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

4536

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. ESPAILLAT -- 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 prohibition of illegal gun trafficking, criminal possession of a weapon by a minor and criminal use of a weapon by a minor, failure to report a lost or stolen firearm, and fines for gun trafficking; and to amend the education law, in relation to the eligibility for tuition awards to students on probation or parole for weapons convictions

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

Section 1. Short title. This act shall be known and may be cited as the "Gun Trafficking Prevention Act".

S 2. The penal law is amended by adding a new section 265.45 to read as follows:

S 265.45 ILLEGAL GUN TRAFFICKING.

A PERSON IS GUILTY OF ILLEGAL GUN TRAFFICKING WHEN SUCH PERSON KNOWINGLY AND INTENTIONALLY DISTRIBUTES, TRANSPORTS, SHIPS, RECEIVES, BARTERS, PURCHASES OR SELLS ANY FIREARM WHICH HAS:

1. BEEN USED DURING THE COMMISSION OF A CRIME;

2. BEEN STOLEN;

3. HAD THE IMPORTER'S OR MANUFACTURER'S SERIAL NUMBER REMOVED, OBLITERATED OR ALTERED; OR

4. BEEN DEFACED.

ILLEGAL GUN TRAFFICKING IS A CLASS B FELONY.

S 3. The penal law is amended by adding two new sections 265.18 and 265.19 to read as follows:

S 265.18 CRIMINAL POSSESSION OF A WEAPON BY A MINOR.

1. A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON BY A MINOR WHEN, BEING UNDER EIGHTEEN YEARS OF AGE, HE OR SHE POSSESSES ANY FIREARM, RIFLE OR SHOTGUN.

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

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2. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO POSSESSES A RIFLE OR SHOTGUN AND IS THE HOLDER OF A HUNTING LICENSE OR PERMIT ISSUED PURSUANT TO ARTICLE ELEVEN OF THE ENVIRONMENTAL CONSERVATION LAW AND USED IN ACCORDANCE WITH SUCH ARTICLE.

CRIMINAL POSSESSION OF A WEAPON BY A MINOR IS A CLASS D FELONY.

S 265.19 CRIMINAL USE OF A WEAPON BY A MINOR.

A PERSON IS GUILTY OF CRIMINAL USE OF A WEAPON BY A MINOR WHEN, BEING UNDER EIGHTEEN YEARS OF AGE, HE OR SHE COMMITS ANY CRIME AND POSSESSES A FIREARM, RIFLE OR SHOTGUN WHILE IN THE COURSE OF COMMITTING SUCH CRIME.

CRIMINAL USE OF A WEAPON BY A MINOR IS A CLASS C FELONY.

S 4. Subdivisions 4 and 5 of section 60.05 of the penal law, subdivision 4 as amended by chapter 738 of the laws of 2004, subdivision 5 as amended by chapter 405 of the laws of 2010, are amended to read as follows:

4. Certain class C felonies. Except as provided in subdivision six, every person convicted of a class C violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with section 70.02 of this title; and, except as provided in subdivision six of this section, every person convicted of the class C felonies of: attempt to commit any of the class B felonies of bribery in the first degree as defined in section 200.04, bribe receiving in the first degree as defined in section 200.12, conspiracy in the second degree as defined in section 105.15 and criminal mischief in the first degree as defined in section 145.12; criminal usury in the first degree as defined in section 190.42, rewarding official misconduct in the first degree as defined in section 200.22, receiving reward for official misconduct in the first degree as defined in section 200.27, attempt to promote prostitution in the first degree as defined in ARTICLE ONE HUNDRED TEN AND section 230.32, promoting prostitution in the second degree as defined in section 230.30, CRIMINAL USE OF A WEAPON BY A MINOR AS DEFINED IN SECTION 265.19, arson in the third degree as defined in section 150.10 of this chapter, must be sentenced to imprisonment in accordance with section 70.00 of this title.

5. Certain class D felonies. Except as provided in subdivision six of this section, every person convicted of the class D felonies of assault in the second degree as defined in section 120.05, strangulation in the second degree as defined in section 121.12, CRIMINAL POSSESSION OF A WEAPON BY A MINOR AS DEFINED IN SECTION 265.18 or attempt to commit a class C felony as defined in section 230.30 of this chapter, must be sentenced in accordance with section 70.00 or 85.00 of this title.

S 5. The penal law is amended by adding a new section 265.27 to read as follows:

S 265.27 LOST OR STOLEN FIREARM TO BE REPORTED.

AN OWNER OF ONE OR MORE FIREARMS SHALL REPORT EACH INCIDENCE OF A LOST OR STOLEN FIREARM TO THE POLICE AUTHORITIES OF THE CITY, TOWN OR VILLAGE WHERE SUCH PERSON REPORTING IS LOCATED WITHIN SEVENTY-TWO HOURS OF SUCH LOSS OR THEFT, OR DISCOVERY OF SUCH LOSS OR THEFT.

AN INTENTIONAL FAILURE TO MAKE SUCH REPORT IS A CLASS A MISDEMEANOR.

S 6. Paragraph d of subdivision 6 of section 661 of the education law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

d. No student who is incarcerated in any federal, state or other penal institution shall be eligible for any general or academic performance award made pursuant to this article. NO STUDENT WHO HAS BEEN CONVICTED OF ANY WEAPONS POSSESSION, TRANSPORT OR SALE CHARGE AND IS CURRENTLY ON PROBATION OR PAROLE FOR SUCH CONVICTION SHALL BE ELIGIBLE TO APPLY FOR

OR RECEIVE ANY GENERAL OR ACADEMIC PERFORMANCE AWARD MADE PURSUANT TO THIS ARTICLE UNTIL SUCH STUDENT IS SUCCESSFULLY DISCHARGED FROM PROBATION OR PAROLE WHEREUPON SUCH STUDENT SHALL BE ELIGIBLE TO APPLY FOR SUCH AWARDS FOR THE NEXT SUCCEEDING ACADEMIC SEMESTER.

S 7. Paragraph c of subdivision 1 of section 80.00 of the penal law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

c. if the conviction is for any felony defined in article two hundred twenty [or], two hundred twenty-one OR SECTION 265.45 of this chapter, according to the following schedule:

(i) for A-I felonies, one hundred thousand dollars;

(ii) for A-II felonies, fifty thousand dollars;

(iii) for B felonies, thirty thousand dollars;

(iv) for C felonies, fifteen thousand dollars.

When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate to the conduct in which defendant engaged, its impact on any victims, and defendant's economic circumstances, including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support.

S 8. This act shall take effect immediately, provided that:

a. sections two, three and five of this act shall take effect on the first of November next succeeding the date on which it shall have become a law;

b. sections four and seven of this act shall take effect on the one hundred twentieth day after it shall have become a law; and

c. section six of this act shall apply to tuition awards for the 2011-2012 academic year and all subsequent academic years.