

6495

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

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

AN ACT to amend the penal law, in relation to the related use of a
lethal or explosive device

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

1 Section 1. The penal law is amended by adding a new section 265.07 to
2 read as follows:

3 S 265.07 RELATED USE OF LETHAL OR EXPLOSIVE DEVICE.

4 1. A PERSON IS GUILTY OF RELATED USE OF A LETHAL OR EXPLOSIVE DEVICE
5 WHEN HE OR SHE COMMITS ANY OFFENSE WHILE IN POSSESSION OF A LETHAL OR
6 EXPLOSIVE DEVICE.

7 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY
8 PERSON CONVICTED OF RELATED USE OF A LETHAL OR EXPLOSIVE DEVICE SHALL,
9 IN ADDITION TO THE PUNISHMENT PROVIDED FOR THE RELATED OR UNDERLYING
10 OFFENSE, BE SENTENCED TO A DETERMINATE TERM OF IMPRISONMENT FOR SEVEN
11 YEARS, AND THE TERM OF IMPRISONMENT IMPOSED PURSUANT TO THIS SECTION
12 SHALL NOT RUN CONCURRENTLY WITH ANY OTHER TERM OF IMPRISONMENT INCLUDING
13 THAT IMPOSED FOR THE RELATED OR UNDERLYING CRIME.

14 3. ANY SUCH NON-CONCURRENT TERM REQUIRED TO BE IMPOSED PURSUANT TO
15 THIS SECTION SHALL, HOWEVER, NOT BE IMPOSED IF:

16 (A) THE DEFENDANT, WITHIN SIXTY DAYS OF THE DATE OF ARRAIGNMENT ON THE
17 INDICTMENT OR SUPERIOR COURT INFORMATION, WHICH SIXTY DAY PERIOD MAY BE
18 EXTENDED IN THE DISCRETION OF THE DISTRICT ATTORNEY, SHALL TRUTHFULLY TO
19 THE SATISFACTION OF THE COURT PROVIDE THE DISTRICT ATTORNEY WITH ALL THE
20 INFORMATION THE DEFENDANT HAS CONCERNING THE SOURCE OR SOURCES OF THE
21 LETHAL OR EXPLOSIVE DEVICE; AND

22 (B) THE USE OF SUCH LETHAL OR EXPLOSIVE DEVICE HAS NOT RESULTED IN
23 DEATH OR SERIOUS BODILY INJURY TO ANOTHER PERSON WHO WAS NOT A PARTIC-
24 IPANT IN THE OFFENSE.

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

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1 4. SO LONG AS THE STATEMENTS MADE BY THE DEFENDANT TO THE DISTRICT
2 ATTORNEY RELATING TO THE SOURCES OF THE LETHAL OR EXPLOSIVE DEVICE ARE
3 TRUTHFUL, THEN (A) NO STATEMENT SO MADE SHALL BE USED AS EVIDENCE
4 AGAINST THE DEFENDANT IN ANY CRIMINAL PROCEEDINGS EXCEPT THAT THE
5 DISTRICT ATTORNEY MAY USE SUCH STATEMENTS FOR THE PURPOSE OF CROSS-EXA-
6 MINATION, IMPEACHMENT AND REBUTTAL SHOULD THE DEFENDANT EVER OFFER
7 CONTRARY EVIDENCE, AND (B) THE DISTRICT ATTORNEY MAY USE AS EVIDENCE
8 AGAINST THE DEFENDANT ANY INDEPENDENT EVIDENCE WHICH MAY BE DERIVED
9 THROUGH AN INVESTIGATION INTO THE INFORMATION SO PROFFERED BY THE
10 DEFENDANT. AT ANY HEARING ON THE ISSUE OF WHETHER THE DEFENDANT'S STATE-
11 MENTS ARE TRUTHFUL, THE PEOPLE SHALL BEAR THE BURDEN OF SHOWING THAT THE
12 STATEMENTS ARE NOT TRUTHFUL BY PROOF BEYOND A REASONABLE DOUBT.

13 5. THE TERM "LETHAL DEVICE" SHALL MEAN (A) A MACHINE GUN, (B) A PISTOL
14 OR REVOLVER, (C) EITHER A SHOTGUN, RIFLE OR ASSAULT WEAPON OF ANY LENGTH
15 OR ANY OBJECT MADE THEREFROM BY ALTERATION, MODIFICATION OR OTHERWISE,
16 (D) AN ELECTRONIC DART GUN, AND (E) AN ELECTRONIC STUN GUN. "EXPLOSIVE
17 DEVICE" SHALL MEAN ANY EXPLOSIVE, INCENDIARY OR POISON GAS (A) BOMB, (B)
18 GRENADE, (C) ROCKET HAVING A PROPELLANT CHARGE OF MORE THAN FOUR OUNCES,
19 (D) MISSILE HAVING AN EXPLOSIVE OR INCENDIARY CHARGE OF MORE THAN
20 ONE-QUARTER OUNCE, (E) MINE OR (F) ANY DEVICE SIMILAR TO ANY OF THE
21 DEVICES DESCRIBED IN THIS PARAGRAPH. "EXPLOSIVE" SHALL MEAN ANY CHEMICAL
22 COMPOUND MIXTURE OR DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO FUNCTION
23 BY EXPLOSION.

24 S 2. This act shall take effect on the first of November next succeed-
25 ing the date on which it shall have become a law.