

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:

1 Section 1. The closing paragraph of section 265.01 of the penal law,
2 as added by chapter 1041 of the laws of 1974, is amended to read as
3 follows:
4 Criminal possession of a weapon in the fourth degree is a class A
5 misdemeanor; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE
6 SHALL BE A CLASS D FELONY.
7 S 2. The closing paragraph of section 265.02 of the penal law, as
8 amended by chapter 764 of the laws of 2005, is amended to read as
9 follows:
10 Criminal possession of a weapon in the third degree is a class D felo-
11 ny; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A
12 CLASS C FELONY.
13 S 3. The closing paragraph of section 265.03 of the penal law, as
14 amended by chapter 742 of the laws of 2006, is amended to read as
15 follows:
16 Criminal possession of a weapon in the second degree is a class [C] B
17 felony.
18 S 4. The closing paragraph of section 265.04 of the penal law, as
19 amended by chapter 764 of the laws of 2005, is amended to read as
20 follows:
21 Criminal possession of a weapon in the first degree is a class B felo-
22 ny; EXCEPT THAT IF SUCH WEAPON IS A FIREARM THEN SUCH OFFENSE SHALL BE A
23 CLASS A FELONY.
24 S 5. The closing paragraph of section 265.08 of the penal law, as
25 added by chapter 233 of the laws of 1980, is amended to read as follows:
26 Criminal use of a firearm in the second degree is a class [C] B felo-
27 ny.

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

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

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

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

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

10 1. Any person who manufactures or causes to be manufactured any
11 machine-gun, assault weapon, large capacity ammunition feeding device or
12 disguised gun is guilty of a class [D] C felony. Any person who manufac-
13 tures or causes to be manufactured any switchblade knife, gravity knife,
14 pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon,
15 plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag,
16 sandclub or slungshot is guilty of a class A misdemeanor.

17 2. Any person who transports or ships any machine-gun, firearm silenc-
18 er, assault weapon or large capacity ammunition feeding device or
19 disguised gun, or who transports or ships as merchandise five or more
20 firearms, is guilty of a class [D] C felony. Any person who transports
21 or ships as merchandise any firearm, other than an assault weapon, IS
22 GUILTY OF A CLASS D FELONY, ANY PERSON WHO TRANSPORTS OR SHIPS AS
23 MERCHANDISE ANY switchblade knife, gravity knife, pilum ballistic knife,
24 billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu
25 star, chuka stick, sandbag or slungshot is guilty of a class A misdemea-
26 nor.

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

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

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

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

44 7. Any person, other than a wholesale dealer, or gunsmith or dealer in
45 firearms duly licensed pursuant to section 400.00, lawfully in
46 possession of a firearm, who disposes of the same without first notify-
47 ing in writing the licensing officer in the city of New York and coun-
48 ties of Nassau and Suffolk and elsewhere in the state the executive
49 department, division of state police, Albany, is guilty of a class [A
50 misdemeanor] D FELONY.

51 S 8. The closing paragraph of section 265.11 of the penal law, as
52 amended by chapter 764 of the laws of 2005, is amended to read as
53 follows:

54 Criminal sale of a firearm in the third degree is a class [D] C felo-
55 ny.

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

4 Criminal sale of a firearm in the second degree is a class [C] B felo-
5 ny.

6 S 10. The closing paragraph of section 265.13 of the penal law, as
7 amended by chapter 764 of the laws of 2005, is amended to read as
8 follows:

9 Criminal sale of a firearm in the first degree is a class [B] A felo-
10 ny.

11 S 11. The closing paragraph of section 265.14 of the penal law, as
12 amended by chapter 654 of the laws of 1998, is amended to read as
13 follows:

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

16 S 12. The closing paragraph of section 265.16 of the penal law, as
17 amended by chapter 654 of the laws of 1998, is amended to read as
18 follows:

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

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

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

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

26 S 265.35 Prohibited use of weapons.

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

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

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

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

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

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

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

14 (B) Class B violent felony offenses: an attempt to commit the class
15 A-I felonies of murder in the second degree as defined in section
16 125.25, kidnapping in the first degree as defined in section 135.25, and
17 arson in the first degree as defined in section 150.20; manslaughter in
18 the first degree as defined in section 125.20, aggravated manslaughter
19 in the first degree as defined in section 125.22, rape in the first
20 degree as defined in section 130.35, criminal sexual act in the first
21 degree as defined in section 130.50, aggravated sexual abuse in the
22 first degree as defined in section 130.70, course of sexual conduct
23 against a child in the first degree as defined in section 130.75;
24 assault in the first degree as defined in section 120.10, kidnapping in
25 the second degree as defined in section 135.20, burglary in the first
26 degree as defined in section 140.30, arson in the second degree as
27 defined in section 150.15, robbery in the first degree as defined in
28 section 160.15, incest in the first degree as defined in section 255.27,
29 criminal possession of a weapon in the first degree as defined in
30 section 265.04 WHERE THE WEAPON IS NOT A FIREARM, [criminal use of a
31 firearm in the first degree as defined in section 265.09, criminal sale
32 of a firearm in the first degree as defined in section 265.13,] CRIMINAL
33 POSSESSION OF A WEAPON IN THE SECOND DEGREE AS DEFINED IN SECTION
34 265.03, CRIMINAL USE OF A FIREARM IN THE SECOND DEGREE AS DEFINED IN
35 SECTION 265.08, CRIMINAL SALE OF A FIREARM IN THE SECOND DEGREE AS
36 DEFINED IN SECTION 265.12, CRIMINAL SALE OF A FIREARM WITH THE AID OF A
37 MINOR AS DEFINED IN 265.14, aggravated assault upon a police officer or
38 a peace officer as defined in section 120.11, gang assault in the first
39 degree as defined in section 120.07, intimidating a victim or witness in
40 the first degree as defined in section 215.17, hindering prosecution of
41 terrorism in the first degree as defined in section 490.35, criminal
42 possession of a chemical weapon or biological weapon in the second
43 degree as defined in section 490.40, and criminal use of a chemical
44 weapon or biological weapon in the third degree as defined in section
45 490.47.

46 [(b)] (C) Class C violent felony offenses: an attempt to commit any of
47 the class B felonies set forth in paragraph [(a)] (B) of this subdivi-
48 sion; aggravated criminally negligent homicide as defined in section
49 125.11, aggravated manslaughter in the second degree as defined in
50 section 125.21, aggravated sexual abuse in the second degree as defined
51 in section 130.67, assault on a peace officer, police officer, fireman
52 or emergency medical services professional as defined in section 120.08,
53 assault on a judge as defined in section 120.09, gang assault in the
54 second degree as defined in section 120.06, strangulation in the first
55 degree as defined in section 121.13, burglary in the second degree as
56 defined in section 140.25, robbery in the second degree as defined in

1 section 160.10, [criminal possession of a weapon in the second degree as
2 defined in section 265.03, criminal use of a firearm in the second
3 degree as defined in section 265.08, criminal sale of a firearm in the
4 second degree as defined in section 265.12, criminal sale of a firearm
5 with the aid of a minor as defined in section 265.14,] CRIMINAL
6 POSSESSION OF A WEAPON IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION
7 FIVE, SIX, SEVEN OR EIGHT OF SECTION 265.02 WHERE THE WEAPON IS A
8 FIREARM, CRIMINAL SALE OF A FIREARM IN THE THIRD DEGREE AS DEFINED IN
9 SECTION 265.11, soliciting or providing support for an act of terrorism
10 in the first degree as defined in section 490.15, hindering prosecution
11 of terrorism in the second degree as defined in section 490.30, and
12 criminal possession of a chemical weapon or biological weapon in the
13 third degree as defined in section 490.37.

14 [(c)] (D) Class D violent felony offenses: an attempt to commit any of
15 the class C felonies set forth in paragraph [(b)] (C); reckless assault
16 of a child as defined in section 120.02, assault in the second degree as
17 defined in section 120.05, menacing a police officer or peace officer as
18 defined in section 120.18, stalking in the first degree, as defined in
19 subdivision one of section 120.60, strangulation in the second degree as
20 defined in section 121.12, rape in the second degree as defined in
21 section 130.30, criminal sexual act in the second degree as defined in
22 section 130.45, sexual abuse in the first degree as defined in section
23 130.65, course of sexual conduct against a child in the second degree as
24 defined in section 130.80, aggravated sexual abuse in the third degree
25 as defined in section 130.66, facilitating a sex offense with a
26 controlled substance as defined in section 130.90, criminal possession
27 of a weapon in the [third] FOURTH degree as defined in [subdivision
28 five, six, seven or eight of] section [265.02] 265.01 WHERE THE WEAPON
29 IS A FIREARM, [criminal sale of a firearm in the third degree as defined
30 in section 265.11,] AN ATTEMPT TO COMMIT ANY OF THE FELONIES OF CRIMINAL
31 POSSESSION IN THE THIRD DEGREE AS DEFINED IN SUBDIVISION FIVE, SIX,
32 SEVEN OR EIGHT OF SECTION 265.02 AS A LESSER INCLUDED OFFENSE OF THAT
33 SECTION AS DEFINED IN SECTION 220.20 OF THE CRIMINAL PROCEDURE LAW,
34 intimidating a victim or witness in the second degree as defined in
35 section 215.16, soliciting or providing support for an act of terrorism
36 in the second degree as defined in section 490.10, and making a terror-
37 istic threat as defined in section 490.20, falsely reporting an incident
38 in the first degree as defined in section 240.60, placing a false bomb
39 or hazardous substance in the first degree as defined in section 240.62,
40 placing a false bomb or hazardous substance in a sports stadium or
41 arena, mass transportation facility or enclosed shopping mall as defined
42 in section 240.63, and aggravated unpermitted use of indoor pyrotechnics
43 in the first degree as defined in section 405.18.

44 [(d)] (E) Class E violent felony offenses: an attempt to commit any of
45 the felonies of criminal possession of a weapon in the [third] FOURTH
46 degree as defined in [subdivision five, six, seven or eight of] section
47 [265.02] 265.01 WHERE THE WEAPON IS A FIREARM as a lesser included
48 offense of that section as defined in section 220.20 of the criminal
49 procedure law, persistent sexual abuse as defined in section 130.53,
50 aggravated sexual abuse in the fourth degree as defined in section
51 130.65-a, falsely reporting an incident in the second degree as defined
52 in section 240.55 and placing a false bomb or hazardous substance in the
53 second degree as defined in section 240.61.

54 S 16. Subdivision 3 of section 70.02 of the penal law, as amended by
55 chapter 765 of the laws of 2005, is amended to read as follows:

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

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

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

13 [(b)] (C) For a class C felony, the term must be at least three and
14 one-half years and must not exceed fifteen years, provided, however,
15 that the term must be: (i) at least seven years and must not exceed
16 twenty years where the sentence is for the crime of aggravated
17 manslaughter in the second degree as defined in section 125.21 of this
18 chapter; (ii) at least seven years and must not exceed twenty years
19 where the sentence is for the crime of attempted aggravated assault upon
20 a police officer or peace officer as defined in section 120.11 of this
21 chapter; and (iii) at least three and one-half years and must not exceed
22 twenty years where the sentence is for the crime of aggravated criminal-
23 ly negligent homicide as defined in section 125.11 of this chapter;

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

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

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

37 (c) Except as provided in subdivision six of section 60.05, the
38 sentence imposed upon a person who stands convicted of the class [D] (C)
39 violent felony offenses of criminal possession of a weapon in the third
40 degree as defined in subdivision four, five, seven or eight of section
41 265.02, criminal sale of a firearm in the third degree as defined in
42 section 265.11 or the class E violent felonies of attempted criminal
43 possession of a weapon in the third degree as defined in subdivision
44 four, five, seven or eight of section 265.02 must be a sentence to a
45 determinate period of imprisonment, or, in the alternative, a definite
46 sentence of imprisonment for a period of no less than one year, except
47 that:

48 (i) the court may impose any other sentence authorized by law upon a
49 person who has not been previously convicted in the five years imme-
50 diately preceding the commission of the offense for a class A misdemea-
51 nor defined in this chapter, if the court having regard to the nature
52 and circumstances of the crime and to the history and character of the
53 defendant, finds on the record that such sentence would be unduly harsh
54 and that the alternative sentence would be consistent with public safety
55 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.