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

2694

2011-2012 Regular Sessions

I N S E N A T E

January 28, 2011

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

AN ACT to amend the penal law, in relation to the related use of a lethal or explosive device

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

Section 1. The penal law is amended by adding a new section 265.07 to read as follows:

S 265.07 RELATED USE OF LETHAL OR EXPLOSIVE DEVICE.

1. A PERSON IS GUILTY OF RELATED USE OF A LETHAL OR EXPLOSIVE DEVICE WHEN HE OR SHE COMMITS ANY OFFENSE WHILE IN POSSESSION OF A LETHAL OR EXPLOSIVE DEVICE.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ANY PERSON CONVICTED OF RELATED USE OF A LETHAL OR EXPLOSIVE DEVICE SHALL, IN ADDITION TO THE PUNISHMENT PROVIDED FOR THE RELATED OR UNDERLYING OFFENSE, BE SENTENCED TO A DETERMINATE TERM OF IMPRISONMENT FOR SEVEN YEARS, AND THE TERM OF IMPRISONMENT IMPOSED PURSUANT TO THIS SECTION SHALL NOT RUN CONCURRENTLY WITH ANY OTHER TERM OF IMPRISONMENT INCLUDING THAT IMPOSED FOR THE RELATED OR UNDERLYING CRIME.

3. ANY SUCH NON-CONCURRENT TERM REQUIRED TO BE IMPOSED PURSUANT TO THIS SECTION SHALL, HOWEVER, NOT BE IMPOSED IF:

(A) THE DEFENDANT, WITHIN SIXTY DAYS OF THE DATE OF ARRAIGNMENT ON THE INDICTMENT OR SUPERIOR COURT INFORMATION, WHICH SIXTY DAY PERIOD MAY BE EXTENDED IN THE DISCRETION OF THE DISTRICT ATTORNEY, SHALL TRUTHFULLY TO THE SATISFACTION OF THE COURT PROVIDE THE DISTRICT ATTORNEY WITH ALL THE INFORMATION THE DEFENDANT HAS CONCERNING THE SOURCE OR SOURCES OF THE LETHAL OR EXPLOSIVE DEVICE; AND

(B) THE USE OF SUCH LETHAL OR EXPLOSIVE DEVICE HAS NOT RESULTED IN DEATH OR SERIOUS BODILY INJURY TO ANOTHER PERSON WHO WAS NOT A PARTICIPANT IN THE OFFENSE.

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

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4. SO LONG AS THE STATEMENTS MADE BY THE DEFENDANT TO THE DISTRICT ATTORNEY RELATING TO THE SOURCES OF THE LETHAL OR EXPLOSIVE DEVICE ARE TRUTHFUL, THEN (A) NO STATEMENT SO MADE SHALL BE USED AS EVIDENCE AGAINST THE DEFENDANT IN ANY CRIMINAL PROCEEDINGS EXCEPT THAT THE DISTRICT ATTORNEY MAY USE SUCH STATEMENTS FOR THE PURPOSE OF CROSS-EXAMINATION, IMPEACHMENT AND REBUTTAL SHOULD THE DEFENDANT EVER OFFER CONTRARY EVIDENCE, AND (B) THE DISTRICT ATTORNEY MAY USE AS EVIDENCE AGAINST THE DEFENDANT ANY INDEPENDENT EVIDENCE WHICH MAY BE DERIVED THROUGH AN INVESTIGATION INTO THE INFORMATION SO PROFFERED BY THE DEFENDANT. AT ANY HEARING ON THE ISSUE OF WHETHER THE DEFENDANT'S STATEMENTS ARE TRUTHFUL, THE PEOPLE SHALL BEAR THE BURDEN OF SHOWING THAT THE STATEMENTS ARE NOT TRUTHFUL BY PROOF BEYOND A REASONABLE DOUBT.

5. THE TERM: (A) "LETHAL DEVICE" SHALL MEAN A MACHINE GUN, A PISTOL OR REVOLVER, EITHER A SHOTGUN, RIFLE OR ASSAULT WEAPON OF ANY LENGTH OR ANY OBJECT MADE THEREFROM BY ALTERATION, MODIFICATION OR OTHERWISE, AN ELECTRONIC DART GUN, AND AN ELECTRONIC STUN GUN.

(B) "EXPLOSIVE DEVICE" SHALL MEAN ANY EXPLOSIVE, INCENDIARY OR POISON GAS, BOMB, GRENADE, ROCKET HAVING A PROPELLANT CHARGE OF MORE THAN FOUR OUNCES, MISSILE HAVING AN EXPLOSIVE OR INCENDIARY CHARGE OF MORE THAN ONE-QUARTER OUNCE, MINE OR ANY DEVICE SIMILAR TO ANY OF THE DEVICES DESCRIBED IN THIS SUBDIVISION.

(C) "EXPLOSIVE" SHALL MEAN ANY CHEMICAL COMPOUND MIXTURE OR DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO FUNCTION BY EXPLOSION.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.