

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

8222--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 7, 2011

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Codes -- 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 general business law and the vehicle and traffic law, in relation to criminal use of a firearm; and to repeal sections 265.08 and 265.09 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. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of
2 the penal law, paragraph (a) as amended by chapter 320 of the laws of
3 2006 and paragraph (b) as amended by chapter 148 of the laws of 2011,
4 are amended to read as follows:
5 (a) Class B violent felony offenses: an attempt to commit the class
6 A-I felonies of murder in the second degree as defined in section
7 125.25, kidnapping in the first degree as defined in section 135.25, and
8 arson in the first degree as defined in section 150.20; manslaughter in
9 the first degree as defined in section 125.20, aggravated manslaughter
10 in the first degree as defined in section 125.22, rape in the first
11 degree as defined in section 130.35, criminal sexual act in the first
12 degree as defined in section 130.50, aggravated sexual abuse in the
13 first degree as defined in section 130.70, course of sexual conduct
14 against a child in the first degree as defined in section 130.75;
15 assault in the first degree as defined in section 120.10, kidnapping in
16 the second degree as defined in section 135.20, burglary in the first
17 degree as defined in section 140.30, arson in the second degree as
18 defined in section 150.15, robbery in the first degree as defined in
19 section 160.15, incest in the first degree as defined in section 255.27,
20 criminal possession of a weapon in the first degree as defined in
21 section 265.04, [criminal use of a firearm in the first degree as
22 defined in section 265.09,] criminal sale of a firearm in the first

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

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1 degree as defined in section 265.13, aggravated assault upon a police
2 officer or a peace officer as defined in section 120.11, gang assault in
3 the first degree as defined in section 120.07, intimidating a victim or
4 witness in the first degree as defined in section 215.17, hindering
5 prosecution of terrorism in the first degree as defined in section
6 490.35, criminal possession of a chemical weapon or biological weapon in
7 the second degree as defined in section 490.40, and criminal use of a
8 chemical weapon or biological weapon in the third degree as defined in
9 section 490.47.

10 (b) Class C violent felony offenses: an attempt to commit any of the
11 class B felonies set forth in paragraph (a) of this subdivision; aggra-
12 vated criminally negligent homicide as defined in section 125.11, aggra-
13 vated manslaughter in the second degree as defined in section 125.21,
14 aggravated sexual abuse in the second degree as defined in section
15 130.67, assault on a peace officer, police officer, fireman or emergency
16 medical services professional as defined in section 120.08, assault on a
17 judge as defined in section 120.09, gang assault in the second degree as
18 defined in section 120.06, strangulation in the first degree as defined
19 in section 121.13, burglary in the second degree as defined in section
20 140.25, robbery in the second degree as defined in section 160.10, crim-
21 inal possession of a weapon in the second degree as defined in section
22 265.03, [criminal use of a firearm in the second degree as defined in
23 section 265.08,] criminal sale of a firearm in the second degree as
24 defined in section 265.12, criminal sale of a firearm with the aid of a
25 minor as defined in section 265.14, soliciting or providing support for
26 an act of terrorism in the first degree as defined in section 490.15,
27 hindering prosecution of terrorism in the second degree as defined in
28 section 490.30, and criminal possession of a chemical weapon or biolog-
29 ical weapon in the third degree as defined in section 490.37.

30 S 2. Sections 265.08 and 265.09 of the penal law are REPEALED and a
31 new section 265.45 is added to read as follows:

32 S 265.45 CRIMINAL USE OF A FIREARM.

33 A PERSON IS GUILTY OF CRIMINAL USE OF A FIREARM WHEN HE OR SHE COMMITS
34 A CLASS A FELONY OR A VIOLENT FELONY OFFENSE, AS DEFINED IN SUBDIVISION
35 ONE OF SECTION 70.02 OF THIS CHAPTER AND HE OR SHE EITHER:

36 1. POSSESSES A DEADLY WEAPON, IF SUCH WEAPON IS A LOADED WEAPON FROM
37 WHICH A SHOT, READILY CAPABLE OF PRODUCING DEATH OR SERIOUS PHYSICAL
38 INJURY MAY BE DISCHARGED; OR

39 2. DISPLAYS WHAT APPEARS TO BE OR IS A PISTOL, REVOLVER, RIFLE, SHOT-
40 GUN, MACHINE GUN OR OTHER FIREARM.

41 CRIMINAL USE OF A FIREARM IS A CLASS A-I FELONY.

42 S 3. Paragraph f of subdivision 1 of section 410 of the general busi-
43 ness law, as added by chapter 509 of the laws of 1992, is amended to
44 read as follows:

45 f. Conviction of any of the following crimes subsequent to the issu-
46 ance of a license pursuant to this article: fraud pursuant to sections
47 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying
48 business records pursuant to section 175.10; grand larceny pursuant to
49 article 155; bribery pursuant to sections 180.03, 180.08, 180.15,
50 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50;
51 perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to
52 sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article
53 160; homicide pursuant to sections 125.25 and 125.27; manslaughter
54 pursuant to sections 125.15 and 125.20; kidnapping and unlawful impri-
55 sonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons
56 possession pursuant to sections 265.02, 265.03 and 265.04; criminal use

1 of a weapon pursuant to sections 265.08 [and], 265.09 AND 265.45; criminal
2 sale of a weapon pursuant to sections 265.11 and 265.12; and sex
3 offenses pursuant to article 130 of the penal law. Provided, however,
4 that for the purposes of this article, none of the following shall be
5 considered criminal convictions or reported as such: (i) a conviction
6 for which an executive pardon has been issued pursuant to the executive
7 law; (ii) a conviction which has been vacated and replaced by a youthful
8 offender finding pursuant to article seven hundred twenty of the criminal
9 procedure law, or the applicable provisions of law of any other
10 jurisdiction; or (iii) a conviction the records of which have been
11 expunged or sealed pursuant to the applicable provisions of the laws of
12 this state or of any other jurisdiction; and (iv) a conviction for which
13 other evidence of successful rehabilitation to remove the disability has
14 been issued.

15 S 4. Paragraph (a) of subdivision 4 of section 509-cc of the vehicle
16 and traffic law, as amended by chapter 400 of the laws of 2011, is
17 amended to read as follows:

18 (a) The offenses referred to in subparagraph (ii) of paragraph (a) of
19 subdivision one and paragraph (a) of subdivision two of this section
20 that result in permanent disqualification shall include a conviction
21 under sections 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22,
22 125.25, 125.26, 125.27, 130.30, 130.35, 130.45, 130.50, 130.65, 130.66,
23 130.67, 130.70, 130.75, 130.80, 130.90, 130.95, 130.96, 135.25, 150.20,
24 230.30, 230.32, 230.34, 235.22, 263.05, 263.10, 263.11, 263.15, 263.16
25 AND 265.45 of the penal law or an attempt to commit any of the aforesaid
26 offenses under section 110.00 of the penal law, or any offenses committed
27 under a former section of the penal law which would constitute
28 violations of the aforesaid sections of the penal law, or any offenses
29 committed outside this state which would constitute violations of the
30 aforesaid sections of the penal law.

31 S 5. This act shall take effect on the first of November next succeeding
32 the date on which it shall have become a law, provided that the
33 provisions of sections one and two of this act shall only apply to
34 offenses committed on or after such effective date.