

6634--C

Cal. No. 762

I N S E N A T E

February 19, 2014

Introduced by Sens. KLEIN, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to establishing the offenses of aggravated assault upon a person less than ten years old and 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 act shall be known and may be cited as
2 "Luisito's law".
3 S 2. Paragraph (a) of subdivision 1 of section 70.02 of the penal
4 law, as amended by chapter 320 of the laws of 2006, is amended to read
5 as follows:
6 (a) Class B violent felony offenses: an attempt to commit the class
7 A-I felonies of murder in the second degree as defined in section
8 125.25, kidnapping in the first degree as defined in section 135.25, and
9 arson in the first degree as defined in section 150.20; manslaughter in
10 the first degree as defined in section 125.20, aggravated manslaughter
11 in the first degree as defined in section 125.22, rape in the first
12 degree as defined in section 130.35, criminal sexual act in the first
13 degree as defined in section 130.50, aggravated sexual abuse in the
14 first degree as defined in section 130.70, course of sexual conduct
15 against a child in the first degree as defined in section 130.75;
16 assault in the first degree as defined in section 120.10, kidnapping in
17 the second degree as defined in section 135.20, burglary in the first
18 degree as defined in section 140.30, arson in the second degree as
19 defined in section 150.15, robbery in the first degree as defined in
20 section 160.15, incest in the first degree as defined in section 255.27,
21 criminal possession of a weapon in the first degree as defined in
22 section 265.04, criminal use of a firearm in the first degree as defined
23 in section 265.09, criminal sale of a firearm in the first degree as
24 defined in section 265.13, AGGRAVATED ASSAULT UPON A PERSON LESS THAN

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

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TEN YEARS OLD AS DEFINED IN SECTION 120.12-A, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

S 3. The penal law is amended by adding a new section 120.12-a to read as follows:

S 120.12-A AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD.

A PERSON IS GUILTY OF AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD WHEN, BEING EIGHTEEN YEARS OLD OR OLDER, WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON, HE OR SHE CAUSES SUCH INJURY TO A CHILD LESS THAN TEN YEARS OLD BY MEANS OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

AGGRAVATED ASSAULT UPON A PERSON LESS THAN TEN YEARS OLD IS A CLASS B FELONY.

S 4. Section 265.08 of the penal law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

S 265.08 Criminal use of a firearm in the second degree.

1. A person is guilty of criminal use of a firearm in the second degree when he OR SHE commits any class C violent felony offense as defined in paragraph (b) of subdivision one of section 70.02 OF THIS CHAPTER, OR HE OR SHE COMMITS A SPECIFIED OFFENSE WHILE KNOWING HE OR SHE IS ON SCHOOL GROUNDS, AS DEFINED IN SUBDIVISION FOURTEEN OF SECTION 220.00 OF THIS TITLE, OR WITHIN TWO HUNDRED FIFTY FEET OF ANY PLAYGROUND OPERATED BY THE CITY OF NEW YORK OR ANY DEPARTMENT OR PUBLIC AUTHORITY THEREOF, and he OR SHE either:

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

[(2)] (B) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm.

2. FOR THE PURPOSES OF THIS SECTION, A "SPECIFIED OFFENSE" IS AN OFFENSE DEFINED BY ANY OF THE FOLLOWING PROVISIONS OF THIS CHAPTER: SECTION 115.05 (CRIMINAL FACILITATION IN THE SECOND DEGREE), 265.16 (CRIMINAL SALE OF A FIREARM TO A MINOR), 100.13 (CRIMINAL SOLICITATION IN THE FIRST DEGREE), 155.40 (GRAND LARCENY IN THE SECOND DEGREE), 120.05 (ASSAULT IN THE SECOND DEGREE), 265.11 (CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE), 130.90 (FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE), 215.16 (INTIMIDATING A VICTIM OR WITNESS IN THE SECOND DEGREE), 120.18 (MENACING A POLICE OFFICER OR PEACE OFFICER), 120.02 (RECKLESS ASSAULT OF A CHILD), 120.60 (STALKING IN THE FIRST DEGREE), 121.12 (STRANGULATION IN THE SECOND DEGREE), 130.30 (RAPE IN THE SECOND DEGREE), 130.45 (CRIMINAL SEXUAL ACT IN THE SECOND DEGREE), 130.65 (SEXUAL ABUSE IN THE FIRST DEGREE), 130.80 (COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE), 130.66 (AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE), 135.65 (COERCION IN THE FIRST DEGREE), 265.17 (CRIMINAL PURCHASE OR DISPOSAL OF A WEAPON), 120.25 (RECKLESS ENDANGERMENT IN THE FIRST DEGREE), 160.05 (ROBBERY IN THE THIRD DEGREE), AND 215.12 (TAMPERING WITH A WITNESS IN THE SECOND DEGREE).

Criminal use of a firearm in the second degree is a class C felony.

S 5. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.