

7623--A

I N S E N A T E

May 11, 2016

Introduced by Sen. KLEIN -- 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

AN ACT to amend the penal law and the criminal procedure law, in relation to establishing crimes relating to the criminal possession or manufacture of undetectable firearms, rifles or shotguns

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

1 Section 1. Section 265.00 of the penal law is amended by adding two
2 new subdivisions 3-a and 26 to read as follows:
3 3-A. "MAJOR COMPONENT OF A FIREARM, RIFLE, OR SHOTGUN" MEANS THE
4 BARREL, THE SLIDE OR CYLINDER, THE FRAME, OR RECEIVER OF THE FIREARM,
5 RIFLE, OR SHOTGUN.
6 26. "UNDETECTABLE" MEANS NOT DETECTABLE BY AN X-RAY MACHINE, PORTABLE
7 PULSED X-RAY GENERATOR, METAL DETECTOR OR MAGNETOMETER WHEN SET AT A
8 STANDARD CALIBRATION, OR ANY OTHER MACHINE USED TO SCREEN OR INSPECT A
9 PERSON AND AN OBJECT FOR A FIREARM, RIFLE, OR SHOTGUN.
10 S 2. The penal law is amended by adding two new sections 265.50 and
11 265.55 to read as follows:
12 S 265.50 CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE
13 FIREARM.
14 A PERSON IS GUILTY OF CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN
15 UNDETECTABLE FIREARM WHEN HE OR SHE KNOWINGLY MANUFACTURES, CAUSES TO BE
16 MANUFACTURED, SELLS, EXCHANGES, GIVES, DISPOSES OF, TRANSPORTS, SHIPS,
17 OR POSSESSES WITH THE INTENT TO SELL:
18 1. ANY FIREARM, RIFLE, OR SHOTGUN THAT, AFTER REMOVAL OF GRIPS, STOCKS
19 AND MAGAZINES, IS UNDETECTABLE; OR
20 2. ANY MAJOR COMPONENT OF A FIREARM, RIFLE, OR SHOTGUN WHICH IS UNDE-
21 TECTABLE.
22 CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM IS
23 A CLASS D FELONY.
24 S 265.55 CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM.
25 A PERSON IS GUILTY OF CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM
26 WHEN HE OR SHE KNOWINGLY POSSESSES AN UNDETECTABLE FIREARM, RIFLE OR
27 SHOTGUN OR ANY UNDETECTABLE MAJOR COMPONENT OF A FIREARM, RIFLE, OR
28 SHOTGUN.

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

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CRIMINAL POSSESSION OF AN UNDETECTABLE FIREARM IS A CLASS E FELONY.

S 3. The opening paragraph and the opening paragraph of paragraph 1 of subdivision a of section 265.20 of the penal law, the opening paragraph as amended by section 1 of part FF of chapter 57 of the laws of 2013 and the opening paragraph of paragraph 1 as amended by chapter 1041 of the laws of 1974, are amended to read as follows:

Paragraph (h) of subdivision twenty-two of section 265.00 and sections 265.01, 265.01-a, [subdivision one of section] 265.01-b, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37, 265.50, 265.55 and 270.05 shall not apply to:

Possession of any of the weapons, instruments, appliances or substances specified in sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.50, 265.55 and 270.05 by the following:

S 4. Paragraph (c) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 368 of the laws of 2015, is amended to read as follows:

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, labor trafficking as defined in paragraphs (a) and (b) of subdivision three of section 135.35, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, [and] aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18, AND CRIMINAL MANUFACTURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION 265.50.

S 5. The opening paragraph of paragraph (c) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 1 of the laws of 2013, is amended to read as follows:

Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision five, seven, eight or nine of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11 [or], the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision five, seven, eight or nine of section 265.02, OR CRIMINAL MANUFACTURE,

1 SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION
2 265.50 must be a sentence to a determinate period of imprisonment, or,
3 in the alternative, a definite sentence of imprisonment for a period of
4 no less than one year, except that:

5 S 6. Paragraph (a) of subdivision 1 of section 460.10 of the penal
6 law, as amended by chapter 368 of the laws of 2015, is amended to read
7 as follows:

8 (a) Any of the felonies set forth in this chapter: sections 120.05,
9 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
10 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
11 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
12 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to
13 labor trafficking; section 135.65 relating to coercion; sections 140.20,
14 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and
15 145.12 relating to criminal mischief; article one hundred fifty relating
16 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
17 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
18 care fraud; article one hundred sixty relating to robbery; sections
19 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
20 stolen property; sections 165.72 and 165.73 relating to trademark coun-
21 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
22 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
23 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
24 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
25 to criminal diversion of prescription medications and prescriptions;
26 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
27 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,
28 215.00, 215.05 and 215.19; sections 187.10, 187.15, 187.20 and 187.25
29 relating to residential mortgage fraud, sections 190.40 and 190.42
30 relating to criminal usury; section 190.65 relating to schemes to
31 defraud; any felony defined in article four hundred ninety-six; sections
32 205.60 and 205.65 relating to hindering prosecution; sections 210.10,
33 210.15, and 215.51 relating to perjury and contempt; section 215.40
34 relating to tampering with physical evidence; sections 220.06, 220.09,
35 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,
36 220.55, 220.60, 220.65 and 220.77 relating to controlled substances;
37 sections 225.10 and 225.20 relating to gambling; sections 230.25,
38 230.30, and 230.32 relating to promoting prostitution; section 230.34
39 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22
40 relating to obscenity; sections 263.10 and 263.15 relating to promoting
41 a sexual performance by a child; sections 265.02, 265.03, 265.04,
42 265.11, 265.12, 265.13 and the provisions of section 265.10 which
43 constitute a felony relating to firearms and other dangerous weapons;
44 sections 265.14 and 265.16 relating to criminal sale of a firearm;
45 section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized
46 recordings; [and] sections 470.05, 470.10, 470.15 and 470.20 relating to
47 money laundering; AND SECTION 265.50 RELATING TO THE CRIMINAL MANUFAC-
48 TURE, SALE, OR TRANSPORT OF AN UNDETECTABLE FIREARM; or

49 S 7. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
50 procedure law, as amended by chapter 368 of the laws of 2015, is amended
51 to read as follows:

52 (b) Any of the following felonies: assault in the second degree as
53 defined in section 120.05 of the penal law, assault in the first degree
54 as defined in section 120.10 of the penal law, reckless endangerment in
55 the first degree as defined in section 120.25 of the penal law, promot-
56 ing a suicide attempt as defined in section 120.30 of the penal law,

1 strangulation in the second degree as defined in section 121.12 of the
2 penal law, strangulation in the first degree as defined in section
3 121.13 of the penal law, criminally negligent homicide as defined in
4 section 125.10 of the penal law, manslaughter in the second degree as
5 defined in section 125.15 of the penal law, manslaughter in the first
6 degree as defined in section 125.20 of the penal law, murder in the
7 second degree as defined in section 125.25 of the penal law, murder in
8 the first degree as defined in section 125.27 of the penal law, abortion
9 in the second degree as defined in section 125.40 of the penal law,
10 abortion in the first degree as defined in section 125.45 of the penal
11 law, rape in the third degree as defined in section 130.25 of the penal
12 law, rape in the second degree as defined in section 130.30 of the penal
13 law, rape in the first degree as defined in section 130.35 of the penal
14 law, criminal sexual act in the third degree as defined in section
15 130.40 of the penal law, criminal sexual act in the second degree as
16 defined in section 130.45 of the penal law, criminal sexual act in the
17 first degree as defined in section 130.50 of the penal law, sexual abuse
18 in the first degree as defined in section 130.65 of the penal law,
19 unlawful imprisonment in the first degree as defined in section 135.10
20 of the penal law, kidnapping in the second degree as defined in section
21 135.20 of the penal law, kidnapping in the first degree as defined in
22 section 135.25 of the penal law, labor trafficking as defined in section
23 135.35 of the penal law, aggravated labor trafficking as defined in
24 section 135.37 of the penal law, custodial interference in the first
25 degree as defined in section 135.50 of the penal law, coercion in the
26 first degree as defined in section 135.65 of the penal law, criminal
27 trespass in the first degree as defined in section 140.17 of the penal
28 law, burglary in the third degree as defined in section 140.20 of the
29 penal law, burglary in the second degree as defined in section 140.25 of
30 the penal law, burglary in the first degree as defined in section 140.30
31 of the penal law, criminal mischief in the third degree as defined in
32 section 145.05 of the penal law, criminal mischief in the second degree
33 as defined in section 145.10 of the penal law, criminal mischief in the
34 first degree as defined in section 145.12 of the penal law, criminal
35 tampering in the first degree as defined in section 145.20 of the penal
36 law, arson in the fourth degree as defined in section 150.05 of the
37 penal law, arson in the third degree as defined in section 150.10 of the
38 penal law, arson in the second degree as defined in section 150.15 of
39 the penal law, arson in the first degree as defined in section 150.20 of
40 the penal law, grand larceny in the fourth degree as defined in section
41 155.30 of the penal law, grand larceny in the third degree as defined in
42 section 155.35 of the penal law, grand larceny in the second degree as
43 defined in section 155.40 of the penal law, grand larceny in the first
44 degree as defined in section 155.42 of the penal law, health care fraud
45 in the fourth degree as defined in section 177.10 of the penal law,
46 health care fraud in the third degree as defined in section 177.15 of
47 the penal law, health care fraud in the second degree as defined in
48 section 177.20 of the penal law, health care fraud in the first degree
49 as defined in section 177.25 of the penal law, robbery in the third
50 degree as defined in section 160.05 of the penal law, robbery in the
51 second degree as defined in section 160.10 of the penal law, robbery in
52 the first degree as defined in section 160.15 of the penal law, unlawful
53 use of secret scientific material as defined in section 165.07 of the
54 penal law, criminal possession of stolen property in the fourth degree
55 as defined in section 165.45 of the penal law, criminal possession of
56 stolen property in the third degree as defined in section 165.50 of the

1 penal law, criminal possession of stolen property in the second degree
2 as defined by section 165.52 of the penal law, criminal possession of
3 stolen property in the first degree as defined by section 165.54 of the
4 penal law, trademark counterfeiting in the second degree as defined in
5 section 165.72 of the penal law, trademark counterfeiting in the first
6 degree as defined in section 165.73 of the penal law, forgery in the
7 second degree as defined in section 170.10 of the penal law, forgery in
8 the first degree as defined in section 170.15 of the penal law, criminal
9 possession of a forged instrument in the second degree as defined in
10 section 170.25 of the penal law, criminal possession of a forged instru-
11 ment in the first degree as defined in section 170.30 of the penal law,
12 criminal possession of forgery devices as defined in section 170.40 of
13 the penal law, falsifying business records in the first degree as
14 defined in section 175.10 of the penal law, tampering with public
15 records in the first degree as defined in section 175.25 of the penal
16 law, offering a false instrument for filing in the first degree as
17 defined in section 175.35 of the penal law, issuing a false certificate
18 as defined in section 175.40 of the penal law, criminal diversion of
19 prescription medications and prescriptions in the second degree as
20 defined in section 178.20 of the penal law, criminal diversion of
21 prescription medications and prescriptions in the first degree as
22 defined in section 178.25 of the penal law, residential mortgage fraud
23 in the fourth degree as defined in section 187.10 of the penal law,
24 residential mortgage fraud in the third degree as defined in section
25 187.15 of the penal law, residential mortgage fraud in the second degree
26 as defined in section 187.20 of the penal law, residential mortgage
27 fraud in the first degree as defined in section 187.25 of the penal law,
28 escape in the second degree as defined in section 205.10 of the penal
29 law, escape in the first degree as defined in section 205.15 of the
30 penal law, absconding from temporary release in the first degree as
31 defined in section 205.17 of the penal law, promoting prison contraband
32 in the first degree as defined in section 205.25 of the penal law,
33 hindering prosecution in the second degree as defined in section 205.60
34 of the penal law, hindering prosecution in the first degree as defined
35 in section 205.65 of the penal law, sex trafficking as defined in
36 section 230.34 of the penal law, criminal possession of a weapon in the
37 third degree as defined in subdivisions two, three and five of section
38 265.02 of the penal law, criminal possession of a weapon in the second
39 degree as defined in section 265.03 of the penal law, criminal
40 possession of a weapon in the first degree as defined in section 265.04
41 of the penal law, manufacture, transport, disposition and defacement of
42 weapons and dangerous instruments and appliances defined as felonies in
43 subdivisions one, two, and three of section 265.10 of the penal law,
44 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use
45 of weapons as defined in subdivision two of section 265.35 of the penal
46 law, relating to firearms and other dangerous weapons, [or] failure to
47 disclose the origin of a recording in the first degree as defined in
48 section 275.40 of the penal law, OR CRIMINAL MANUFACTURE, SALE, OR
49 TRANSPORT OF AN UNDETECTABLE FIREARM AS DEFINED IN SECTION 265.50 OF THE
50 PENAL LAW;

51 S 8. This act shall take effect on the one hundred eightieth day after
52 it shall have become a law.