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

7843

I N S E N A T E

August 24, 2012

Introduced by Sen. SMITH -- 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 criminal sale, possession and use of firearms

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

Section 1. The closing paragraph of section 265.01 of the penal law, as added by chapter 1041 of the laws of 1974, is amended to read as follows:

Criminal possession of a weapon in the fourth degree is a class A misdemeanor; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A CLASS D FELONY.

S 2. The closing paragraph of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal possession of a weapon in the third degree is a class D felony; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A CLASS C FELONY.

S 3. The closing paragraph of section 265.03 of the penal law, as amended by chapter 742 of the laws of 2006, is amended to read as follows:

Criminal possession of a weapon in the second degree is a class [C] B felony.

S 4. The closing paragraph of section 265.04 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

Criminal possession of a weapon in the first degree is a class B felony; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A CLASS A FELONY.

S 5. The closing paragraph of section 265.08 of the penal law, as added by chapter 233 of the laws of 1980, is amended to read as follows:

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

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

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S 6. The closing paragraph of subdivision 1 of section 265.09 of the penal law, as amended by chapter 650 of the laws of 1996, is amended to read as follows:

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

S 7. Section 265.10 of the penal law, as amended by chapter 189 of the laws of 2000, subdivisions 1 and 2 as amended by chapter 257 of the laws of 2008, is amended to read as follows:

S 265.10 Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances.

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] C felony. Any person who manufactures or causes to be manufactured any 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.

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] C felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, IS GUILTY OF A CLASS D FELONY, ANY PERSON WHO TRANSPORTS OR SHIPS AS MERCHANDISE ANY 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.

3. Any person who disposes of any machine-gun, assault weapon, large capacity ammunition feeding device or firearm silencer is guilty of a class [D] C felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun is guilty of a class [D] C felony.

4. Any person who disposes of any of the weapons, instruments or appliances specified in subdivision one of section 265.01, except a firearm, is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.

5. Any person who disposes of any of the weapons, instruments, appliances or substances specified in section 265.05 to any other person under the age of sixteen years is guilty of a class A misdemeanor.

6. Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm is guilty of a class [D] C felony.

7. Any person, other than a wholesale dealer, or gunsmith or dealer in firearms duly licensed pursuant to section 400.00, lawfully in possession of a firearm, who disposes of the same without first notifying in writing the licensing officer in the city of New York and counties of Nassau and Suffolk and elsewhere in the state the executive department, division of state police, Albany, is guilty of a class [A misdemeanor] D FELONY.

S 8. 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 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. 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 11. 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 12. 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 13. The closing paragraph of section 265.17 of the penal law, as added by chapter 189 of the laws of 2000, is amended to read as follows:

Criminal purchase of a weapon is a class [A misdemeanor] D FELONY.

S 14. Section 265.35 of the penal law, subdivisions 1, 2 and 3 as renumbered by chapter 1041 of the laws of 1974, is amended to read as follows:

S 265.35 Prohibited use of weapons.

1. Any person hunting with a dangerous weapon in any county wholly embraced within the territorial limits of a city is guilty of a class A misdemeanor. WHERE SUCH DANGEROUS WEAPON IS A FIREARM SUCH PERSON IS GUILTY OF A CLASS D FELONY.

2. Any person who wilfully discharges a loaded firearm or any other gun, the propelling force of which is gunpowder, at an aircraft while such aircraft is in motion in the air or in motion or stationary upon the ground, or at any railway or street railroad train as defined by the public service law, or at a locomotive, car, bus or vehicle standing or moving upon such railway, railroad or public highway, is guilty of a class [D] C felony if thereby the safety of any person is endangered, and in every other case, of a class [E] D felony.

3. Any person who, otherwise than in self defense or in the discharge of official duty, (a) wilfully discharges any species of firearms, air-gun or other weapon, or throws any other deadly missile, either in a public place, or in any place where there is any person to be endangered thereby, or, in Putnam county, within one-quarter mile of any occupied school building other than under supervised instruction by properly authorized instructors although no injury to any person ensues; (b) intentionally, without malice, points or aims any firearm or any other gun, the propelling force of which is gunpowder, at or toward any other person; (c) discharges, without injury to any other person, firearms or any other guns, the propelling force of which is gunpowder, while intentionally without malice, aimed at or toward any person; or (d) maims or injures any other person by the discharge of any firearm or any other gun, the propelling force of which is gunpowder, pointed or aimed intentionally, but without malice, at any such person, is guilty of a class [A misdemeanor] D FELONY.

S 15. Subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, paragraph (a) as

amended by chapter 320 of the laws of 2006, paragraph (b) as amended by chapter 148 of the laws of 2011, paragraph (c) as amended by chapter 405 of the laws of 2010 and paragraph (d) as amended by chapter 7 of the laws of 2007, is amended to read as follows:

1. Definition of a violent felony offense. A violent felony offense is A CLASS A VIOLENT FELONY OFFENSE, a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) CLASS A VIOLENT FELONY OFFENSES: CRIMINAL POSSESSION OF A WEAPON IN THE FIRST DEGREE AS DEFINED IN SECTION 265.04 WHERE THE WEAPON IS A FIREARM, CRIMINAL USE OF A FIREARM IN THE FIRST DEGREE AS DEFINED IN SECTION 265.09, AND CRIMINAL SALE OF A FIREARM IN THE FIRST DEGREE AS DEFINED IN SECTION 265.13.

(B) 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 WHERE THE WEAPON IS NOT A FIREARM, [criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13,] 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 DEGREE AS DEFINED IN SECTION 265.12, CRIMINAL SALE OF A FIREARM WITH THE AID OF A MINOR AS DEFINED IN 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.

[(b)] (C) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph [(a)] (B) 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, assault on a judge as defined in section 120.09, 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 degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14,] CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION FIVE, SIX, SEVEN OR EIGHT OF SECTION 265.02 WHERE THE WEAPON IS A FIREARM, CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS DEFINED IN SECTION 265.11, 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.

[(c)] (D) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph [(b)] (C); 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, strangulation in the second degree as defined in section 121.12, 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] FOURTH degree as defined in [subdivision five, six, seven or eight of] section [265.02] 265.01 WHERE THE WEAPON IS A FIREARM, [criminal sale of a firearm in the third degree as defined in section 265.11,] AN ATTEMPT TO COMMIT ANY OF THE FELONIES OF CRIMINAL POSSESSION IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION FIVE, SIX, SEVEN OR EIGHT OF SECTION 265.02 AS A LESSER INCLUDED OFFENSE OF THAT SECTION AS DEFINED IN SECTION 220.20 OF THE CRIMINAL PROCEDURE LAW, 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 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)] (E) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the [third] FOURTH degree as defined in [subdivision five, six, seven or eight of] section [265.02] 265.01 WHERE THE WEAPON IS A FIREARM 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 16. 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:

3. Term of sentence. The term of a determinate sentence for a violent felony offense must be fixed by the court as follows:

(a) FOR A CLASS A FELONY, THE TERM MUST BE AT LEAST TEN YEARS AND MUST NOT EXCEED TWENTY-FIVE YEARS;

(B) For a class B felony, the term must be at least five years and must not exceed twenty-five years, provided, however, that the term must be: (i) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; and (ii) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated manslaughter in the first degree as defined in section 125.22 of this chapter;

[(b)] (C) 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;

[(c)] (D) For a class D felony, the term must be at least two years and must not exceed seven years, provided, however, that the term must be: (I) at least two years and must not exceed eight years where the sentence is for the crime of menacing a police officer or peace officer as defined in section 120.18 of this chapter; AND (II) AT LEAST FIVE YEARS AND MUST NOT EXCEED EIGHT YEARS WHERE THE SENTENCE IS FOR THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE FOURTH DEGREE AS DEFINED IN SECTION 265.01 OF THIS CHAPTER IF SUCH WEAPON IS A FIREARM; and

[(d)] (E) For a class E felony, the term must be at least one and one-half years and must not exceed four years.

S 17. Paragraph (c) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

(c) Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class [D] (C) violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision four, five, seven or eight of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11 or the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision four, five, seven or eight of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

(i) the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime; and

(ii) the court may apply the provisions of paragraphs (b) and (c) of subdivision four of this section when imposing a sentence upon a person who has previously been convicted of a class A misdemeanor defined in this chapter in the five years immediately preceding the commission of the offense.

S 18. Paragraph (a) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

(a) Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of a class A, B or class C violent felony offense must be a determinate sentence of imprisonment which shall be in whole or half years. The term of such sentence must be in accordance with the provisions of subdivision three of this section.

S 19. Paragraph (a) of subdivision 2 of section 70.02 of the penal law, as amended by chapter 233 of the laws of 1980, is amended to read as follows:

(a) The sentence imposed upon a person who stands convicted of a class A, B or class C violent felony offense must be an indeterminate sentence of imprisonment. Except as provided in subdivision five of section 60.05, the maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

S 20. This act shall take effect immediately and shall apply to offenses committed on and after such date; provided that the amendments to paragraph (a) of subdivision 2 of section 70.02 of the penal law made by section eighteen of this act shall be subject to the expiration and reversion of such paragraph when upon such date the provisions of section nineteen of this act shall take effect.