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

2282

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

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

AN ACT to amend the penal law and the criminal procedure law, in relation to offenses involving the criminal possession of a firearm, rifle, shotgun, or machine-gun and increasing the penalties therefor, restricting the ability to plea to lesser offenses, and providing for mandatory minimum sentences of imprisonment

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

Section 1. The penal law is amended by adding three new sections 265.45, 265.50 and 265.55 to read as follows:

S 265.45 CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE THIRD DEGREE.

A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE THIRD DEGREE WHEN, IN THE COURSE OF COMMITTING ANY CRIME OR ATTEMPTING TO COMMIT ANY SUCH CRIME, OR IN THE COURSE AND FURTHERANCE OF IMMEDIATE FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT ANY CRIME, HE OR SHE POSSESSES A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN.

CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE THIRD DEGREE IS A CLASS C FELONY.

S 265.50 CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE SECOND DEGREE.

A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE SECOND DEGREE WHEN, IN THE COURSE OF COMMITTING ANY CRIME OR ATTEMPTING TO COMMIT ANY SUCH CRIME, OR IN THE COURSE OF FURTHERANCE OF IMMEDIATE FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT ANY CRIME, HE OR SHE POSSESSES A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN AND CAUSES PHYSICAL INJURY TO ANOTHER PERSON.

CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE SECOND DEGREE IS A CLASS B FELONY.

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

LBD07048-01-1

S 265.55 CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE.

A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE WHEN, IN THE COURSE OF COMMITTING ANY CRIME OR ATTEMPTING TO COMMIT ANY SUCH CRIME, OR IN THE COURSE AND FURTHERANCE OF IMMEDIATE FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT ANY CRIME, HE OR SHE POSSESSES A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN AND CAUSES THE DEATH OF ANOTHER PERSON.

CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE IS A CLASS A-II FELONY.

S 2. The penal law is amended by adding a new section 70.16 to read as follows:

S 70.16 ADDITIONAL TERM OF IMPRISONMENT FOR CRIMES INVOLVING THE CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN.

NOTWITHSTANDING ANY INCONSISTENT PROVISIONS OF SECTION 70.25 OF THIS ARTICLE, ANY PERSON WHO IS FOUND GUILTY OF OR PLEADS GUILTY TO:

1. CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE THIRD DEGREE AS DEFINED IN SECTION 265.45 OF THIS CHAPTER SHALL, IN LIEU OF THE PENALTY PRESCRIBED BY ANY OTHER PROVISION OF LAW, BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN TEN YEARS;

2. CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE SECOND DEGREE AS DEFINED IN SECTION 265.50 OF THIS CHAPTER SHALL, IN LIEU OF THE PENALTY PRESCRIBED BY ANY OTHER PROVISION OF LAW, BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN FIFTEEN YEARS; AND

3. CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE AS DEFINED IN SECTION 265.55 OF THIS CHAPTER SHALL IN LIEU OF THE PENALTY PRESCRIBED BY ANY OTHER PROVISION OF LAW, BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN TWENTY-FIVE YEARS.

S 3. The opening paragraph of subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981, is amended to read as follows:

Except as provided in subdivisions two, two-a [and], five, AND SIX of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

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 section 265.45, 265.50, 265.55, OR 270.20 of this chapter, must run concurrently.

S 5. Section 70.25 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. WHEN A PERSON IS CONVICTED OF CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE THIRD DEGREE AS DEFINED IN SECTION 265.45 OF THIS CHAPTER, OR CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE SECOND DEGREE AS DEFINED IN SECTION

265.50 OF THIS CHAPTER, OR CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE AS DEFINED IN SECTION 265.55 OF THIS CHAPTER AND ANY OTHER CRIME, THE SENTENCES FOR SUCH CRIMES SHALL RUN CONSECUTIVELY.

S 6. Paragraph (a) of subdivision 5 of section 220.10 of the criminal procedure law is amended by adding a new subparagraph (ii) to read as follows:

(II) WHERE THE INDICTMENT CHARGES THE CLASS A-II FELONY OF CRIMINAL POSSESSION OF A FIREARM, RIFLE, SHOTGUN, OR MACHINE-GUN IN THE FIRST DEGREE AS DEFINED IN SECTION 265.55 OF THE PENAL LAW, THEN ANY PLEA OF GUILTY ENTERED PURSUANT TO SUBDIVISION THREE OR FOUR OF THIS SECTION MUST BE OR MUST INCLUDE AT LEAST A PLEA OF GUILTY TO A CLASS A-II FELONY.

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.