S T A T E O F N E W Y O R K

4379

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. KOON, GREENE, DINOWITZ -- Multi-Sponsored by -- M. of A. BRENNAN, GALEF, HOOPER, HOYT, JACOBS, JOHN, MAGEE, MAYERSOHN, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing the penalty for assault in the first and second degrees and including assault in the definition of criminal use of a firearm in the first degree

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

Section 1. The closing paragraph of section 120.05 of the penal law is amended to read as follows:

Assault in the second degree is a class [D] C felony.

S 2. Subdivision 1 of section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, is amended to read as follows:

(1) A person is guilty of criminal use of a firearm in the first degree when [he]:

A. (I) HE OR SHE commits any class B violent felony offense as defined in paragraph (a) of subdivision one of section 70.02; OR

(II) HE OR SHE COMMITS ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION 120.00 OR ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.05 OR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.10; and [he]

B. HE OR SHE either:

[(a)] (I) 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

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

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

S 3. Subdivisions 4 and 5 of section 60.05 of the penal law, as amended by chapter 738 of the laws of 2004, are amended to read as follows:

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

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4. Certain class C felonies. Except as provided in subdivision six, every person convicted of a class C violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with section 70.02 of this title; and, except as provided in subdivision six of this section, every person convicted of the class C felonies of: attempt to commit any of the class B felonies of bribery in the first degree as defined in section 200.04, bribe receiving in the first degree as defined in section 200.12, conspiracy in the second degree as defined in section 105.15 and criminal mischief in the first degree as defined in section 145.12; criminal usury in the first degree as defined in section 190.42, rewarding official misconduct in the first degree as defined in section 200.22, receiving reward for official misconduct in the first degree as defined in section 200.27, attempt to promote prostitution in the first degree as defined in section 230.32, promoting prostitution in the second degree as defined in section 230.30, ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.05, AND arson in the third degree as defined in section 150.10 of this chapter, must be sentenced to imprisonment in accordance with section 70.00 of this title.

5. Certain class D felonies. Except as provided in subdivision six of this section, every person convicted of the class D [felonies] FELONY of [assault in the second degree as defined in section 120.05 or] attempt to commit a class C felony as defined in section 230.30 of this chapter, must be sentenced in accordance with section 70.00 or 85.00 of this title.

S 4. Paragraphs (b) and (c) of subdivision 1 of section 70.02 of the penal law, paragraph (b) as separately amended by chapters 764 and 765 of the laws of 2005 and paragraph (c) as amended by chapter 7 of the laws of 2007, are amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.05, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(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, 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, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight 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.

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