

10069

I N   A S S E M B L Y

March 3, 2010

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Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the prohibition of illegal gun trafficking, criminal possession of a weapon by a minor and criminal use of a weapon by a minor, failure to report a lost or stolen firearm, and fines for gun trafficking; and to amend the education law, in relation to the eligibility for tuition awards to students on probation or parole for weapons convictions

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     the "Gun Trafficking Prevention Act".  
3     S 2. The penal law is amended by adding a new section 265.45 to read  
4     as follows:  
5     S 265.45 ILLEGAL GUN TRAFFICKING.  
6     A PERSON IS GUILTY OF ILLEGAL GUN TRAFFICKING WHEN SUCH PERSON KNOW-  
7     INGLY AND INTENTIONALLY DISTRIBUTES, TRANSPORTS, SHIPS, RECEIVES,  
8     BARTERS, PURCHASES OR SELLS ANY FIREARM WHICH HAS:  
9       1. BEEN USED DURING THE COMMISSION OF A CRIME;  
10      2. BEEN STOLEN;  
11      3. HAD THE IMPORTER'S OR MANUFACTURER'S SERIAL NUMBER REMOVED, OBLIT-  
12     ERATED OR ALTERED; OR  
13      4. BEEN DEFACED.  
14     ILLEGAL GUN TRAFFICKING IS A CLASS B FELONY.  
15     S 3. The penal law is amended by adding two new sections 265.18 and  
16     265.19 to read as follows:  
17     S 265.18 CRIMINAL POSSESSION OF A WEAPON BY A MINOR.  
18       1. A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON BY A MINOR  
19     WHEN, BEING UNDER EIGHTEEN YEARS OF AGE, HE OR SHE POSSESSES ANY  
20     FIREARM, RIFLE OR SHOTGUN.  
21       2. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO  
22     POSSESSES A RIFLE OR SHOTGUN AND IS THE HOLDER OF A HUNTING LICENSE OR  
23     PERMIT ISSUED PURSUANT TO ARTICLE ELEVEN OF THE ENVIRONMENTAL CONSERVA-  
24     TION LAW AND USED IN ACCORDANCE WITH SUCH ARTICLE.

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

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1 CRIMINAL POSSESSION OF A WEAPON BY A MINOR IS A CLASS D FELONY.

2 S 265.19 CRIMINAL USE OF A WEAPON BY A MINOR.

3 A PERSON IS GUILTY OF CRIMINAL USE OF A WEAPON BY A MINOR WHEN, BEING  
4 UNDER EIGHTEEN YEARS OF AGE, HE OR SHE COMMITS ANY CRIME AND POSSESSES A  
5 FIREARM, RIFLE OR SHOTGUN WHILE IN THE COURSE OF COMMITTING SUCH CRIME.

6 CRIMINAL USE OF A WEAPON BY A MINOR IS A CLASS C FELONY.

7 S 4. Subdivisions 4 and 5 of section 60.05 of the penal law, as  
8 amended by chapter 738 of the laws of 2004, are amended to read as  
9 follows:

10 4. Certain class C felonies. Except as provided in subdivision six,  
11 every person convicted of a class C violent felony offense as defined in  
12 subdivision one of section 70.02 of this title, must be sentenced to  
13 imprisonment in accordance with section 70.02 of this title; and, except  
14 as provided in subdivision six of this section, every person convicted  
15 of the class C felonies of: attempt to commit any of the class B felo-  
16 nies of bribery in the first degree as defined in section 200.04, bribe  
17 receiving in the first degree as defined in section 200.12, conspiracy  
18 in the second degree as defined in section 105.15 and criminal mischief  
19 in the first degree as defined in section 145.12; criminal usury in the  
20 first degree as defined in section 190.42, rewarding official misconduct  
21 in the first degree as defined in section 200.22, receiving reward for  
22 official misconduct in the first degree as defined in section 200.27,  
23 attempt to promote prostitution in the first degree as defined in ARTI-  
24 CLE ONE HUNDRED TEN AND section 230.32, promoting prostitution in the  
25 second degree as defined in section 230.30, CRIMINAL USE OF A WEAPON BY  
26 A MINOR AS DEFINED IN SECTION 265.19, arson in the third degree as  
27 defined in section 150.10 of this chapter, must be sentenced to impri-  
28 sonment in accordance with section 70.00 of this title.

29 5. Certain class D felonies. Except as provided in subdivision six of  
30 this section, every person convicted of the class D felonies of assault  
31 in the second degree as defined in section 120.05, CRIMINAL POSSESSION  
32 OF A WEAPON BY A MINOR AS DEFINED IN SECTION 265.18 or attempt to commit  
33 a class C felony as defined in section 230.30 of this chapter, must be  
34 sentenced in accordance with section 70.00 or 85.00 of this title.

35 S 5. The penal law is amended by adding a new section 265.27 to read  
36 as follows:

37 S 265.27 LOST OR STOLEN FIREARM TO BE REPORTED.

38 AN OWNER OF ONE OR MORE FIREARMS SHALL REPORT EACH INCIDENCE OF A LOST  
39 OR STOLEN FIREARM TO THE POLICE AUTHORITIES OF THE CITY, TOWN OR VILLAGE  
40 WHERE SUCH PERSON REPORTING IS LOCATED WITHIN SEVENTY-TWO HOURS OF SUCH  
41 LOSS OR THEFT, OR DISCOVERY OF SUCH LOSS OR THEFT.

42 AN INTENTIONAL FAILURE TO MAKE SUCH REPORT IS A CLASS A MISDEMEANOR.

43 S 6. Paragraph d of subdivision 6 of section 661 of the education law,  
44 as added by chapter 83 of the laws of 1995, is amended to read as  
45 follows:

46 d. No student who is incarcerated in any federal, state or other penal  
47 institution shall be eligible for any general or academic performance  
48 award made pursuant to this article. NO STUDENT WHO HAS BEEN CONVICTED  
49 OF ANY WEAPONS POSSESSION, TRANSPORT OR SALE CHARGE AND IS CURRENTLY ON  
50 PROBATION OR PAROLE FOR SUCH CONVICTION SHALL BE ELIGIBLE TO APPLY FOR  
51 OR RECEIVE ANY GENERAL OR ACADEMIC PERFORMANCE AWARD MADE PURSUANT TO  
52 THIS ARTICLE UNTIL SUCH STUDENT IS SUCCESSFULLY DISCHARGED FROM  
53 PROBATION OR PAROLE WHEREUPON SUCH STUDENT SHALL BE ELIGIBLE TO APPLY  
54 FOR SUCH AWARDS FOR THE NEXT SUCCEEDING ACADEMIC SEMESTER.

1 S 7. Paragraph c of subdivision 1 of section 80.00 of the penal law,  
2 as amended by chapter 338 of the laws of 1989, is amended to read as  
3 follows:

4 c. if the conviction is for any felony defined in article two hundred  
5 twenty [or], two hundred twenty-one OR SECTION 265.45 of this chapter,  
6 according to the following schedule:

7 (i) for A-I felonies, one hundred thousand dollars;

8 (ii) for A-II felonies, fifty thousand dollars;

9 (iii) for B felonies, thirty thousand dollars;

10 (iv) for C felonies, fifteen thousand dollars.

11 When imposing a fine pursuant to the provisions of this paragraph, the  
12 court shall consider the profit gained by defendant's conduct, whether  
13 the amount of the fine is disproportionate to the conduct in which  
14 defendant engaged, its impact on any victims, and defendant's economic  
15 circumstances, including the defendant's ability to pay, the effect of  
16 the fine upon his or her immediate family or any other persons to whom  
17 the defendant owes an obligation of support.

18 S 8. This act shall take effect immediately, provided that:

19 a. sections two, three and five of this act shall take effect on the  
20 first of November next succeeding the date on which it shall have become  
21 a law;

22 b. sections four and seven of this act shall take effect on the one  
23 hundred twentieth day after it shall have become a law; and

24 c. section six of this act shall take effect immediately and shall  
25 apply to tuition awards for the 2010-2011 academic year and all subse-  
26 quent academic years.