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

1714

2011-2012 Regular Sessions

I N S E N A T E

January 11, 2011

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to criminal possession of a weapon; to amend the penal law and the executive law, in relation to the possession of a firearm while under the influence of alcohol or drugs; to amend the penal law, in relation to increasing penalties for the criminal sale of firearms; to amend the civil practice law and rules, in relation to forfeiture money; and to repeal certain provisions of the penal law relating thereto

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

Section 1. Subdivisions 7 and 8 of section 265.01 of the penal law are REPEALED.

S 2. 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 A BULLET CONTAINING AN EXPLOSIVE SUBSTANCE DESIGNED TO DETONATE UPON IMPACT; OR

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

S 3. Subdivision 1 of section 400.00 of the penal law, as amended by chapter 189 of the laws of 2000, is amended to read as follows:

1. Eligibility. No license shall be issued or renewed pursuant to this section except by the licensing officer, and then only after investigation and finding that all statements in a proper application for a license are true. No license shall be issued or renewed except for an applicant (a) twenty-one years of age or older, provided, however, that where such applicant has been honorably discharged from the United States army, navy, marine corps, air force or coast guard, or the

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

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national guard of the state of New York, no such age restriction shall apply; (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense; (d) who has stated whether he or she has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; (e) who has not had a license revoked or who is not under a suspension or ineligibility order issued pursuant to the provisions of SUBDIVISION ELEVEN-A OF THIS SECTION, section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act; (f) in the county of Westchester, who has successfully completed a firearms safety course and test as evidenced by a certificate of completion issued in his or her name and endorsed and affirmed under the penalties of perjury by a duly authorized instructor, except that: (i) persons who are honorably discharged from the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York, and produce evidence of official qualification in firearms during the term of service are not required to have completed those hours of a firearms safety course pertaining to the safe use, carrying, possession, maintenance and storage of a firearm; and (ii) persons who were licensed to possess a pistol or revolver prior to the effective date of this paragraph are not required to have completed a firearms safety course and test; and (g) concerning whom no good cause exists for the denial of the license. No person shall engage in the business of gunsmith or dealer in firearms unless licensed pursuant to this section. An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city or county where the license is issued. For such business, if the applicant is a firm or partnership, each member thereof shall comply with all of the requirements set forth in this subdivision and if the applicant is a corporation, each officer thereof shall so comply.

S 4. Subdivision 11 of section 400.00 of the penal law, as amended by chapter 210 of the laws of 1999, is amended to read as follows:

11. License: revocation and suspension. The conviction of a licensee anywhere of a felony or serious offense shall operate as a revocation of the license. A license may be revoked or suspended as provided for in section 530.14 of the criminal procedure law or section eight hundred forty-two-a of the family court act. Except for a license issued pursuant to section 400.01 of this article, a license may be revoked and cancelled at any time in the city of New York, and in the counties of Nassau and Suffolk, by the licensing officer, and elsewhere than in the city of New York by any judge or justice of a court of record; a license issued pursuant to section 400.01 of this article may be revoked and cancelled at any time by the licensing officer or any judge or justice of a court of record. The official revoking a license shall give written notice thereof without unnecessary delay to the executive department, division of state police, Albany, and shall also notify immediately the duly constituted police authorities of the locality. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "SERIOUS OFFENSE" SHALL INCLUDE, BUT NOT BE LIMITED TO, A SECOND VIOLATION OF SUBDIVISION ELEVEN-A OF THIS SECTION WITHIN TEN YEARS OF A PRIOR VIOLATION OF SUCH SUBDIVISION.

S 5. Section 400.00 of the penal law is amended by adding a new subdivision 11-a to read as follows:

11-A. LICENSE; SUSPENSION FOR POSSESSION WHILE UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE. (A) NO LICENSEE SHALL POSSESS ANY LOADED FIREARM, AS DEFINED IN SUBDIVISION FIFTEEN OF SECTION 265.00 OF THIS CHAPTER, ON HIS OR HER PERSON IN A PUBLIC PLACE WHILE SUCH LICENSEE

IS EITHER UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE, AS DEFINED IN SECTIONS THIRTY-THREE HUNDRED TWO AND THIRTY-THREE HUNDRED SIX OF THE PUBLIC HEALTH LAW. FOR PURPOSES OF THIS SUBDIVISION, A PERSON IS CONSIDERED TO BE UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE WHERE SUCH PERSON HAS VOLUNTARILY CONSUMED ALCOHOL OR VOLUNTARILY USED ONE OR MORE CONTROLLED SUBSTANCES, OR BOTH, TO THE EXTENT THAT HIS OR HER ABILITY TO SAFELY HANDLE OR USE A LOADED FIREARM HAS BEEN SIGNIFICANTLY DIMINISHED. FOR PURPOSES OF THIS SUBDIVISION, "PUBLIC PLACE" SHALL HAVE THE SAME MEANING AS IN SUBDIVISION ONE OF SECTION 240.00 OF THIS CHAPTER, PROVIDED HOWEVER, THAT FOR PURPOSES OF THIS SUBDIVISION, "PUBLIC PLACE" SHALL ALSO INCLUDE THE INTERIOR OF A MOTOR VEHICLE. AS USED IN THIS SUBDIVISION, "ON HIS OR HER PERSON" SHALL HAVE ITS ORDINARY MEANING, PROVIDED, HOWEVER, THAT FOR PURPOSES OF THIS SUBDIVISION, A PERSON SHALL ALSO BE DEEMED TO POSSESS A FIREARM "ON HIS OR HER PERSON" WHERE A FIREARM LICENSED TO SUCH PERSON IS FOUND IN A MOTOR VEHICLE AT THE SAME TIME SUCH PERSON IS AN OCCUPANT OF SUCH VEHICLE.

(B) THE LICENSE TO CARRY OR POSSESS A FIREARM OF ANY PERSON WHO IS CHARGED WITH A VIOLATION OF ANY OF THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION OR WHO REFUSES TO SUBMIT TO A CHEMICAL TEST OF HIS OR HER BREATH, BLOOD, URINE OR SALIVA FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT OF HIS OR HER BLOOD SHALL BE DEEMED SUSPENDED, WITH RESPECT TO THE FIREARM OR FIREARMS FORMING THE BASIS OF SUCH CHARGE OR REFUSAL, PENDING A HEARING HELD PURSUANT TO THIS SUBDIVISION AND SUCH FIREARM OR FIREARMS, TOGETHER WITH ANY AMMUNITION POSSESSED THEREWITH, SHALL BE CONFISCATED AND HELD BY THE POLICE PENDING SUCH HEARING.

(C) (I) ANY PERSON WHO HOLDS A LICENSE TO CARRY OR POSSESS A FIREARM IN THIS STATE SHALL BE DEEMED TO HAVE GIVEN HIS OR HER CONSENT TO A CHEMICAL TEST OF HIS OR HER BREATH, BLOOD, URINE OR SALIVA FOR THE PURPOSE OF DETERMINING THE ALCOHOLIC AND/OR DRUG CONTENT OF HIS OR HER BLOOD; PROVIDED, THAT SUCH TEST IS ADMINISTERED BY OR AT THE DIRECTION OF A POLICE OFFICER WITH RESPECT TO A CHEMICAL TEST OF BREATH, URINE OR SALIVA OR, WITH RESPECT TO A CHEMICAL TEST OF BLOOD, AT THE DIRECTION OF A POLICE OFFICER HAVING REASONABLE GROUNDS TO BELIEVE SUCH PERSON POSSESSES A FIREARM IN VIOLATION OF THIS SUBDIVISION.

(II) IF SUCH LICENSEE, HAVING BEEN REQUESTED TO SUBMIT TO SUCH CHEMICAL TEST AND HAVING BEEN INFORMED THAT HIS OR HER LICENSE TO CARRY OR POSSESS A FIREARM SHALL BE SUSPENDED FOR A REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST, REFUSES TO SUBMIT TO SUCH TEST OR IS ADMINISTERED SUCH TEST, A WRITTEN REPORT OF SUCH REFUSAL OR TEST RESULT SHALL BE IMMEDIATELY MADE BY THE POLICE OFFICER BEFORE WHOM SUCH REFUSAL OR TEST WAS MADE. SUCH REPORT MAY BE VERIFIED BY HAVING THE REPORT SWORN TO, OR AFFIXING TO SUCH REPORT A FORM NOTICE THAT FALSE STATEMENTS MADE THEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR, PURSUANT TO SECTION 210.45 OF THIS CHAPTER, AND SUCH FORM NOTICE TOGETHER WITH THE SUBSCRIPTION OF THE DEPONENT SHALL CONSTITUTE A VERIFICATION OF THE REPORT. THE REPORT OF THE POLICE OFFICER SHALL STATE THAT HE OR SHE HAD REASONABLE GROUNDS TO BELIEVE SUCH LICENSEE TO HAVE BEEN IN VIOLATION OF THIS SUBDIVISION AND, IF APPROPRIATE, THAT SAID PERSON HAD REFUSED TO SUBMIT TO SUCH CHEMICAL TEST. COPIES OF SUCH REPORT SHALL BE FORWARDED BY THE POLICE OFFICER TO THE LICENSING OFFICER WITHIN FORTY-EIGHT HOURS.

(D) (I) ANY LICENSEE WHOSE LICENSE TO CARRY OR POSSESS A FIREARM HAS BEEN DEEMED SUSPENDED PURSUANT TO THE TERMS OF THIS SUBDIVISION, IS ENTITLED TO A HEARING BY THE LICENSING OFFICER, NO LATER THAN SEVEN DAYS AFTER THE DATE ON WHICH HE OR SHE ALLEGEDLY VIOLATED THIS SUBDIVISION.

SUCH HEARING SHALL BE CONDUCTED BY THE LICENSING OFFICER, OR IF SUCH POSSESSION ALLEGEDLY OCCURRED IN THE CITY OF NEW YORK, BY THE POLICE COMMISSIONER OF SUCH CITY. IF THE LICENSING OFFICER FAILS TO PROVIDE FOR SUCH HEARING WITHIN THE TIME PRESCRIBED HEREIN, THE LICENSE OF SUCH PERSON SHALL BE REINSTATED PENDING A HEARING PURSUANT TO THIS SUBDIVISION AND ANY LAWFULLY POSSESSED FIREARM AND AMMUNITION CONFISCATED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE IMMEDIATELY RETURNED TO THE LICENSEE. THE BURDEN OF PROOF AT A HEARING CONDUCTED PURSUANT TO THIS SUBDIVISION SHALL BE ON THE POLICE OFFICER TO PROVE THE ISSUES BY A PREPONDERANCE OF THE EVIDENCE. THE HEARING SHALL BE LIMITED TO THE FOLLOWING ISSUES: (1) DID THE PERSON POSSESS A LOADED FIREARM ON HIS OR HER PERSON IN A PUBLIC PLACE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IN VIOLATION OF THIS SUBDIVISION AND DID THE POLICE OFFICER HAVE REASONABLE GROUNDS FOR BELIEVING SUCH VIOLATION HAD OCCURRED; AND (2) IF SUSPENSION IS BASED UPON A REFUSAL TO SUBMIT TO A CHEMICAL TEST, DID THE POLICE OFFICER HAVE REASONABLE GROUNDS FOR BELIEVING THE LICENSEE POSSESSED A FIREARM IN VIOLATION OF THIS SUBDIVISION, WAS SUCH PERSON GIVEN SUFFICIENT WARNING, IN CLEAR AND UNEQUIVOCAL LANGUAGE, PRIOR TO SUCH REFUSAL THAT SUCH REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST WOULD RESULT IN THE SUSPENSION OF HIS OR HER LICENSE WHETHER OR NOT HE OR SHE IS FOUND GUILTY OF THE CHARGE AND DID SUCH PERSON REFUSE TO SUBMIT TO SUCH CHEMICAL TEST. IF, AFTER SUCH HEARING, THE LICENSING OFFICER FINDS ON BOTH OF SAID ISSUES IN THE NEGATIVE, HE OR SHE SHALL IMMEDIATELY REINSTATE SUCH LICENSE SUBJECT TO ANY EXISTING RESTRICTION, REVOCATION, OR SUSPENSION OF SUCH LICENSE AND ANY LAWFULLY POSSESSED FIREARM AND AMMUNITION CONFISCATED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE IMMEDIATELY RETURNED TO THE LICENSEE. IF, AFTER SUCH HEARING, THE LICENSING OFFICER FINDS EITHER OF THE ISSUES IN THE AFFIRMATIVE, HE OR SHE SHALL IMMEDIATELY SUSPEND THE LICENSE. THE FIREARM LICENSE SHALL BE SUSPENDED FOR A PERIOD OF ONE YEAR. THE LICENSING OFFICER, UPON SUSPENDING A LICENSE, SHALL INSTRUCT THE PERSON THAT ALL OUTSTANDING FIREARMS HELD PURSUANT TO SUCH LICENSE, AND ANY AMENDMENTS THERETO, SHALL BE SURRENDERED TO THE DULY ENTITLED POLICE AUTHORITIES WITHIN TWENTY-FOUR HOURS OF THE CONCLUSION OF SUCH HEARING. THE LICENSING OFFICER SHALL INSTRUCT SUCH PERSON THAT ALL WEAPONS SURRENDERED PURSUANT TO THIS PARAGRAPH AND PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE RETURNED TO SUCH PERSON UPON THE REINSTATEMENT OF SUCH LICENSE. ANY PERSON MAY WAIVE HIS OR HER RIGHT TO A HEARING UNDER THIS PARAGRAPH. FAILURE BY SUCH PERSON TO APPEAR FOR HIS OR HER SCHEDULED HEARING SHALL CONSTITUTE A WAIVER OF SUCH HEARING, PROVIDED, HOWEVER, THAT SUCH PERSON MAY PETITION THE LICENSING OFFICER FOR A NEW HEARING WHICH, IF GRANTED, SHALL BE HELD AS SOON AS PRACTICABLE.

(II) EVIDENCE OF A REFUSAL TO SUBMIT TO SUCH CHEMICAL TEST SHALL BE ADMISSIBLE IN ANY HEARING HELD PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION BUT ONLY UPON SHOWING THAT THE PERSON WAS GIVEN SUFFICIENT WARNING, IN CLEAR AND UNEQUIVOCAL LANGUAGE, OF THE EFFECT OF SUCH REFUSAL.

(III) UPON THE REQUEST OF THE PERSON WHO WAS TESTED, THE RESULTS OF SUCH TEST SHALL BE MADE AVAILABLE TO HIM OR HER.

(IV) THE CHEMICAL TEST PROVIDED FOR IN SUBPARAGRAPH (I) OF PARAGRAPH (C) OF THIS SUBDIVISION SHALL BE CONDUCTED IN THE SAME MANNER AS PROVIDED IN SUBDIVISION FOUR OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THE VEHICLE AND TRAFFIC LAW.

(V) ANY PERSON WHOSE LICENSE IS SUSPENDED FOR A VIOLATION OF THIS SUBDIVISION SHALL, AS A CONDITION FOR REINSTATEMENT OF SUCH LICENSE, SUCCESSFULLY COMPLETE THE ALCOHOL AND DRUG REHABILITATION PROGRAM PROVIDED FOR IN SECTION EIGHT HUNDRED THIRTY-SEVEN-S OF THE EXECUTIVE

LAW. THE LICENSING OFFICER SHALL NOT REINSTATE SUCH LICENSE UNTIL THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES CERTIFIES SUCH PERSON HAS SUCCESSFULLY COMPLETED THE ALCOHOL AND DRUG REHABILITATION PROGRAM.

(VI) DURING THE PERIOD OF SUSPENSION PROVIDED FOR IN THIS PARAGRAPH SUCH PERSON SHALL NOT BE PERMITTED TO APPLY FOR ANY LICENSE, OR AN AMENDMENT TO AN EXISTING LICENSE, PROVIDED FOR IN THIS SECTION.

(E) THE LICENSING OFFICER SUSPENDING A LICENSE SHALL GIVE WRITTEN NOTICE THEREOF, WITHOUT UNNECESSARY DELAY, TO THE EXECUTIVE DEPARTMENT, DIVISION OF STATE POLICE, ALBANY, AND SHALL ALSO NOTIFY IMMEDIATELY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY.

(F) IN ANY HEARING PURSUANT TO THIS SUBDIVISION, THE LICENSING OFFICER SHALL ADMIT EVIDENCE OF THE AMOUNT OF ALCOHOL OR DRUGS IN THE PERSON'S BLOOD AS SHOWN BY A TEST ADMINISTERED PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

THE FOLLOWING EFFECT SHALL BE GIVEN TO EVIDENCE OF BLOOD-ALCOHOL CONTENT, AS DETERMINED BY SUCH TESTS, OF A PERSON CHARGED WITH A VIOLATION OF THIS SUBDIVISION:

(I) EVIDENCE THAT THERE WAS LESS THAN .10 OF ONE PER CENTUM BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT SUCH PERSON WAS NOT UNDER THE INFLUENCE OF ALCOHOL;

(II) EVIDENCE THAT THERE WAS .10 OF ONE PER CENTUM OR MORE BY WEIGHT OF ALCOHOL IN SUCH PERSON'S BLOOD SHALL BE PRIMA FACIE EVIDENCE THAT SUCH PERSON WAS UNDER THE INFLUENCE OF ALCOHOL.

(G) EXCEPT AS HEREIN SPECIFICALLY PROVIDED, THE HEARING CONDUCTED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED TO BE AN ADJUDICATORY PROCEEDING SUBJECT TO THE PROVISIONS OF ARTICLE THREE OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

(H) ANY PERSON AGGRIEVED BY A DECISION AFTER THE HEARING PROVIDED FOR IN THIS SUBDIVISION MAY APPEAL SUCH DECISION PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

(I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO PERSON SHALL BE ARRESTED SOLELY FOR AN ALLEGED VIOLATION OF THIS SUBDIVISION. HOWEVER, A PERSON FOR WHOM A CHEMICAL TEST IS AUTHORIZED PURSUANT TO THIS SUBDIVISION MAY BE TEMPORARILY DETAINED BY THE POLICE SOLELY FOR THE PURPOSE OF REQUESTING OR ADMINISTERING SUCH CHEMICAL TEST WHENEVER ARREST WITHOUT WARRANT FOR A PETTY OFFENSE WOULD BE AUTHORIZED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 140.10 OF THE CRIMINAL PROCEDURE LAW.

(J) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO IN ANY WAY REDUCE OR LIMIT THE EXISTING AUTHORITY OF A LICENSING OFFICER TO REVOKE OR SUSPEND A LICENSE ISSUED PURSUANT TO THIS SECTION. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO LIMIT, REDUCE OR IN ANY WAY EFFECT THE CRIMINAL LIABILITY OF A LICENSEE FOR ANY FIREARM OR OTHER OFFENSE DEFINED IN THIS CHAPTER OR ANY OTHER PROVISION OF LAW.

S 6. Subdivision 15 of section 400.00 of the penal law is amended to read as follows:

15. Any violation by any person of any provision of this section, OTHER THAN A VIOLATION OF PARAGRAPH (A) OF SUBDIVISION ELEVEN-A OF THIS SECTION, is a class A misdemeanor.

S 7. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. ALCOHOL AND DRUG REHABILITATION PROGRAM. 1. PROGRAM ESTABLISHMENT. THERE IS HEREBY ESTABLISHED AN ALCOHOL AND DRUG REHABILITATION PROGRAM WITHIN THE DIVISION. THE COMMISSIONER SHALL ESTABLISH, BY REGULATION, THE INSTRUCTIONAL AND REHABILITATIVE ASPECTS OF THE PROGRAM.

SUCH PROGRAM SHALL CONSIST OF AT LEAST FIFTEEN AND NOT MORE THAN THIRTY HOURS AND INCLUDE, BUT NEED NOT BE LIMITED TO, CLASSROOM INSTRUCTION IN AREAS DEEMED SUITABLE BY THE COMMISSIONER.

2. CURRICULUM. THE FORM, CONTENT AND METHOD OF PRESENTATION OF THE VARIOUS ASPECTS OF SUCH PROGRAM SHALL BE ESTABLISHED BY THE COMMISSIONER. IN THE DEVELOPMENT OF THE FORM, CURRICULUM AND CONTENT OF SUCH PROGRAM, THE COMMISSIONER MAY CONSULT WITH THE COMMISSIONER OF MENTAL HEALTH, THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AND ANY OTHER STATE DEPARTMENT OR AGENCY AND REQUEST AND RECEIVE ASSISTANCE FROM THEM. THE COMMISSIONER IS ALSO AUTHORIZED TO DEVELOP MORE THAN ONE CURRICULUM AND COURSE CONTENT FOR SUCH PROGRAM IN ORDER TO MEET THE VARYING REHABILITATIVE NEEDS OF THE PARTICIPANTS.

3. WHERE AVAILABLE. A COURSE IN SUCH PROGRAM SHALL BE AVAILABLE IN AT LEAST EVERY COUNTY IN THE STATE, EXCEPT WHERE THE COMMISSIONER DETERMINES THAT THERE IS NOT A SUFFICIENT NUMBER OF ALCOHOL OR DRUG-RELATED OFFENSES IN A COUNTY TO MANDATE THE ESTABLISHMENT OF SAID COURSE, AND THAT PROVISIONS BE MADE FOR THE RESIDENTS OF SAID COUNTY TO ATTEND A COURSE IN ANOTHER COUNTY WHERE A COURSE EXISTS.

4. ELIGIBILITY. PARTICIPATION IN THE PROGRAM SHALL BE LIMITED TO THOSE PERSONS HAVING VIOLATED THE PROVISIONS OF SUBDIVISION ELEVEN-A OF SECTION 400.00 OF THE PENAL LAW.

5. EFFECT OF COMPLETION. UPON SUCCESSFUL COMPLETION OF A COURSE IN SUCH PROGRAM AS CERTIFIED BY ITS ADMINISTRATOR, THE COMMISSIONER SHALL, ON A FORM PROVIDED FOR SUCH PURPOSE, NOTIFY THE APPROPRIATE LICENSING OFFICER HAVING ISSUED THE ORDER OF SUSPENSION OF SUCH LICENSEE'S SUCCESSFUL COMPLETION OF THE COURSE PROVIDED FOR IN THIS SECTION.

6. FEES. THE COMMISSIONER SHALL ESTABLISH A SCHEDULE OF FEES TO BE PAID BY OR ON BEHALF OF EACH PARTICIPANT IN THE PROGRAM, AND MAY, FROM TIME TO TIME, MODIFY SAME. SUCH FEES SHALL DEFRAY THE ONGOING EXPENSES OF THE PROGRAM, PROVIDED, HOWEVER, THAT PURSUANT TO AN AGREEMENT WITH THE DIVISION A MUNICIPALITY, DEPARTMENT THEREOF, OR OTHER AGENCY MAY CONDUCT A COURSE IN SUCH PROGRAM WITH ALL OR PART OF THE EXPENSE OF SUCH COURSE AND PROGRAM BEING BORNE BY SUCH MUNICIPALITY, DEPARTMENT OR AGENCY. IN NO EVENT SHALL SUCH FEE BE REFUNDABLE, EITHER FOR REASONS OF THE PARTICIPANT'S WITHDRAWAL OR EXPULSION FROM SUCH PROGRAM OR OTHERWISE.

S 8. The closing paragraph of section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the first degree is a class [B] A felony.

S 9. The closing paragraph of section 265.12 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the second degree is a class [C] B felony.

S 10. Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the

first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the [first] SECOND degree as defined in section [265.13] 265.12, CRIMINAL SALE OF A FIREARM WITH THE AID OF A MINOR AS DEFINED IN SECTION 265.14, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

S 11. The closing paragraph of section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal sale of a firearm in the third degree is a class [D] C felony.

S 12. Paragraph (b) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 405 of the laws of 2010, is 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) of this subdivision; 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 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, strangulation in the first degree as defined in section 121.13, 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] THIRD degree as defined in section [265.12] 265.11, [criminal sale of a firearm with the aid of a minor as defined in section 265.14] CRIMINAL SALE OF A FIREARM TO A MINOR AS DEFINED IN SECTION 265.16, 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.

S 13. The closing paragraph of section 265.16 of the penal law, as amended by chapter 654 of the laws of 1998, is amended to read as follows:

Criminal sale of a firearm to a minor is a class [C] B felony.

S 14. The closing paragraph of section 265.14 of the penal law, as amended by chapter 654 of the laws of 1998, is amended to read as follows:

Criminal sale of a firearm with the aid of a minor is a class [C] B felony.

S 15. Subparagraph (i) of paragraph (h) of subdivision 2 of section 1349 of the civil practice law and rules, as added by chapter 655 of the laws of 1990, is amended to read as follows:

(i) [seventy-five] SIXTY-FIVE percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses; AND TEN PERCENT OF SUCH MONIES SHALL BE ALLOCATED TO THE POLICE ATHLETIC LEAGUE OF THE POLITICAL SUBDIVISION OR PUBLIC AUTHORITY OF WHICH THE CLAIMING AGENT IS A PART;

S 16. Paragraph (b) of subdivision 3 of section 70.02 of the penal law, as amended by chapter 765 of the laws of 2005, is amended to read as follows:

(b) For a class C felony, the term must be at least three and one-half years and must not exceed fifteen years, provided, however, that the term must be: (i) at least seven years and must not exceed twenty years where the sentence is for the crime of aggravated manslaughter in the second degree as defined in section 125.21 of this chapter; (ii) at least seven years and must not exceed twenty years where the sentence is for the crime of attempted aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; [and] (iii) at least three and one-half years and must not exceed twenty years where the sentence is for the crime of aggravated criminally negligent homicide as defined in section 125.11 of this chapter; AND (IV) AT LEAST TEN YEARS AND MUST NOT EXCEED TWENTY YEARS WHERE THE SENTENCE IS FOR A CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AS DEFINED IN SECTION 265.03 OF THIS CHAPTER;

S 17. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.