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

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I N A S S E M B L Y

May 2, 2014

Introduced by M. of A. PAULIN, ZEBROWSKI, MOSLEY, ABINANTI, GOTTFRIED, ROSA, DINOWITZ, GALEF, JACOBS, MAGNARELLI, MARKEY, MILLMAN, OTIS, QUART, ROBINSON, SCARBOROUGH -- Multi-Sponsored by -- M. of A. RIVERA, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to orders to surrender eligible weapons

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 60.12-a to read as follows:

S 60.12-A ORDER TO SURRENDER.

1. FOR PURPOSES OF THIS SECTION, "ELIGIBLE WEAPON" MEANS (I) AN "ELECTRONIC DART GUN," "ELECTRONIC STUN GUN," OR "DISGUISED GUN," AS THOSE TERMS ARE DEFINED IN SECTION 265.00 OF THIS CHAPTER, AND (II) AN "IMITATION WEAPON" AS DEFINED IN SUBDIVISION TWO OF SECTION EIGHT HUNDRED SEVENTY-ONE OF THE GENERAL BUSINESS LAW.

2. WHENEVER A PERSON IS CONVICTED OF ASSAULT OR ATTEMPTED ASSAULT IN THE THIRD DEGREE, AS DEFINED IN SECTIONS 120.00 AND 110.00 OF THIS CHAPTER, MENACING OR ATTEMPTED MENACING IN THE SECOND DEGREE, AS DEFINED IN SECTION 120.14 AND 110.00 OF THIS CHAPTER, CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION OR ATTEMPTED CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION, AS DEFINED IN SECTIONS 121.11 AND 110.00 OF THIS CHAPTER, FORCIBLE TOUCHING OR ATTEMPTED FORCIBLE TOUCHING, AS DEFINED IN SECTIONS 130.52 AND 110.00 OF THIS CHAPTER, AND THE DEFENDANT HAS BEEN DETERMINED, PURSUANT TO SECTION 370.15 OF THE CRIMINAL PROCEDURE LAW, TO BE RELATED OR SITUATED TO THE VICTIM OF THE OFFENSE IN THE MANNER SPECIFIED IN 18 U.S.C. 921(A)(33)(A)(II), THE COURT SHALL ORDER THE IMMEDIATE SURRENDER PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER AND SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER, OF ANY OR ALL FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS OWNED OR POSSESSED.

3. (A) WHENEVER A PERSON IS CONVICTED AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL REQUIRE THE RESPONDENT TO INFORM THE COURT OF ALL FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS HE OR SHE OWNS OR POSSESSES. ANY ORDER TO SURRENDER ONE OR MORE FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS SHALL SPECIFY A DATE AND TIME BY WHICH THE SURRENDER SHALL BE COMPLETED AND,

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

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TO THE EXTENT POSSIBLE, SHALL DESCRIBE SUCH FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS TO BE SURRENDERED AND SHALL DIRECT THE AUTHORITY RECEIVING SUCH SURRENDERED FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS TO IMMEDIATELY NOTIFY THE COURT OF SUCH SURRENDER.

(B) THE PROMPT SURRENDER OF ONE OR MORE FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE CONSIDERED A VOLUNTARY SURRENDER FOR PURPOSES OF SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION A OF SECTION 265.20 OF THIS CHAPTER. THE DISPOSITION OF ANY SUCH FIREARMS, RIFLES, SHOTGUNS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SIX OF SECTION 400.05 OF THIS CHAPTER.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO LIMIT, RESTRICT OR OTHERWISE IMPAIR THE AUTHORITY OF THE COURT TO ORDER AND DIRECT THE SURRENDER OF ANY OR ALL PISTOLS, REVOLVERS, RIFLES, SHOTGUNS OR OTHER FIREARMS, ASSAULT WEAPONS, OR ELIGIBLE WEAPONS OWNED OR POSSESSED BY A RESPONDENT PURSUANT TO THIS CHAPTER.

4. (A) THE COURT ORDERING THE SURRENDER OF ANY FIREARM, RIFLE, SHOTGUN, ASSAULT WEAPON, OR ELIGIBLE WEAPON AS PROVIDED IN THIS SECTION SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY OF SUCH ACTION AND THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

(B) WHERE AN ORDER OF SURRENDER IS MODIFIED OR VACATED, THE COURT SHALL IMMEDIATELY NOTIFY THE DULY CONSTITUTED POLICE AUTHORITIES OF THE LOCALITY CONCERNING SUCH ACTION AND SHALL GIVE WRITTEN NOTICE THEREOF WITHOUT UNNECESSARY DELAY TO THE DIVISION OF STATE POLICE AT ITS OFFICE IN THE CITY OF ALBANY.

5. THE RESPONDENT SHALL HAVE THE RIGHT TO A HEARING BEFORE THE COURT REGARDING ANY SURRENDER ORDER ISSUED PURSUANT TO THIS SECTION, PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE COURT FROM ISSUING ANY SUCH ORDER PRIOR TO A HEARING. WHERE THE COURT HAS ISSUED SUCH AN ORDER PRIOR TO A HEARING, IT SHALL COMMENCE SUCH HEARING WITHIN FOURTEEN DAYS OF THE DATE SUCH ORDER WAS ISSUED.

S 2. Paragraph (c) of subdivision 11 of section 400.00 of the penal law, as added by chapter 1 of the laws of 2013, is amended to read as follows:

(c) In any instance in which a person's license is suspended or revoked under paragraph (a) or (b) of this subdivision, such person shall surrender such license to the appropriate licensing official and any and all firearms, rifles, [or] shotguns, ANTIQUE FIREARMS, BLACK POWDER RIFLES, BLACK POWDER SHOTGUNS, MUZZLE-LOADING FIREARMS, OR ELIGIBLE WEAPONS AS DEFINED IN SUBDIVISION ONE OF SECTION 60.12-A OF THIS CHAPTER, owned or possessed by such person shall be surrendered to an appropriate law enforcement agency as provided in subparagraph (f) of paragraph one of subdivision a of section 265.20 of this chapter. In the event such license, firearm, shotgun, [or] rifle, ANTIQUE FIREARM, BLACK POWDER RIFLE, BLACK POWDER SHOTGUN, MUZZLE-LOADING FIREARM, OR ELIGIBLE WEAPON is not surrendered, such items shall be removed and declared a nuisance and any police officer or peace officer acting pursuant to his or her special duties is authorized to remove any and all such weapons.

S 3. This act shall take effect immediately and shall apply to convictions on or after such effective date as well as to charges for such offenses pending on such effective date for which sentence had not yet been imposed.