

7545

2011-2012 Regular Sessions

I N   A S S E M B L Y

May 10, 2011

---

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

AN ACT to amend the penal law, in relation to increasing penalties for criminal use of a firearm in the first degree when committing a drug related felony offense

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

1     Section 1. Section 265.09 of the penal law, as amended by chapter 650  
2     of the laws of 1996, is amended to read as follows:  
3     S 265.09 Criminal use of a firearm in the first degree.  
4     (1) A person is guilty of criminal use of a firearm in the first  
5     degree when he OR SHE commits any class B violent felony offense as  
6     defined in paragraph (a) of subdivision one of section 70.02 OR COMMITS  
7     ANY DRUG RELATED FELONY OFFENSE AS DEFINED IN SECTIONS 220.31, 220.34,  
8     220.39, 220.41, 220.43, 220.44 AND 220.48 OF THIS CHAPTER and he OR SHE  
9     either:  
10    (a) possesses a deadly weapon, if the weapon is a loaded OR UNLOADED  
11    weapon from which a shot, readily capable of producing death or other  
12    serious injury may be discharged; or  
13    (b) displays what appears to be a pistol, revolver, rifle, shotgun,  
14    machine gun or other firearm.  
15    Criminal use of a firearm in the first degree is a class B felony.  
16    (2) Sentencing. (A) Notwithstanding any other provision of law to the  
17    contrary, when a person is convicted of criminal use of a firearm in the  
18    first degree as defined in subdivision one of this section, the court  
19    shall impose an additional consecutive sentence of [five] TEN years to  
20    the minimum term of an indeterminate sentence imposed on the underlying  
21    class B violent felony offense OR DRUG RELATED FELONY OFFENSE where the  
22    person convicted of such crime displays a loaded OR UNLOADED weapon from  
23    which a shot, readily capable of producing death or other serious injury  
24    may be discharged OR DISPLAYS WHAT APPEARS TO BE A PISTOL, REVOLVER,

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

LBD11088-01-1

1 RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM, in furtherance of the  
2 commission of such crime[, provided, however, that such additional  
3 sentence shall not be imposed if the court, having regard to the nature  
4 and circumstances of the crime and to the history and character of the  
5 defendant, finds on the record that such additional consecutive sentence  
6 would be unduly harsh and that not imposing such sentence would be  
7 consistent with the public safety and would not deprecate the serious-  
8 ness of the crime]. THE ADDITIONAL SENTENCE SHALL BE IMPOSED BY THE  
9 COURT REGARDLESS OF THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE  
10 HISTORY AND CHARACTER OF THE DEFENDANT. THE DISTRICT ATTORNEY OF ANY  
11 JURISDICTION SHALL BE PROHIBITED FROM DISMISSING THIS OFFENSE IN THE  
12 COURSE OF A PLEA BARGAIN.

13 (B) Notwithstanding any other provision of law to the contrary, the  
14 aggregate of the [five] TEN year consecutive term imposed pursuant to  
15 this subdivision and the minimum term of the indeterminate sentence  
16 imposed on the underlying class B violent felony OR DRUG RELATED FELONY  
17 OFFENSE shall constitute the new aggregate minimum term of imprisonment,  
18 and a person subject to such term shall be required to serve the entire  
19 aggregate minimum term and shall not be eligible for release on parole  
20 or conditional release during such term. This subdivision shall [not]  
21 apply where the defendant's criminal liability for displaying a loaded  
22 OR UNLOADED weapon from which a shot, readily capable of producing death  
23 or other serious injury may be discharged, OR DISPLAYS WHAT APPEARS TO  
24 BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM, in  
25 furtherance of the commission of crime is based on the conduct of another  
26 pursuant to section 20.00 of [the penal law] THIS CHAPTER.

27 S 2. This act shall take effect on the one hundred eightieth day after  
28 it shall have become a law.