

7839

I N S E N A T E

August 17, 2012

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

AN ACT to amend the penal law, in relation to community guns and the criminal sale of a firearm in the first and third degrees

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

1 Section 1. Section 115.00 of the penal law, as amended by chapter 422
2 of the laws of 1978, is amended to read as follows:
3 S 115.00 Criminal facilitation in the fourth degree.
4 A person is guilty of criminal facilitation in the fourth degree
5 when[,]:
6 1. believing it probable that he OR SHE is rendering aid:
7 [1.] A. to a person who intends to commit a crime, he OR SHE engages
8 in conduct which provides such person with means or opportunity for the
9 commission thereof and which in fact aids such person to commit a felo-
10 ny; or
11 [2.] B. to a person under sixteen years of age who intends to engage
12 in conduct which would constitute a crime, he OR SHE, being over eigh-
13 teen years of age, engages in conduct which provides such person with
14 means or opportunity for the commission thereof and which in fact aids
15 such person to commit a crime; OR
16 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO
17 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR
18 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,
19 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A FELONY, INCLUD-
20 ING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED
21 SIXTY-FIVE OF THIS PART; OR
22 3. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
23 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
24 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR
25 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
26 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING,
27 BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE
28 OF THIS PART.
29 Criminal facilitation in the fourth degree is a class A misdemeanor.
30 S 2. Section 115.01 of the penal law, as added by chapter 422 of the
31 laws of 1978, is amended to read as follows:

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

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1 S 115.01 Criminal facilitation in the third degree.

2 A person IS guilty of criminal facilitation in the third degree, when:

3 1. believing it probable that he OR SHE is rendering aid to a person
4 under sixteen years of age who intends to engage in conduct that would
5 constitute a felony, he OR SHE, being over eighteen years of age,
6 engages in conduct which provides such person with means or opportunity
7 for the commission thereof and which in fact aids such person to commit
8 a felony; OR

9 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
10 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
11 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR
12 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
13 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A FELONY, INCLUDING,
14 BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE
15 OF THIS PART.

16 Criminal facilitation in the third degree is a class E felony.

17 S 3. Section 115.05 of the penal law, as amended by chapter 422 of the
18 laws of 1978, is amended to read as follows:

19 S 115.05 Criminal facilitation in the second degree.

20 A person is guilty of criminal facilitation in the second degree
21 when[,]:

22 1. believing it probable that he OR SHE is rendering aid to a person
23 who intends to commit a class A felony, he OR SHE engages in conduct
24 which provides such person with means or opportunity for the commission
25 thereof and which in fact aids such person to commit such class A
26 felony; OR

27 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO
28 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR
29 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,
30 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A CLASS A FELONY.

31 Criminal facilitation in the second degree is a class C felony.

32 S 4. Section 115.08 of the penal law, as added by chapter 422 of the
33 laws of 1978, is amended to read as follows:

34 S 115.08 Criminal facilitation in the first degree.

35 A person is guilty of criminal facilitation in the first degree
36 when[,]:

37 1. believing it probable that he OR SHE is rendering aid to a person
38 under sixteen years of age who intends to engage in conduct that would
39 constitute a class A felony, he OR SHE, being over eighteen years of
40 age, engages in conduct which provides such person with means or oppor-
41 tunity for the commission thereof and which in fact aids such person to
42 commit such a class A felony; OR

43 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
44 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
45 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR
46 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
47 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CLASS A FELONY.

48 Criminal facilitation in the first degree is a class B felony.

49 S 5. Section 115.15 of the penal law is amended to read as follows:

50 S 115.15 Criminal facilitation; corroboration.

51 A person shall not be convicted of criminal facilitation upon the
52 testimony of a person who has committed the felony charged to have been
53 facilitated unless such testimony be corroborated by such other evidence
54 as tends to connect the defendant with such facilitation; PROVIDED THAT
55 THIS SECTION SHALL NOT APPLY TO A CONVICTION OF CRIMINAL FACILITATION

FOR SHARING, MAKING AVAILABLE, SELLING, EXCHANGING, GIVING OR DISPOSING OF A COMMUNITY GUN, OR ASSISTING ANY PERSON IN SUCH ACTIVITY.

S 6. The penal law is amended by adding a new section 115.20 to read as follows:

S 115.20 CRIMINAL FACILITATION; DEFINITIONS AND CONSTRUCTION.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "COMMUNITY GUN" SHALL MEAN A FIREARM THAT IS SHARED, MADE AVAILABLE, SOLD, EXCHANGED, GIVEN OR DISPOSED OF AMONG OR BETWEEN TWO OR MORE PERSONS, AT LEAST ONE OF WHOM IS NOT AUTHORIZED PURSUANT TO LAW TO POSSESS A FIREARM.

2. "DISPOSE OF" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 265.00 OF THIS PART.

3. "SHARE" AND "MAKE AVAILABLE" SHALL, IN THE CASE OF A FIREARM, BE CONSTRUED TO INCLUDE, BUT SHALL NOT BE LIMITED TO, PLACING SUCH FIREARM AT A LOCATION ACCESSIBLE AND KNOWN TO ONE OR MORE OTHER PERSONS.

S 7. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

24. "COMMUNITY GUN" SHALL HAVE THE DEFINITION SET FORTH IN SECTION 115.20 OF THIS PART, AND THE TERMS "SHARE" AND "MAKE AVAILABLE" SHALL BE CONSTRUED AS SET FORTH IN SUCH SECTION.

S 8. Section 265.11 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.11 Criminal sale of a firearm in the third degree.

A person is guilty of criminal sale of a firearm in the third degree when such person is not authorized pursuant to law to possess a firearm and such person unlawfully either:

(1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person; [or]

(2) possesses a firearm with the intent to sell it; OR

(3) SHARE OR MAKES AVAILABLE A COMMUNITY GUN.

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

S 9. Section 265.13 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

S 265.13 Criminal sale of a firearm in the first degree.

A person is guilty of criminal sale of a firearm in the first degree when such person:

(1) unlawfully sells, exchanges, gives or disposes of to another ten or more firearms; [or]

(2) unlawfully sells, exchanges, gives or disposes of to another person or persons a total of ten or more firearms in a period of not more than one year; OR

(3) BEING NOT AUTHORIZED BY NEW YORK STATE LAW TO POSSESS A FIREARM UNLAWFULLY SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES, OR DISPOSES OF A FIREARM TO ANOTHER PERSON, AND, WITHIN THREE YEARS THEREAFTER, THE FIREARM IS DISCHARGED AND CAUSES THE DEATH OF ANOTHER PERSON. THE PROVISIONS OF THIS SUBDIVISION SHALL ONLY APPLY WHEN SUCH FIREARM WAS DISCHARGED INTENTIONALLY, RECKLESSLY OR WITH CRIMINAL NEGLIGENCE, PROVIDED THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHEN SUCH FIREARM WAS DISCHARGED INTENTIONALLY FOR PURPOSES OF COMMITTING SUICIDE. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "FIREARM" SHALL INCLUDE BUT NOT BE LIMITED TO A COMMUNITY GUN.

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

S 10. This act shall take effect on the one hundred eightieth day after it shall have become a law.