined in section 120.05 of the penal law, assault in the first degree
6 as defined in section 120.10 of the penal law, GANG ASSAULT IN THE THIRD
7 DEGREE AS DEFINED IN SECTION 120.05-A OF THE PENAL LAW, GANG ASSAULT IN
8 THE SECOND DEGREE AS DEFINED IN SECTION 120.06 OF THE PENAL LAW, GANG
9 ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.07 OF THE PENAL
10 LAW, reckless endangerment in the first degree as defined in section
11 120.25 of the penal law, promoting a suicide attempt as defined in
12 section 120.30 of the penal law, strangulation in the second degree as
13 defined in section 121.12 of the penal law, strangulation in the first
14 degree as defined in section 121.13 of the penal law, criminally negli-
15 gent homicide as defined in section 125.10 of the penal law, manslaught-
16 er in the second degree as defined in section 125.15 of the penal law,
17 manslaughter in the first degree as defined in section 125.20 of the
18 penal law, murder in the second degree as defined in section 125.25 of
19 the penal law, murder in the first degree as defined in section 125.27
20 of the penal law, abortion in the second degree as defined in section
21 125.40 of the penal law, abortion in the first degree as defined in
22 section 125.45 of the penal law, rape in the third degree as defined in
23 section 130.25 of the penal law, rape in the second degree as defined in
24 section 130.30 of the penal law, rape in the first degree as defined in
25 section 130.35 of the penal law, criminal sexual act in the third degree
26 as defined in section 130.40 of the penal law, criminal sexual act in
27 the second degree as defined in section 130.45 of the penal law, crimi-
28 nal sexual act in the first degree as defined in section 130.50 of the
29 penal law, sexual abuse in the first degree as defined in section 130.65
30 of the penal law, unlawful imprisonment in the first degree as defined
31 in section 135.10 of the penal law, kidnapping in the second degree as
32 defined in section 135.20 of the penal law, kidnapping in the first
33 degree as defined in section 135.25 of the penal law, labor trafficking
34 as defined in section 135.35 of the penal law, custodial interference in
35 the first degree as defined in section 135.50 of the penal law, coercion
36 in the [first] SECOND degree as defined in section 135.65 of the penal
37 law, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION 135.67 OF THE
38 PENAL LAW, criminal trespass in the first degree as defined in section
39 140.17 of the penal law, burglary in the third degree as defined in
40 section 140.20 of the penal law, burglary in the second degree as
41 defined in section 140.25 of the penal law, burglary in the first degree
42 as defined in section 140.30 of the penal law, criminal mischief in the
43 third degree as defined in section 145.05 of the penal law, criminal
44 mischief in the second degree as defined in section 145.10 of the penal
45 law, criminal mischief in the first degree as defined in section 145.12
46 of the penal law, criminal tampering in the first degree as defined in
47 section 145.20 of the penal law, arson in the fourth degree as defined
48 in section 150.05 of the penal law, arson in the third degree as defined
49 in section 150.10 of the penal law, arson in the second degree as
50 defined in section 150.15 of the penal law, arson in the first degree as
51 defined in section 150.20 of the penal law, grand larceny in the fourth
52 degree as defined in section 155.30 of the penal law, grand larceny in
53 the third degree as defined in section 155.35 of the penal law, grand
54 larceny in the second degree as defined in section 155.40 of the penal
55 law, grand larceny in the first degree as defined in section 155.42 of
56 the penal law, health care fraud in the fourth degree as defined in

1 section 177.10 of the penal law, health care fraud in the third degree
2 as defined in section 177.15 of the penal law, health care fraud in the
3 second degree as defined in section 177.20 of the penal law, health care
4 fraud in the first degree as defined in section 177.25 of the penal law,
5 robbery in the third degree as defined in section 160.05 of the penal
6 law, robbery in the second degree as defined in section 160.10 of the
7 penal law, robbery in the first degree as defined in section 160.15 of
8 the penal law, unlawful use of secret scientific material as defined in
9 section 165.07 of the penal law, criminal possession of stolen property
10 in the fourth degree as defined in section 165.45 of the penal law,
11 criminal possession of stolen property in the third degree as defined in
12 section 165.50 of the penal law, criminal possession of stolen property
13 in the second degree as defined by section 165.52 of the penal law,
14 criminal possession of stolen property in the first degree as defined by
15 section 165.54 of the penal law, trademark counterfeiting in the second
16 degree as defined in section 165.72 of the penal law, trademark counter-
17 feiting in the first degree as defined in section 165.73 of the penal
18 law, forgery in the second degree as defined in section 170.10 of the
19 penal law, forgery in the first degree as defined in section 170.15 of
20 the penal law, criminal possession of a forged instrument in the second
21 degree as defined in section 170.25 of the penal law, criminal
22 possession of a forged instrument in the first degree as defined in
23 section 170.30 of the penal law, criminal possession of forgery devices
24 as defined in section 170.40 of the penal law, falsifying business
25 records in the first degree as defined in section 175.10 of the penal
26 law, tampering with public records in the first degree as defined in
27 section 175.25 of the penal law, offering a false instrument for filing
28 in the first degree as defined in section 175.35 of the penal law, issu-
29 ing a false certificate as defined in section 175.40 of the penal law,
30 criminal diversion of prescription medications and prescriptions in the
31 second degree as defined in section 178.20 of the penal law, criminal
32 diversion of prescription medications and prescriptions in the first
33 degree as defined in section 178.25 of the penal law, residential mort-
34 gage fraud in the fourth degree as defined in section 187.10 of the
35 penal law, residential mortgage fraud in the third degree as defined in
36 section 187.15 of the penal law, residential mortgage fraud in the
37 second degree as defined in section 187.20 of the penal law, residential
38 mortgage fraud in the first degree as defined in section 187.25 of the
39 penal law, escape in the second degree as defined in section 205.10 of
40 the penal law, escape in the first degree as defined in section 205.15
41 of the penal law, absconding from temporary release in the first degree
42 as defined in section 205.17 of the penal law, promoting prison contra-
43 band in the first degree as defined in section 205.25 of the penal law,
44 hindering prosecution in the second degree as defined in section 205.60
45 of the penal law, hindering prosecution in the first degree as defined
46 in section 205.65 of the penal law, TAMPERING WITH A WITNESS IN THE
47 FOURTH DEGREE AS DEFINED IN SECTION 215.10 OF THE PENAL LAW, TAMPERING
48 WITH A WITNESS IN THE THIRD DEGREE AS DEFINED IN SECTION 215.11 OF THE
49 PENAL LAW, TAMPERING WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN
50 SECTION 215.12 OF THE PENAL LAW, TAMPERING WITH A WITNESS IN THE FIRST
51 DEGREE AS DEFINED IN SECTION 215.13 OF THE PENAL LAW, sex trafficking as
52 defined in section 230.34 of the penal law, criminal possession of a
53 weapon in the third degree as defined in subdivisions two, three and
54 five of section 265.02 of the penal law, criminal possession of a weapon
55 in the second degree as defined in section 265.03 of the penal law,
56 criminal possession of a weapon in the first degree as defined in

1 section 265.04 of the penal law, manufacture, transport, disposition and
2 defacement of weapons and dangerous instruments and appliances defined
3 as felonies in subdivisions one, two, and three of section 265.10 of the
4 penal law, sections 265.11, 265.12 and 265.13 of the penal law, or
5 prohibited use of weapons as defined in subdivision two of section
6 265.35 of the penal law, relating to firearms and other dangerous weap-
7 ons, or failure to disclose the origin of a recording in the first
8 degree as defined in section 275.40 of the penal law;

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

14 1. Definition of a violent felony offense. A violent felony offense is
15 a class B violent felony offense, a class C violent felony offense, a
16 class D violent felony offense, or a class E violent felony offense,
17 defined as follows:

18 (a) Class B violent felony offenses: an attempt to commit the class
19 A-I [felonies] FELONY of murder in the second degree as defined in
20 section 125.25, kidnapping in the first degree as defined in section
21 135.25[, and] OR arson in the first degree as defined in section 150.20;
22 manslaughter in the first degree as defined in section 125.20, aggra-
23 vated manslaughter in the first degree as defined in section 125.22,
24 rape in the first degree as defined in section 130.35, criminal sexual
25 act in the first degree as defined in section 130.50, aggravated sexual
26 abuse in the first degree as defined in section 130.70, course of sexual
27 conduct against a child in the first degree as defined in section
28 130.75; assault in the first degree as defined in section 120.10,
29 kidnapping in the second degree as defined in section 135.20, burglary
30 in the first degree as defined in section 140.30, arson in the second
31 degree as defined in section 150.15, robbery in the first degree as
32 defined in section 160.15, incest in the first degree as defined in
33 section 255.27, criminal possession of a weapon in the first degree as
34 defined in section 265.04, criminal use of a firearm in the first degree
35 as defined in section 265.09, criminal sale of a firearm in the first
36 degree as defined in section 265.13, aggravated assault upon a police
37 officer or a peace officer as defined in section 120.11, gang assault in
38 the first degree as defined in section 120.07, TAMPERING WITH A WITNESS
39 IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13, intimidating a victim
40 or witness in the first degree as defined in section 215.17, hindering
41 prosecution of terrorism in the first degree as defined in section
42 490.35, criminal possession of a chemical weapon or biological weapon in
43 the second degree as defined in section 490.40, [and] OR criminal use of
44 a chemical weapon or biological weapon in the third degree as defined in
45 section 490.47; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS
46 PARAGRAPH.

47 (b) Class C violent felony offenses: an attempt to commit any of the
48 class B felonies set forth in paragraph (a) of this subdivision; aggra-
49 vated criminally negligent homicide as defined in section 125.11, aggra-
50 vated manslaughter in the second degree as defined in section 125.21,
51 aggravated sexual abuse in the second degree as defined in section
52 130.67, assault on a peace officer, police officer, fireman or emergency
53 medical services professional as defined in section 120.08, assault on a
54 judge as defined in section 120.09, gang assault in the second degree as
55 defined in section 120.06, strangulation in the first degree as defined
56 in section 121.13, COERCION IN THE FIRST DEGREE AS DEFINED IN SECTION

1 135.67, burglary in the second degree as defined in section 140.25,
2 robbery in the second degree as defined in section 160.10, TAMPERING
3 WITH A WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, INTIM-
4 IDATING A VICTIM OR WITNESS IN THE SECOND DEGREE AS DEFINED IN SECTION
5 215.16, criminal possession of a weapon in the second degree as defined
6 in section 265.03, [criminal use of a firearm in the second degree as
7 defined in section 265.08,] criminal sale of a firearm in the second
8 degree as defined in section 265.12, criminal sale of a firearm with the
9 aid of a minor as defined in section 265.14, aggravated criminal
10 possession of a weapon as defined in section 265.19, soliciting or
11 providing support for an act of terrorism in the first degree as defined
12 in section 490.15, hindering prosecution of terrorism in the second
13 degree as defined in section 490.30, [and] OR criminal possession of a
14 chemical weapon or biological weapon in the third degree as defined in
15 section 490.37; OR A CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS
16 PARAGRAPH.

17 (c) Class D violent felony offenses: an attempt to commit any of the
18 class C felonies set forth in paragraph (b); reckless assault of a child
19 as defined in section 120.02, assault in the second degree as defined in
20 section 120.05, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION
21 120.05-A, menacing a police officer or peace officer as defined in
22 section 120.18, stalking in the first degree, as defined in subdivision
23 one of section 120.60, strangulation in the second degree as defined in
24 section 121.12, rape in the second degree as defined in section 130.30,
25 criminal sexual act in the second degree as defined in section 130.45,
26 sexual abuse in the first degree as defined in section 130.65, course of
27 sexual conduct against a child in the second degree as defined in
28 section 130.80, aggravated sexual abuse in the third degree as defined
29 in section 130.66, facilitating a sex offense with a controlled
30 substance as defined in section 130.90, criminal possession of a weapon
31 in the third degree as defined in subdivision five, six, seven, eight,
32 nine or ten of section 265.02, criminal sale of a firearm in the third
33 degree as defined in section 265.11, TAMPERING WITH A WITNESS IN THE
34 THIRD DEGREE AS DEFINED IN SECTION 215.11, intimidating a victim or
35 witness in the [second] THIRD degree as defined in section [215.16]
36 215.15, soliciting or providing support for an act of terrorism in the
37 second degree as defined in section 490.10, and making a terroristic
38 threat as defined in section 490.20, falsely reporting an incident in
39 the first degree as defined in section 240.60, placing a false bomb or
40 hazardous substance in the first degree as defined in section 240.62,
41 placing a false bomb or hazardous substance in a sports stadium or
42 arena, mass transportation facility or enclosed shopping mall as defined
43 in section 240.63, [and] OR aggravated unpermitted use of indoor pyro-
44 technics in the first degree as defined in section 405.18; OR A CONSPIR-
45 ACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

46 (d) Class E violent felony offenses: an attempt to commit any of the
47 felonies of criminal possession of a weapon in the third degree as
48 defined in subdivision five, six, seven or eight of section 265.02 as a
49 lesser included offense of that section as defined in section 220.20 of
50 the criminal procedure law[,]; persistent sexual abuse as defined in
51 section 130.53, aggravated sexual abuse in the fourth degree as defined
52 in section 130.65-a, falsely reporting an incident in the second degree
53 as defined in section 240.55 [and] OR placing a false bomb or hazardous
54 substance in the second degree as defined in section 240.61; OR A
55 CONSPIRACY TO COMMIT ANY OFFENSE SPECIFIED IN THIS PARAGRAPH.

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

3 2. A "specified offense" is a felony offense defined by any of the
4 following provisions of this chapter: assault in the second degree as
5 defined in section 120.05, assault in the first degree as defined in
6 section 120.10, GANG ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION
7 120.05-A, gang assault in the second degree as defined in section
8 120.06, gang assault in the first degree as defined in section 120.07,
9 stalking in the first degree as defined in section 120.60, strangulation
10 in the second degree as defined in section 121.12, strangulation in the
11 first degree as defined in section 121.13, manslaughter in the second
12 degree as defined in subdivision one of section 125.15, manslaughter in
13 the first degree as defined in section 125.20, murder in the second
14 degree as defined in section 125.25, aggravated murder as defined in
15 section 125.26, murder in the first degree as defined in section 125.27,
16 kidnapping in the second degree as defined in section 135.20, kidnapping
17 in the first degree as defined in section 135.25, burglary in the third
18 degree as defined in section 140.20, burglary in the second degree as
19 defined in section 140.25, burglary in the first degree as defined in
20 section 140.30, arson in the second degree as defined in section 150.15,
21 arson in the first degree as defined in section 150.20, robbery in the
22 third degree as defined in section 160.05, robbery in the second degree
23 as defined in section 160.10, robbery in the first degree as defined in
24 section 160.15, promoting prostitution in the second degree as defined
25 in section 230.30, promoting prostitution in the first degree as defined
26 in section 230.32, compelling prostitution as defined in section 230.33,
27 disseminating indecent material to minors in the first degree as defined
28 in section 235.22, use of a child in a sexual performance as defined in
29 section 263.05, promoting an obscene sexual performance by a child as
30 defined in section 263.10, promoting a sexual performance by a child as
31 defined in section 263.15, or any felony attempt or conspiracy to commit
32 any of the foregoing offenses.

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

35 2-H. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE
36 FOURTH DEGREE AS DEFINED IN SECTION 215.10, TAMPERING WITH A WITNESS IN
37 THE THIRD DEGREE AS DEFINED IN SECTION 215.11, TAMPERING WITH A WITNESS
38 IN THE SECOND DEGREE AS DEFINED IN SECTION 215.12, TAMPERING WITH A
39 WITNESS IN THE FIRST DEGREE AS DEFINED IN SECTION 215.13 OF THIS CHAP-
40 TER, OR ANY ATTEMPT TO COMMIT ANY OF SUCH OFFENSE, RELATING TO A CRIMI-
41 NAL PROCEEDING, AND SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE CHARGED
42 IN SUCH CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

43 2-I. WHENEVER A PERSON IS CONVICTED OF TAMPERING WITH A WITNESS IN THE
44 FIFTH DEGREE AS DEFINED IN SECTION 215.09 OF THIS CHAPTER, OR ANY
45 ATTEMPT TO COMMIT SUCH OFFENSE RELATING TO A CRIMINAL PROCEEDING, AND
46 SUCH PERSON IS ALSO CONVICTED OF AN OFFENSE THAT IS CHARGED IN SUCH
47 CRIMINAL PROCEEDING, THE SENTENCES SHALL RUN CONSECUTIVELY.

48 S 25. The opening paragraph and subdivisions 6 and 7 of section 710.20
49 of the criminal procedure law, the opening paragraph and subdivision 6
50 as amended by chapter 8 of the laws of 1976, subdivision 6 as renumbered
51 by chapter 481 of the laws of 1983 and subdivision 7 as added by chapter
52 744 of the laws of 1988, are amended and a new subdivision 8 is added to
53 read as follows:

54 Upon motion of a defendant who (a) is aggrieved by unlawful or improp-
55 er acquisition of evidence and has reasonable cause to believe that such
56 may be offered against him in a criminal action, or (b) claims that

improper identification testimony may be offered against him in a criminal action, OR (C) CLAIMS THAT EVIDENCE AS TO THE USE OF WHICH HE OR SHE POSSESSES IMMUNITY MAY BE OFFERED AGAINST HIM OR HER IN A CRIMINAL PROCEEDING, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

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

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

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

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

3. A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); SECTION 120.05-A (GANG ASSAULT IN THE THIRD DEGREE); SECTION 120.06 (GANG ASSAULT IN THE SECOND DEGREE); SECTION 120.07 (GANG ASSAULT IN THE FIRST DEGREE); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the [second] THIRD degree); section 135.65 (coercion in the [first] SECOND degree); SECTION 135.67 (COERCION IN THE FIRST DEGREE); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section

1 140.25 (burglary in the second degree); section 140.30 (burglary in the
2 first degree); section 145.00 (criminal mischief in the fourth degree);
3 section 145.05 (criminal mischief in the third degree); section 145.10
4 (criminal mischief in the second degree); section 145.12 (criminal
5 mischief in the first degree); section 150.05 (arson in the fourth
6 degree); section 150.10 (arson in the third degree); section 150.15
7 (arson in the second degree); section 150.20 (arson in the first
8 degree); section 155.25 (petit larceny); section 155.30 (grand larceny
9 in the fourth degree); section 155.35 (grand larceny in the third
10 degree); section 155.40 (grand larceny in the second degree); section
11 155.42 (grand larceny in the first degree); section 160.05 (robbery in
12 the third degree); section 160.10 (robbery in the second degree);
13 section 160.15 (robbery in the first degree); section 240.25 (harassment
14 in the first degree); subdivision one, two or four of section 240.30
15 (aggravated harassment in the second degree); or any attempt or conspir-
16 acy to commit any of the foregoing offenses.

17 S 27. This act shall take effect on the first of November next
18 succeeding the date on which it shall have become a law; provided,
19 however, that if the amendments to subdivision 2 of section 265.09 of
20 the penal law, made by chapter 1 of the laws of 2013, shall not have
21 taken effect on or before such effective date, then section nineteen of
22 this act shall take effect on the same date and in the same manner as
23 such amendments; and provided, further, that if the amendments to para-
24 graphs (b) and (c) of subdivision 1 of section 70.02 of the penal law,
25 made by chapter 1 of the laws of 2013, shall not have taken effect on or
26 before such effective date, then section twenty-two of this act shall
27 take effect on the same date and in the same manner as such amendments.