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

5382

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. KOON, ENGLEBRIGHT, PHEFFER, CUSICK -- Multi-Sponsored by -- M. of A. CARROZZA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the Police Officer Safety Act

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

Section 1. This act shall be known as and may be cited as the "Police Officer Safety Act".

S 2. Paragraphs (c) and (d) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 7 of the laws of 2007, are 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, 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, 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

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

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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.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven [or], eight, NINE OR TEN of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

S 3. Section 70.02 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, EXCEPT SECTION 70.08, THE SENTENCE IMPOSED UPON A PERSON WHO STANDS CONVICTED OF THE CLASS B VIOLENT FELONY OFFENSE OF AGGRAVATED ASSAULT UPON A POLICE OFFICER OR A PEACE OFFICER, AS DEFINED IN SECTION 120.11, MUST BE A DETERMINATE SENTENCE OF IMPRISONMENT THE TERM OF WHICH MUST BE AT LEAST TWENTY YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS.

S 4. Subdivision 2 of section 70.25 of the penal law, as amended by chapter 56 of the laws of 1984, is amended to read as follows:

2. When more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences, except if one or more of such sentences is for a violation of SUBDIVISION NINE OR TEN OF SECTION 265.02 OR section 270.20 of this chapter, must run concurrently.

S 5. Subdivision 18 of section 265.00 of the penal law, as added by chapter 646 of the laws of 1986, is amended to read as follows:

18. "Armor piercing ammunition" means any ammunition [capable of being used in pistols or revolvers] containing a projectile or projectile core[, or a projectile or projectile core for use in such ammunition, that is] constructed entirely (excluding the presence of traces of other substances) from one or a combination of any of the following: tungsten alloys, steel, iron, brass, bronze, beryllium copper, [or] uranium, CERAMICS, OR POLYMER PLASTICS AND CAPABLE OF BEING USED IN PISTOLS AND REVOLVERS.

S 6. Section 265.00 of the penal law is amended by adding two new subdivisions 24 and 25 to read as follows:

24. "FRANGIBLE AMMUNITION" MEANS ANY AMMUNITION WITH A PROJECTILE OR PROJECTILE CORE COMPOSED OF HYBRID MATERIALS, EITHER PRESSED TOGETHER AT HIGH PRESSURE OR GLUED TOGETHER WITH ADHESIVES, WHICH IS CAPABLE OF BEING USED IN PISTOLS OR REVOLVERS AND IS DESIGNED TO FRACTURE OR DISINTEGRATE UPON IMPACT.

25. "DEVASTATOR AMMUNITION" MEANS ANY AMMUNITION WITH A PROJECTILE OR PROJECTILE CORE WHICH IS CAPABLE OF BEING USED IN PISTOLS OR REVOLVERS AND DESIGNED TO EXPLODE OR DETONATE UPON IMPACT.

S 7. Subdivisions 7 and 8 of section 265.01 of the penal law, subdivision 7 as added by chapter 807 of the laws of 1981 and subdivision 8 as

added by chapter 646 of the laws of 1986, are amended to read as follows:

(7) He [knowingly] OR SHE possesses [a bullet containing an explosive substance designed to detonate upon impact] ANY DEVASTATOR AMMUNITION.

(8) He OR SHE possesses any armor piercing ammunition [with intent to use the same unlawfully against another] OR FRANGIBLE AMMUNITION.

S 8. Subdivision 8 of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended and two new subdivisions 9 and 10 are added to read as follows:

(8) Such person possesses a large capacity ammunition feeding device[.]; OR

(9) SUCH PERSON KNOWINGLY POSSESSES ANY DEVASTATOR AMMUNITION WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER PERSON OR HIS OR HER PROPERTY; OR

(10) SUCH PERSON KNOWINGLY POSSESSES ANY ARMOR PIERCING AMMUNITION OR FRANGIBLE AMMUNITION WITH INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER.

S 9. Subdivisions 1 and 2 of section 265.10 of the penal law, as amended by chapter 257 of the laws of 2008, are amended to read as follows:

1. Any person who manufactures or causes to be manufactured any machine-gun, assault weapon, large capacity ammunition feeding device or disguised gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any DEVASTATOR AMMUNITION, FRANGIBLE AMMUNITION, switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot is guilty of a class A misdemeanor. ANY PERSON WHO MANUFACTURES OR CAUSES TO BE MANUFACTURED ANY ARMOR PIERCING AMMUNITION IS GUILTY OF A CLASS E FELONY.

2. Any person who transports or ships any machine-gun, firearm silencer, assault weapon or large capacity ammunition feeding device or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, DEVASTATOR AMMUNITION, FRANGIBLE AMMUNITION, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor. ANY PERSON WHO TRANSPORTS OR SHIPS AS MERCHANDISE ANY ARMOR PIERCING AMMUNITION IS GUILTY OF A CLASS E FELONY.

S 10. Paragraph 2 of subdivision a of section 265.20 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

2. Possession of a machine-gun, large capacity ammunition feeding device, firearm, DEVASTATOR AMMUNITION, FRANGIBLE AMMUNITION, switchblade knife, gravity knife, pilum ballistic knife, billy [or], blackjack, OR ANY ARMOR PIERCING AMMUNITION by a warden, superintendent, headkeeper or deputy of a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or detained as witnesses in criminal cases, in pursuit of official duty or when duly authorized by regulation or order to possess the same.

S 11. Paragraph 8 of subdivision a of section 265.20 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

8. The manufacturer of machine-guns, assault weapons, large capacity ammunition feeding devices, disguised guns, DEVASTATOR AMMUNITION, FRANGIBLE AMMUNITION, pilum ballistic knives, switchblade or gravity knives, billies [or], blackjacks, OR ARMOR PIERCING AMMUNITION as merchandise and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States.

S 12. This act shall take effect on the one hundred eightieth day after it shall have become a law.