

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

5904--B

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, the vehicle and traffic law and the general business law, in relation to criminal use of a firearm in the first degree 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:

1 Section 1. Section 265.09 of the penal law, as amended by chapter 650
2 of the laws of 1996, is amended to read as follows:
3 S 265.09 Criminal use of a firearm in the first degree.
4 (1) A person is guilty of criminal use of a firearm in the first
5 degree when he OR SHE commits any [class B violent] felony offense [as
6 defined in paragraph (a) of subdivision one of section 70.02] and he
7 [either:
8 (a) possesses a deadly weapon, if the weapon is a loaded weapon from
9 which a shot, readily capable of producing death or other serious injury
10 may be discharged; or
11 (b)] OR SHE displays what appears to be a pistol, revolver, rifle,
12 shotgun, machine gun or other firearm.
13 Criminal use of a firearm in the first degree is a class B felony.
14 (2) Sentencing. Notwithstanding any other provision of law to the
15 contrary, when a person is convicted of criminal use of a firearm in the
16 first degree as defined in subdivision one of this section, the court
17 shall impose [an additional] A consecutive sentence of five years to the
18 minimum term of [an indeterminate] THE sentence imposed on the underlying
19 [class B violent] felony offense where the person convicted of such

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

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1 crime displays [a loaded weapon from which a shot, readily capable of
2 producing death or other serious injury may be discharged,] WHAT APPEARS
3 TO BE A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM
4 in furtherance of the commission of such crime, provided, however, that
5 such additional sentence shall not be imposed if the court, having
6 regard to the nature and circumstances of the crime and to the history
7 and character of the defendant, finds on the record that such additional
8 consecutive sentence would be unduly harsh and that not imposing such
9 sentence would be consistent with the public safety and would not depre-
10 cate the seriousness of the crime. Notwithstanding any other provision
11 of law to the contrary, the aggregate of the five year consecutive term
12 imposed pursuant to this subdivision and the minimum term of the [inde-
13 terminate] sentence imposed on the underlying [class B violent] felony
14 shall constitute the new aggregate minimum term of imprisonment, and a
15 person subject to such term shall be required to serve the entire aggre-
16 gate minimum term and shall not be eligible for release on parole or
17 conditional release during such term. This subdivision shall not apply
18 where the defendant's criminal liability for displaying [a loaded weapon
19 from which a shot, readily capable of producing death or other serious
20 injury may be discharged,] WHAT APPEARS TO BE A PISTOL, REVOLVER, RIFLE,
21 SHOTGUN, MACHINE GUN OR OTHER FIREARM in furtherance of the commission
22 of crime is based on the conduct of another pursuant to section 20.00 of
23 [the penal law] THIS CHAPTER.

24 S 2. Section 265.08 of the penal law is REPEALED.

25 S 3. Paragraph (b) of subdivision 1 of section 70.02 of the penal law,
26 as amended by chapter 148 of the laws of 2011, is amended to read as
27 follows:

28 (b) Class C violent felony offenses: an attempt to commit any of the
29 class B felonies set forth in paragraph (a) of this subdivision; aggra-
30 vated criminally negligent homicide as defined in section 125.11, aggra-
31 vated manslaughter in the second degree as defined in section 125.21,
32 aggravated sexual abuse in the second degree as defined in section
33 130.67, assault on a peace officer, police officer, fireman or emergency
34 medical services professional as defined in section 120.08, assault on a
35 judge as defined in section 120.09, gang assault in the second degree as
36 defined in section 120.06, strangulation in the first degree as defined
37 in section 121.13, burglary in the second degree as defined in section
38 140.25, robbery in the second degree as defined in section 160.10, crim-
39 inal possession of a weapon in the second degree as defined in section
40 265.03, [criminal use of a firearm in the second degree as defined in
41 section 265.08,] criminal sale of a firearm in the second degree as
42 defined in section 265.12, criminal sale of a firearm with the aid of a
43 minor as defined in section 265.14, soliciting or providing support for
44 an act of terrorism in the first degree as defined in section 490.15,
45 hindering prosecution of terrorism in the second degree as defined in
46 section 490.30, and criminal possession of a chemical weapon or biolog-
47 ical weapon in the third degree as defined in section 490.37.

48 S 4. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
49 and traffic law, as amended by chapter 400 of the laws of 2011, is
50 amended to read as follows:

51 (c) The offenses referred to in subparagraph (i) of paragraph (b) of
52 subdivision one and subparagraph (i) of paragraph (c) of subdivision two
53 of this section that result in disqualification for a period of five
54 years shall include a conviction under sections 100.10, 105.13, 115.05,
55 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
56 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,

1 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09,
2 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00,
3 230.05, 230.06, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00,
4 260.10, subdivision two of section 260.20 and sections 260.25, 265.02,
5 265.03, [265.08,] 265.09, 265.10, 265.12, 265.35 of the penal law or an
6 attempt to commit any of the aforesaid offenses under section 110.00 of
7 the penal law, or any similar offenses committed under a former section
8 of the penal law, or any offenses committed under a former section of
9 the penal law which would constitute violations of the aforesaid
10 sections of the penal law, or any offenses committed outside this state
11 which would constitute violations of the aforesaid sections of the penal
12 law.

13 S 5. The opening paragraph of paragraph (f) of subdivision 1 of
14 section 410 of the general business law, as added by chapter 509 of the
15 laws of 1992, is amended to read as follows:

16 Conviction of any of the following crimes subsequent to the issuance
17 of a license pursuant to this article: fraud pursuant to sections
18 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
19 business records pursuant to section 175.10; grand larceny pursuant to
20 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
21 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
22 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
23 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
24 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
25 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
26 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
27 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use
28 of a weapon pursuant to [sections 265.08 and] SECTION 265.09; criminal
29 sale of a weapon pursuant to sections 265.11 and 265.12; and sex
30 offenses pursuant to article 130 of the penal law. Provided, however,
31 that for the purposes of this article, none of the following shall be
32 considered criminal convictions or reported as such: (i) a conviction
33 for which an executive pardon has been issued pursuant to the executive
34 law; (ii) a conviction which has been vacated and replaced by a youthful
35 offender finding pursuant to article seven hundred twenty of the crimi-
36 nal procedure law, or the applicable provisions of law of any other
37 jurisdiction; or (iii) a conviction the records of which have been
38 expunged or sealed pursuant to the applicable provisions of the laws of
39 this state or of any other jurisdiction; and (iv) a conviction for which
40 other evidence of successful rehabilitation to remove the disability has
41 been issued.

42 S 6. This act shall take effect on the first of November next succeed-
43 ing the date on which it shall have become a law.