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

4431

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. ESPAILLAT -- Multi-Sponsored by -- M. of A. ALFANO -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the sentence of imprisonment to be imposed for criminal possession of a firearm in the fourth degree in certain cases

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

Section 1. Subdivision 1 of section 70.15 of the penal law, as amended by chapter 291 of the laws of 1993, is amended to read as follows:

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record:

(A) that such sentence would be unduly harsh [and],

(B) that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime, AND

(C) THAT THE DEFENDANT HAS FULLY COOPERATED WITH LAW ENFORCEMENT OFFICERS OR PROSECUTORS INVESTIGATING OR PROSECUTING UNLAWFUL GUN TRAFFICKING AND HAVING REQUESTED SUCH COOPERATION FROM THE DEFENDANT; SUCH A

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

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FINDING SHALL NOT BE MADE IN THE ABSENCE OF A CERTIFICATION FROM THE DISTRICT ATTORNEY EITHER THAT NO SUCH COOPERATION HAS BEEN REQUESTED OR THAT SUCH COOPERATION HAS BEEN REQUESTED AND HAS BEEN FULLY PROVIDED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.